

**CONFIDENTIALITY AGREEMENT / NDA**

between

**create my contract**

and

**\${counterparty\_name}**

This Agreement is effective dated \${effective\_date}

## **Parties**

- (1)     \${company\_entity} of \${company\_address} (Discloser); and
- (2)     \${counterparty\_name} of \${counterparty\_address} (Recipient).

## **BACKGROUND**

- (A)     The parties intend to enter into discussions relating to the Purpose which will involve the disclosure of confidential information from the Discloser to the Recipient.
- (B)     The parties have agreed to comply with this Agreement in connection with the disclosure and use of Confidential Information.

## **Agreed terms**

### **1. Interpretation**

#### **1.1 Definitions:**

**Business Day:** a day other than a Saturday, Sunday or public holiday in Ireland when banks in Ireland are open for business.

**Confidential Information:** has the meaning given in 32..

**Group:** in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.

**Group Company:** in relation to a company, any member of its Group.

**Purpose:** \${agreement\_purpose}.

**Representative(s):** in relation to each party and any member of its Group:

- a)     its officers and employees that need to know the Confidential Information for the Purpose;
- b)     its professional advisers or consultants who are engaged to advise that party and/or any member of its Group in connection with the Purpose;
- c)     its contractors and sub-contractors engaged by that party and/or any member of its Group in connection with the Purpose; and

d) any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.

- 1.2** The headings in this Agreement are inserted for convenience only and shall not affect its construction.
- 1.3** A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4** Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.5** A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6** A reference to **writing** or **written** includes email.

## **2. Confidential Information**

- 2.1 Confidential Information** means all confidential information relating to the Purpose which the Discloser or its Representatives or any of its Group Companies, or their Representatives directly or indirectly discloses, or makes available, to the Recipient or its Representatives or any of its Group Companies, or their Representatives. This includes:
- (a) the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
  - (b) the existence and terms of this Agreement;
  - (c) all confidential or proprietary information relating to:
    - (i) the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Discloser or of any of the Discloser's Group Companies; and
    - (ii) the operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Discloser, or of any of the Discloser's Group Companies;
  - (d) any information, findings, data or analysis derived from Confidential Information; and

- (e) any other information that is identified as being of a confidential or proprietary nature,

but excludes any information referred to in 42.2.

**2.2 Information is not Confidential Information if:**

- (a) it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Recipient or its Representatives in breach of this Agreement;
- (b) it was available to the Recipient on a non-confidential basis prior to disclosure by the Discloser;
- (c) it was, is, or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not under any confidentiality obligation in respect of that information;
- (d) it was lawfully in the possession of the Recipient before the information was disclosed by the Discloser; or
- (e) the parties agree in writing that the information is not confidential.

**3. Confidentiality obligations**

**3.1** In return for the Discloser making Confidential Information available to the Recipient, the Recipient undertakes to the Discloser that it shall:

- (a) keep the Confidential Information secret and confidential;
- (b) not use or exploit the Confidential Information in any way except for the Purpose;
- (c) not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this Agreement; and
- (d) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be the property of the Discloser.

**3.2** The Recipient shall establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised access or use.

**4. Permitted disclosure**

**4.1 Disclosure to Representatives.**

- (a) The Recipient may disclose the Confidential Information to its Representatives, any of its Group Companies, or their Representatives on the basis that it:

- (i) informs those Representatives, Group Companies or their Representatives of the confidential nature of the Confidential Information before it is disclosed; and
  - (ii) procures that those Representatives, Group Companies or their Representatives comply with the confidentiality obligations in 43.1 as if they were the Recipient.
- (b) The Recipient shall be liable for the actions or omissions of the Representatives, any of its Group Companies or their Representatives in relation to the Confidential Information as if they were the actions or omissions of the Recipient.

## **5. Mandatory disclosure**

**5.1** Subject to the provisions of this 55., the Recipient may disclose Confidential Information to the minimum extent required by:

- (a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
- (b) the rules of any listing authority or stock exchange on which its shares are listed or traded; or
- (c) the laws or regulations of any country to which its affairs are subject.

**5.2** Before the Recipient discloses any Confidential Information pursuant to Error: Reference source not found it shall, to the extent permitted by law, give the Discloser as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with Error: Reference source not found, the Recipient shall take into account the Discloser's requests in relation to the content of this disclosure.

**5.3** If the Recipient is unable to inform the Discloser before Confidential Information is disclosed pursuant to Error: Reference source not found it shall, to the extent permitted by law, inform the Discloser of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

## **6. Return or destruction of Confidential Information**

**6.1** If so requested by the Discloser at any time by notice in writing to the Recipient, the Recipient shall:

- (a) destroy or return to the Discloser all documents and materials (and any copies) containing, reflecting, incorporating or based on the Discloser's Confidential Information;

- (b) erase all the Discloser's Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form; and
- (c) to the extent technically and legally practicable, erase all the Discloser's Confidential Information which is stored in electronic form on systems and data storage services provided by third parties.

**6.2** Nothing in 56.1 shall require the Recipient to return or destroy any documents and materials containing or based on the Discloser's Confidential Information that the Recipient is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient pursuant to this 66.2.

## **7. Reservation of rights and acknowledgement**

**7.1** The Discloser reserves all rights in its Confidential Information. The disclosure of Confidential Information by the Discloser to the Recipient does not give the Recipient or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this agreement.

**7.2** Except as expressly stated in this agreement, the Discloser makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.

**7.3** The disclosure of Confidential Information by the Discloser shall not form any offer by, or representation or warranty on the part of, the Discloser to enter into any further agreement with the Recipient in relation to the Purpose or the development or supply of any products or services to which the Confidential Information relates.

## **8. Inadequacy of damages**

Without prejudice to any other rights or remedies that the Discloser may have, the Recipient acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this agreement. Accordingly, the Discloser shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this agreement by the Recipient.

## **9. No obligation to continue discussions**

Nothing in this Agreement shall impose an obligation on either party to continue discussions or negotiations in connection with the Purpose, or an obligation on each

party, or any of its Group Companies to disclose any information (whether Confidential Information or otherwise) to the other party.

## **10. Ending discussions and duration of confidentiality obligations**

- 10.1** If the Discloser decides not to continue to be involved in the Purpose with the Recipient, it shall notify the Recipient in writing immediately.
- 10.2** Notwithstanding the end of discussions between the parties in relation to the Purpose pursuant to Error: Reference source not foundError: Reference source not found, each party's obligations under this Agreement shall continue in full force and effect for a period of \${confidentiality\_period} from the date of this Agreement.
- 10.3** The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which either party is entitled.

## **11. No partnership or agency**

- 11.1** Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 11.2** Each party confirms it is acting on its own behalf and not for the benefit of any other person.

## **12. Variation**

No variation of this Agreement or of any of the documents referred to in it shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **13. Waiver**

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **14. Notices**

Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or by registered post at the address given in this Agreement or by email to the following addresses: \${company\_email} and \${counterparty\_email}; or
- (b) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume.

## 15. **Entire agreement**

- 15.1** This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2** Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 15.3** Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## 16. **Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

## 17. **Governing law**

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Ireland.

## 18. **Jurisdiction**

Each party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## 19. **{amend\_header}**

{amend\_agreement}

This Agreement has been entered into on the date stated at the beginning of it.





**create my contract**

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*Signature*

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*\${company\_signatory}*

**\${counterparty\_name}**

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*Signature*

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*Print Name*