**Mutual Non Disclosure Agreement**

**PARTIES:**

1. {{ party1name }}, a company incorporated in England & Wales, with company number {{ party1companyno }} and whose {{party1addresstype }} is located at {{ party1address }} (“Principal”); and
2. {{ party2name }}, a company incorporated in [England and Wales] with company number {{ party1companyno }} and whose {{ party2addresstype }} is located at {{ party2address }} (“Counter-Party”),

each a “**Party**” and together the “**Parties**”.

In consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

# DEFINITIONS

## **“Agreement”** means this written agreement and any and all documents expressly incorporated into this Agreement.

## “**Authorised Persons**” means such of the Parties’ employees, contractors, consultants or professional advisors who need Confidential Information on a “need to know” basis for the Purpose.

## “**Confidential Information**” means all or any part of the information (in whatever form) of a Party that is disclosed to or otherwise obtained by the other Party (whether before or after the Effective Date) and which is either designated as or by its nature is confidential. Confidential Information includes (without limitation) software, programming code, techniques, trade secrets, know how, ideas, discoveries, improvements, inventions, concepts, designs and “look and feel”, any information relating to released or unreleased products or services, marketing or promotions, any commercial or business terms or objectives of a Party, its business policies or practices and information received from others that the Party is obliged to treat as confidential and all copies, summaries or transcripts of the same made by either Party.

## Confidential Information excludes any information that:

### is or becomes publicly available otherwise than through breach of any duty of confidence by the Party receiving it;

### became known to the Party receiving it from a source other than the other Party without any breach of any duty of confidence;

### is independently developed by the Party receiving it as evidenced by written records; or

### is approved in writing for public release by the Party to which the information belongs.

## “**Disclosing Party**” means a Party disclosing or otherwise making available Confidential Information to the other Party.

## **“Effective Date”** means {{ effectivedate }}.

## “**Purpose**” shall mean the provision of Confidential Information, and discussion between the Parties, in relation to {{ purpose }}.

## “**Recipient**” means a Party receiving or otherwise obtaining Confidential Information of the other Party.

# PERMITTED USE AND NON-DISCLOSURE

## Each Party shall comply with this Agreement as it applies to the Confidential Information of the other Party.

## Each Party may use Confidential Information of other Party only and to the extent strictly necessary for the Purpose and in accordance with this Agreement. Any copy or summary of such Confidential Information made by the Recipient shall be deemed to be and shall be clearly identified as Confidential Information.

## Except as expressly permitted under and in accordance with this Agreement, a Recipient:

### shall keep confidential and shall not disclose the Confidential Information of the Disclosing Party to any third party without the express prior written consent of the Disclosing Party;

### shall not otherwise copy, summarise or use the Confidential Information of the Disclosing Party; and

### is granted no rights in or to the Confidential Information of the Disclosing Party and all such rights are expressly reserved to the Disclosing Party.

## A Recipient may disclose Confidential Information of the Disclosing Party as approved in writing by the Disclosing Party. A Recipient may also disclose Confidential Information of the Disclosing Party if and to the extent required by the law of any relevant jurisdiction or by any judicial, or competent regulatory or governmental authority or recognised securities exchange in any relevant jurisdiction, provided that the Recipient shall:

### give the Disclosing Party reasonable prior notice and take all steps reasonable and practicable in the circumstances to consult with the Disclosing Party and take into account its reasonable comments prior to such disclosure; and

### comply with any applicable protective order or equivalent in relation to the disclosure.

## Without affecting any of its other obligations under this Agreement, a Recipient shall take all reasonable precautions to ensure that the Confidential Information of the Disclosing Party remains secure at all times whilst in its possession or control and does not leave its possession or control inadvertently, or through any unauthorised disclosure. In particular but without limitation, a Recipient shall take no lesser care of the Confidential Information of the Disclosing Party than that it applies to its own confidential and/or proprietary information.

## Subject to and in accordance with the other provisions of this Agreement, a Recipient may only disclose Confidential Information of the Disclosing Party to an Authorised Person. In order to do so, a Recipient shall enter into separate written confidentiality agreements with each such person on terms no less onerous than those contained in this Agreement. Recipient shall be responsible for the acts and omissions of each Authorised Person as if they were its own.

## Neither Party makes any representations, warranties, conditions or other commitments as to the accuracy or completeness of any of its Confidential Information. Nothing in this Agreement shall limit a Party’s liability for fraudulent misrepresentation.

## Each Party acknowledges that it does not rely on any representation, warranty, condition or other commitment which the other may have given or made prior to entering into this Agreement and will itself confirm the accuracy of any information contained in any such representation, warranty, condition or other commitment.

## Neither Party shall, nor shall any person on its behalf, apply for any patent, or registration of any trade mark or design or any other intellectual property right in respect of the Confidential Information of the other Party.

# RIGHTS AND REMEDIES

## Each Party (“**first Party**”) shall notify the other (“**other Party**”) in writing immediately upon becoming aware of or suspecting any unauthorised use or disclosure of Confidential Information of the other Party or other breach by the first Party of this Agreement and will co-operate with the other Party in every reasonable way to help the other Party to terminate any unauthorised possession of its Confidential Information and to prevent any unauthorised use of the same.

## Forthwith on termination or expiry of the Purpose or at one Party’s (“**first Party**”) first written request, the other (“**other Party**”) shall (at the first Party’s option) return or destroy (and in that case certify destruction of) the Confidential Information of the first Party (including without limitation all copies in whatever format) except to the extent that the same form part of the permanent records of the other Party which it is bound by law or regulatory requirement to preserve and the provisions of this Agreement shall, notwithstanding its termination, continue to apply to all such retained information.

# GENERAL

## This Agreement contains all the terms agreed between the Parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the Parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in discussions between the Parties prior to the Agreement except as expressly stated in the Agreement. Neither Party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into the Agreement (unless such untrue statement was made fraudulently or was as to a fundamental matter including as to a matter fundamental to the other party’s ability to perform it obligations under the Agreement) and that Party’s only remedies shall be for breach of contract as provided in the Agreement.

## If any term of this Agreement is found to be illegal, invalid, or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms be deemed omitted from this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.

## Any waiver by the other Party in writing of any of the other Party’s obligation hereunder, or any failure to insist upon strict compliance with any obligation shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure.

## Any variation to this Agreement shall only be effective if in writing signed by an officer or other duly authorised representative of each of the Parties.

## Neither Party shall sub-licence, assign, transfer or charge this Agreement or any of its rights under it or purport to do any of the acts described in this Clause 4.5 without the prior written consent of the other which may be refused at the other’s absolute discretion.

## Any notice which either Party is required or authorised by the Agreement to give or make to the other shall be given in writing by post or hand delivery addressed to the other Party at their last known business address. Notices given by hand delivery shall be deemed to have been given on the date and at the time of delivery. Notices sent by post shall be sent by first class post and shall be deemed received on the second business day after posting. Notices sent by email on a business day before 4.30p.m, shall be deemed received on that day. In any other case, they shall be deemed received on the next business day after the day on which it was sent. In the case of the Principal such notice must be specifically addressed to, **[registered office/principal place of business]**. It is the Counter-Party’s responsibility to inform the Principal promptly of any change to contact details provided by the Counter-Party.

## No provision of this Agreement shall be enforceable by any third party under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

## All obligations created by this Agreement shall survive change or termination of the Parties’ business relationship.

## This Agreement (and any non-contractual obligations arising out of or in connection with the Agreement) shall be governed by the laws of England and Wales. The Parties consent to the exclusive jurisdiction of the English Courts in relation to any legal action or proceedings arising out of or in connection with the Agreement.

## **AGREED AND ACCEPTED:**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| For and on behalf of **{{ party1name }}**: | |  | For and on behalf of **{{ party2name }}:** | |
| Signature: |  |  | Signature: |  |
|  |  |  |  |
| Name: |  | Name: |  |
|  |  |  |  |
| Title: |  | Title: |  |
|  |  |  |  |
| Date: |  | Date: |  |