

SAMPLE RECIPROCAL CONFIDENTIALITY AGREEMENT

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CONFIDENTIALITY AGREEMENT (reciprocal)

April 2017 draft

between:

[insert legal name of first party] ([Party A])	
postal address:	
address for service:	

and

[insert legal name of second party] ([Party B])	
postal address:	
address for service:	

INTRODUCTION

Each party proposes to disclose Information in connection with the [insert description of the project] (Project) for the purpose of [insert full description of the permitted purpose(s)] (Purpose). Unauthorised further disclosure or use of the Information could be commercially damaging. The parties have agreed to regulate use of the Information on the terms of this document, together with any attachment that further describes the Information or the Purpose (**Agreement**).

Dated: _____

Signed by **[Party A]** by

signature of authorised person

name of authorised person

position

Signed by **[Party B]** by

signature of authorised person

name of authorised person

position



TERMS OF USE OF INFORMATION

1 Definitions and interpretation

In this Agreement and its Introduction, unless the context requires otherwise:

Agreement has the meaning given in the Introduction to this Agreement;

Discloser means either [Party A] or [Party B], as the case may be, in its capacity as a discloser of Information to the other;

Information means all information relating to the past, current or future affairs of the Discloser which the Recipient is given, has access to, or which comes to the knowledge of the Recipient in connection with the Project, and which the Recipient is told is confidential or which from its nature and content is or would reasonably be expected to be confidential, including:

- (a) information relating to the business interests of the Discloser including business plans, marketing plans and supplier/customer lists;
- (b) information relating to the financial position or prospects of the Discloser;
- (c) all intellectual property (whether registered, in the process of registration, unregistered or unregistrable) of the Discloser;
- (d) the fact of the Project; and
- (e) the existence and contents of this Agreement, but does not include information which:
- (f) is or becomes publicly available other than by reason of the Recipient or any third party breaching this Agreement or any other obligations of confidentiality owed by it to the Discloser; or
- (g) can be established by written record to have been:
 - (i) in the Recipient's possession at the time of disclosure to the Recipient and not acquired (directly or indirectly) from the Discloser, or from any third party in breach of obligations of confidentiality owed by it to the Discloser;
 - (ii) received by the Recipient from a third party who is not in breach of obligations of confidentiality owed by it to the Discloser; or
 - (iii) independently developed by the Recipient without the use of the Discloser's Information;

Project has the meaning given to it in the Introduction to this Agreement;

Purpose has the meaning given to it in the Introduction to this Agreement;

Recipient means either [Party A] or [Party B], as the case may be, in its capacity as a receiver of Information under this Agreement, and includes any Related Person of that party; and

Related Person means, any person that is related to the Recipient and includes any director, officer, employee, agent, subcontractor or contracted adviser of the Recipient or that person.

2 Recipient undertakings

2.1 In consideration for the Information being made available for the Purpose, each party (as Recipient) undertakes for the benefit of the other party (as Discloser) that, subject to clause 3, it will:

- (a) not disclose the Information to any person other than its Related Persons, and then only on a "need to know" basis;
- (b) maintain the secrecy and confidentiality of the Information including taking all action reasonably necessary to prevent any unauthorised person gaining access to it;
- (c) not use, or copy, the Information for any purpose other than the Purpose;

- (d) be wholly responsible for the conduct of its Related Persons in respect of any Information disclosed to them by it;
- (e) maintain a record of the location of the Information including a list of all the persons who will be, have been or are intended to have access to the Information; and
- (f) comply with all other obligations of the Recipient set out in this Agreement.

2.1 The Recipient will:

- (g) ensure that all Related Persons to whom it discloses Information are aware of and observe the provisions of this Agreement as if they were a party to it; and
- (h) maintain records of all persons to whom it discloses Information and provide copies of such records to the Discloser promptly upon request.

3 Disclosure required by law

If the Recipient or one of its Related Persons is required by any applicable law, court or authority, or by any applicable stock exchange listing rules, to disclose Information to any person, it will:

- (h) give the Discloser prompt written notice of the disclosure, where practicable before it occurs, so that the Discloser has sufficient opportunity to prevent the disclosure through appropriate legal means;
- (i) disclose only that part of the Information which the Recipient's legal advisers consider is legally required to be disclosed; and
- (j) use all reasonable endeavours to obtain an assurance that the Information disclosed will be treated confidentially by the recipient.

4 Intellectual property

Neither this Agreement nor the transfer of Information under it is to be construed as granting to a Recipient any right, licence, ownership or interest in all or any part of the Information disclosed.

5 Return of information

When the Project comes to an end, or otherwise upon receipt of a written request from the Discloser, the Recipient will promptly return to the Discloser or destroy (as the Discloser may require) all the Information (including any copies of the Information) in the possession or control of the Recipient, together with all information and documentation in any way relating to the Information, and confirm in writing that it has done so, provided that a Recipient is not required to return or destroy:

- (k) its board papers, minutes of its board (or of a committee of its board) which refer to or contain Information, provided that it keeps such Information secure and makes it available solely for internal governance and audit purposes; or
- (l) documents that are created or retained by any adviser of the Recipient where those documents are required to be held by law or for the purposes of compliance with any professional standards or insurance policies applicable to the adviser.

6 Breach

- 6.1 The Recipient acknowledges that a breach of this Agreement will cause serious and irreparable harm to the Discloser and, in the event of any threatened, apparent or actual breach of this Agreement, the Discloser may seek immediate injunctive relief.
- 6.2 If a Recipient or any person to whom it has disclosed any Information breaches any term of this Agreement, the Recipient will indemnify the Discloser against all damages, losses, costs, and expenses (including reasonable legal fees and costs) suffered by the Discloser.
- 6.3 If there is a breach of the terms of this Agreement by the Recipient or by any person to whom the Recipient has made any of the Information available, the Discloser may seek equitable relief in addition to damages. In any proceeding brought by the Discloser seeking equitable relief for a breach of this Agreement, neither the Recipient nor any person directly or indirectly under its direction or control may claim that the breach is one which may not or ought not be the subject of equitable relief.

7 Construction

7.1 In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa; and
- (b) a reference to:
 - (i) a clause or party is a reference to a clause of, and a party to, this Agreement;
 - (ii) legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
 - (iii) conduct includes an omission, act, statement and undertaking, whether or not in writing;
 - (iv) “including” means “including but not limited to” and “include” and “includes” have corresponding meanings;
 - (v) a person includes a partnership and also a body of persons, whether corporate or unincorporated; and
 - (vi) either party includes that party’s successors and legal personal representatives.

7.2 Where any provision of this Agreement is expressed to be for the benefit of any person other than a party, such provision is intended to confer a benefit on such person, enforceable at the suit of that person, in terms of the Contracts (Privity) Act 1982.

7.3 The obligations in this Agreement are considered reasonable by the parties and necessary for the protection of a Discloser’s legitimate interests in the Information. If any of the obligations are found to be void or voidable but would be valid and enforceable if some part or parts were deleted or amended, they will apply with such modifications as may be necessary to make them valid and enforceable. If such modification is not possible then the relevant provisions are to be severed from this Agreement, without affecting the enforceability, legality or validity of any other provision of this Agreement.

7.4 This Agreement will not be deemed to create a partnership, joint venture or agency relationship of any kind.

8 General

8.1 This Agreement:

- (a) contains the entire understanding between the parties, superseding all prior or contemporaneous communications, agreements, and understandings between the parties, with respect to the disclosure and protection of Information in connection with the Project;
- (b) applies with respect to all Information received by the Recipient in connection with the Project, whether received prior to or after the date of this Agreement; and
- (c) takes precedence over any specific legends or statements associated with any Information when received.

8.2 This Agreement does not:

- (d) create any obligation upon either party to disclose any Information to any person; or
- (e) impose any obligation on either party in relation to the carrying out of the Project, or to enter into any further agreements.

8.3 No failure to exercise or delay in exercising any right, remedy or power under this Agreement, and no failure to insist on strict compliance with any obligation under this Agreement, will constitute a waiver of the right to demand compliance.

8.4 Except to the extent otherwise agreed by the parties in writing, the obligations set out in this Agreement are on-going and will survive completion or termination of the Project.

8.5 This Agreement is governed by and is to be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the New Zealand courts in all matters relating to this Agreement.