

## **Free non-disclosure agreement: cover**

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# Non-disclosure agreement

## DATE

[Date]

## PARTIES

1. [[INDIVIDUAL NAME] of [address]] OR [[COMPANY NAME], a company incorporated in [jurisdiction] (registration number [number]) having its registered office at [address]] ("**the Disclosor**"); and
2. [[INDIVIDUAL NAME] of [address]] OR [[COMPANY NAME], a company incorporated in [jurisdiction] (registration number [registration number]) having its registered office at [address]] ("**the Recipient**").

## AGREEMENT

### 1. Definitions

- 1.1 In this Agreement[, except to the extent expressly provided otherwise]:

"**Agreement**" means this agreement, and any amendments to this agreement from time to time;

"**Business Day**" means any weekday other than a bank or public holiday in [[England]] OR [[jurisdiction]];

"**Disclosor Confidential Information**" means:

- (a) any information disclosed by [or on behalf of ]the Disclosor to the Recipient [during the Term] OR [at any time before the termination of this Agreement] (whether disclosed in writing, orally or otherwise) that at the time of disclosure was marked[ or described] as "confidential" or should have been understood by the Recipient (acting reasonably) to be confidential; and
- (b) [the terms of this Agreement];

[additional list items]

"**Effective Date**" means [the date of execution of this Agreement]; and

"**Term**" means [the term of this Agreement, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2].

### 2. Credit

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### **3. Term**

- 3.1 This Agreement shall come into force upon the Effective Date.
- 3.2 This Agreement shall continue in force [indefinitely] OR [until *[date]*, at the beginning of which this Agreement shall terminate automatically] OR [until *[event]*, upon which this Agreement shall terminate automatically], subject to termination in accordance with Clause 6 or any other provision of this Agreement.

### **4. Consideration**

- 4.1 The Recipient has entered into this Agreement, and agrees to the provisions of this Agreement, in consideration for [the payment by the Disclosor to the Recipient of the sum of [GBP 1.00], receipt of which the Recipient now acknowledges] OR [*[specify consideration]*].

### **5. Recipient confidentiality obligations**

- 5.1 The Recipient must:
- (a) keep the Disclosor Confidential Information strictly confidential;
  - (b) not disclose the Disclosor Confidential Information to any person without the Disclosor's prior written consent[, and then only under conditions of confidentiality [approved in writing by the Disclosor] OR [no less onerous than those contained in this Agreement]];
  - (c) use the same degree of care to protect the confidentiality of the Disclosor Confidential Information as the Recipient uses to protect the Recipient's own confidential information of a similar nature, being at least a reasonable degree of care;
  - (d) [act in good faith at all times in relation to the Disclosor Confidential Information]; and
  - (e) [not use or allow the use of any of the Disclosor Confidential Information for any purpose other than *[specify purposes]*].
- 5.2 Notwithstanding Clause 5.1, the Recipient may disclose the Disclosor Confidential Information to the Recipient's [officers, employees, professional advisers, insurers, agents and subcontractors] [who have a need to access the Disclosor Confidential Information for the performance of their work with respect to this Agreement and ]who are bound by a written agreement or professional obligation to protect the confidentiality of the Disclosor Confidential Information.
- 5.3 This Clause 5 imposes no obligations upon the Recipient with respect to:
- (a) Disclosor Confidential Information that is known to the Recipient before disclosure under this Agreement and is not subject to any other obligation of confidentiality;

- (b) Disclosor Confidential Information that is or becomes publicly known through no act or default of the Recipient;
- (c) [Disclosor Confidential Information that is obtained by the Recipient from a third party in circumstances where the Recipient has no reason to believe that there has been a breach of an obligation of confidentiality]; or
- (d) [information that is independently developed by the Recipient without reliance upon or use of any Disclosor Confidential Information].

5.4 The restrictions in this Clause 5 do not apply to the extent that any Disclosor Confidential Information is required to be disclosed by any law or regulation, or by any judicial or governmental order or request[, or pursuant to disclosure requirements relating to the listing of the stock of the Recipient on any recognised stock exchange]. [ If the Recipient makes a disclosure to which this Clause 5.4 applies then, to the extent permitted by applicable law, the Recipient shall promptly notify the Disclosor of the fact of the disclosure, the identity of the disclosee, and the Disclosor Confidential Information disclosed.]

5.5 Upon the termination of this Agreement, the Recipient must immediately cease to use the Disclosor Confidential Information.

5.6 [Following the date of effective termination of this Agreement, and within [5 Business Days] following the date of receipt of a written request from the Disclosor] OR [Within [5 Business Days] following the date of effective termination of this Agreement], the Recipient must:

- (a) irreversibly delete from its media and computer systems all copies of the Disclosor Confidential Information[ (and ensure that the Disclosor Confidential Information is irreversibly deleted from the media and computer systems of all persons to whom the Recipient has directly or indirectly disclosed that Disclosor Confidential Information)];
- (b) ensure that no other copies of the Disclosor Confidential Information remain in the possession or control of the Recipient[ (or the possession or control of any person to whom the Recipient has directly or indirectly disclosed the Disclosor Confidential Information)];
- (c) [certify in writing to the Disclosor that it has complied with the requirements of this Clause 5.6],

subject in each case to any obligations that the Recipient has under this Agreement to supply or make available to the Disclosor any data or information, and providing that the Recipient shall have no obligation under this Clause 5.6 to delete or to cease to possess or control any of the Disclosor Confidential Information to the extent that the Recipient is required by applicable law to retain that Disclosor Confidential Information[, or to the extent that the Disclosor Confidential Information is contained in *[define excluded document types]*].

- 5.7 The provisions of this Clause 5 shall continue in force [indefinitely following the termination of this Agreement] OR [for a period of [5 years] following the termination of this Agreement, at the end of which period they will cease to have effect].

## **6. Termination**

- 6.1 Either party may terminate this Agreement [forthwith by giving written notice of termination to the other party] OR [by giving [at least 7 days'] written notice of termination to the other party].

## **7. Effects of termination**

- 7.1 Upon the termination of this Agreement, all of the provisions of this Agreement shall cease to have effect, save that the following provisions of this Agreement shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 5, 7 and 8].
- 7.2 Except to the extent expressly provided otherwise in this Agreement, the termination of this Agreement shall not affect the accrued rights of either party.

## **8. General**

- 8.1 No breach of any provision of this Agreement shall be waived except with the express written consent of the party not in breach.
- 8.2 If any provision of this Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this Agreement will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 8.3 This Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 8.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this Agreement.
- 8.5 This Agreement is made for the benefit of the parties and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this Agreement are not subject to the consent of any third party.
- 8.6 Nothing in this Agreement shall exclude or limit any liability of a party for fraud or fraudulent misrepresentation, or any other liability of a party that may not be excluded or limited under applicable law.

- 8.7 Subject to Clause 8.6, this Agreement shall constitute the entire agreement between the parties in relation to the subject matter of this Agreement, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 8.8 This Agreement shall be governed by and construed in accordance with [English law].
- 8.9 The courts of [England] shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this Agreement.

## EXECUTION

The parties have indicated their acceptance of this Agreement by executing it below.

**SIGNED BY** *[[individual name]* on [.....], the Disclosor] OR *[[individual name]* on [.....], duly authorised for and on behalf of the Disclosor]:

.....

**SIGNED BY** *[[individual name]* on [.....], the Recipient] OR *[[individual name]* on [.....], duly authorised for and on behalf of the Recipient]:

.....

## **Free non-disclosure agreement: drafting notes**

This is a straightforward non-disclosure agreement (NDA). This document is easy to adapt, although it does not include all the clauses in some of our other NDAs. The NDA is unilateral, in that it protects the information of only one of the parties.

A key issue to be addressed when adapting this NDA is the definition of confidential information. A narrow definition of confidential information may be easier to agree, but a broader definition can offer greater protection - for example, in relation to confidential information the disclosure of which was not foreseen by the parties when the NDA was agreed.

As with all of our free documents, this NDA contains a credit for Docular which you should (under our licensing rules) retain in your finished document.

### **DATE**

- Insert the date of execution of the document.

### **PARTIES**

#### **Subsection 1**

- Is the Disclosor an individual or a company?
- What is the full name of the individual (including middle names)?
- What is the postal address of the Disclosor?
- What is the full company name of the Disclosor?
- In which jurisdiction is the Disclosor incorporated?
- What is the registration number of the Disclosor?
- What is the registered office address of the Disclosor?

#### **Subsection 2**

- Is the Recipient an individual or a company?
- What is the full name of the individual (including middle names)?
- What is the postal address of the Recipient?
- What is the full company name of the Recipient?
- In which jurisdiction is the Recipient incorporated?
- What is the registration number of the Recipient?
- What is the registered office address of the Recipient?

### **AGREEMENT**

## **Clause 1: Definitions**

### **Clause 1.1**

#### *Definition of Business Day*

- The bank and public holidays of which jurisdiction should be excluded from the definition of "Business Day"?

#### *Definition of Disclosor Confidential Information*

- Information disclosed during which of these periods is or might be treated as confidential for the purposes of this document?
- Will the terms of this document be confidential?

#### *Definition of Effective Date*

- When will the contract come into force?

#### *Definition of Term*

- Define "Term", the period during which the contract will subsist.

## **Clause 2: Credit**

### **Clause: Free documents licensing warning**

Optional element. Although you need to retain the credit, you should remove the inline copyright warning from this document before use.

## **Clause 3: Term**

### **Clause 3.2**

- Is the term of the contract indefinite, or will it come to an end upon some agreed date, or upon the occurrence of a defined event?
- Upon what date will the contract terminate?
- Upon the occurrence of what event will the contract terminate?

## **Clause 4: Consideration**

Should the document include a provision specifying the consideration provided by the first party to the second party?

In English law, a contract must be supported by consideration - i.e. some kind of quid pro quo. The consideration may be nominal. This sort of provision may be required if it is unclear what benefit the second party is getting from the contract. An alternative approach in these circumstances is to execute the document as a deed.

### **Clause 4.1**



- Will monetary consideration be provided to the second party, or some other form of consideration?
- What amount will be paid by the first party to the second party by way of consideration? The amount may be a nominal amount.
- Specify the consideration provided by the first party to the second party.

## **Clause 5: Recipient confidentiality obligations**

### **Clause 5.1**

- In the event of a disclosure of confidential information made by the Recipient with the prior written consent of the Disclosor, should the Recipient be bound to place confidentiality obligations upon the recipient of the information?
- Will the Disclosor have to give its written approval to the specific conditions under which confidential information is disclosed by the Recipient to a third party, or is it sufficient that such disclosures are made under conditions of confidentiality no less onerous than those set out in this document?
- Should the Recipient be required to act in good faith in relation to confidential information?
- Should the Recipient be placed under an obligation to only use the information disclosed for a defined purpose?

### **Clause 5.2**

Optional element.

- To whom may the Recipient disclose the confidential information?
- Should disclosures made under this provision be prohibited unless there is a "need to know"?

### **Clause 5.3**

- State here the circumstances in which the confidentiality obligations will not apply.
- Should the Recipient be free to disclose all information received from third parties in circumstances where the Recipient has no reason to believe that there has been a breach of a confidentiality obligation?
- Should the Recipient be free to disclose information that has been independently developed? The relevance of this potential exception may depend upon the nature of the information being disclosed.

### **Clause 5.5**

Optional element. Should the Recipient be prohibited from making any further use of confidential information following termination?

## **Clause 5.6**

Optional element. Should the document include an express requirement that the Recipient delete confidential information upon termination?

## **Clause 5.7**

- Will the confidentiality obligations continue indefinitely, or will they come to an end at some point following termination of the contract?
- For what period following termination will the confidentiality obligations continue?

## **Clause 6: Termination**

### **Clause 6.1**

- Will notice of termination be immediately effective, or only effective after the expiry of a defined notice period?
- What notice period will apply?

## **Clause 8: General**

### **Clause 8.1**

Optional element.

### **Clause 8.2**

Optional element.

### **Clause 8.3**

Optional element.

This is intended to prevent, for example, one party wrongfully claiming that a term of the contract was changed in a telephone call.

### **Clause 8.4**

Optional element.

### **Clause 8.5**

Optional element.

This provision is designed to exclude any rights a third party may have under the Contracts (Rights of Third Parties) Act 1999.

- *Contracts (Rights of Third Parties) Act 1999 - <https://www.legislation.gov.uk/ukpga/1999/31>*

### **Clause 8.7**

Optional element.

## **Clause 8.8**

This template has been drafted to work in the English law context. If you plan to change the governing law, you should have the document reviewed by someone with expertise in the law of the relevant jurisdiction.

- Which law will govern the document?

## **Clause 8.9**

Optional element.

As a practical matter, it makes sense for the courts with expertise in the relevant law to have the right to adjudicate disputes. Where one of the parties is outside England (or at least the UK), you may want to grant the courts of their home jurisdiction the right to adjudicate disputes, as this could ease enforcement in some circumstances.

- The courts of which jurisdiction will have the exclusive right to adjudicate disputes relating to the document (subject to applicable law)?

## **EXECUTION**

### **Subsection: Execution of contract by First Party (individual or company)**

- Will the contract be signed by a contracting individual, or an individual on behalf of a contracting company?
- What is the full name of the Disclosor signatory?
- On what date is the Disclosor signing the contract?
- Add the full name of the person who will sign the document on behalf of the Disclosor.
- On what date is the contract being signed on behalf of the Disclosor?

### **Subsection: Execution of contract by Second Party (individual or company)**

- Will the contract be signed by a contracting individual, or an individual on behalf of a contracting company?
- What is the full name of the Recipient signatory?
- On what date is the Recipient signing the contract?
- Add the full name of the person who will sign the document on behalf of the Recipient.
- On what date is the contract being signed on behalf of the Recipient?