

ZA-COMnda04

## Mutual confidentiality agreement

**Between:** [name 1]

**and** [name 2]

**Dated:** [date]

This agreement is dated: [date]

**It is made between**

[name 1 / AA] a company registered number [number], registered in the Republic of  
, [ ]

and

[name 2 / BB] a company registered number [number], registered in the Republic of  
, [ ]

**These are the terms of the agreement**

## 1. Definitions

For the purpose of this agreement the following words have  
:

“Confidential Information” means all information about AA and BB:

- given or received in any medium ,  
;
- of any description, whether recorded or unrecorded;
- whether protected by law or not;
- including, without limitation any inventions, processes, systems, methods, formulae, intellectual property, designs, research or development activities, future plans and ideas, specifications, computer code, financial data, lists  
,  
,
- relate in any way to [insert details of project or ideas  
]

However, Confidential Information shall not

include information:

- that is now or subsequently becomes generally available to the public through no wrongful act or omission of the Recipient

;

- in respect of which the Recipient can demonstrate by its written records to have had rightfully in its possession

;

- in respect of which it can be demonstrated by the Recipient's written records to have been independently developed by the Recipient without

,

;

- the Recipient rightfully obtains from a third party who has the

.

"Discloser"

means either of the parties insofar as that party discloses Confidential Information to the other of them and refers

.

"Recipient"

means either party insofar as that party receives

.

## 2. Interpretation

In this agreement unless the context otherwise requires:

2.1. a reference to a person is a reference to one

,

,

,

.

2.2. any agreement by any party not to do or omit

2.3. in this agreement references to a party include references to a person

2.4. the headings to the paragraphs ( )

2.5. this agreement is made only in the English language. If there is any

### 3. Non-disclosure

In consideration of disclosure of Confidential Information

3.1. except as provided in this ,

3.2. not use the Confidential Information in any way for himself or

3.3. before disclosing any ,

3.3.1 obtain the consent of the other of them;

3.3.2 obtain the signature of the person approved, to the terms

3.4. accept responsibility and

OR

3.5. disclose Confidential Information only to people to whom disclosure is essential and will at all

3.6. to restrict visitors to his

3.7. not to use any name or mark

;

3.8. not to use any trade name

3.9. upon request by the Discloser, promptly deliver to the Discloser or destroy all media

3.10. not disclose Confidential Information to any person

OR

3.11. The Recipient shall limit access

:

*[qualification criteria for disclosure]*

AND

The signatories to this agreement today accept responsibility for the acts

## 4. Security of Confidential Information

4.1. Each of

:

- 4.1.1 keep all records of ;
- 4.1.2 keep all records only at its / his  
( );
- 4.1.3 use his best endeavours to keep confidential (and  
)

#### 4.2. Each of the parties

- 4.2.1 store, copy, or use the Confidential Information  
[ . . . .]
- 4.2.2 remove from his office premises or copy or allow anyone else  
to copy , ,

## 5. Ownership and warranty

- 5.1. All Confidential Information remains the sole property

#### 5.2.

#### 5.3.

## 6. Excluded information

,

.

## 7. No warranty

,

,

,

,

.

## 8. Undertaking not to steal customers and staff

,

:

8.1. solicit or approach any customer of the other;

8.2.

;

8.3. solicit or employ any employee of the other.

## 9. Miscellaneous matters

9.1. ,

.

9.2.

,

.

9.3.

9.4.

9.5.

9.6.

9.7.

9.8.

It shall be deemed to have been delivered:

9.8.1 :

;

9.8.2 : 72 ;

9.8.3 -



- : 24

-

. [

- .

,

]

9.9.

.

9.10.

,

.

9.11.

,

.

Signed by / on behalf of the named parties by their representatives who personally accept liability for the proper authorisation by their respective employer or principal to enter into this agreement.

OR

/

/

[

].

For, and on behalf of [ ]

print name

For, and on behalf of [ ]

print name

OR

:

OR

[ ]

,

.

OR

] [ - [ ] ]  
[ ]

# Explanatory notes:

## Mutual confidentiality agreement

### Paragraph specific notes

Notes following the numbered paragraphs

#### 1. Definitions

The key to the strength of this agreement is the very comprehensive definition of confidential information. This should

You have to define what you want someone to be confidential about. Exactly what is it? Beware of defining it too narrowly, particularly if your negotiations are at an early stage. In this example, we

#### 2. Interpretation

Leave these items in place unless there is a good reason

#### 3. Non-disclosure

In some cases disclosure must be only to named people and with consent. In other cases it may be expected that the signatory is free to tell essential staff and maybe others but he accepts

There is an important point at 3.3.2. A person asked to sign up to this agreement at a later date may have no personal interest in doing so. But if that is the case, you have given him nothing of value “ ”

We have included 3.8 and 3.9 not because they are confidential information (they are probably not) but because if someone intends to steal your customers or suppliers, it is far easier to do

Not all these provisions will be relevant

#### **4. Security of Confidential Information**

This paragraph drives home aspects of confidentiality.

#### **5. Ownership and warranty**

This provision may not be needed

#### **6. Excluded information**

Does he already have knowledge? if you are dealing in a situation where the

#### **7. No warranty**

If, following the events, a future deal is done,

#### **8. Undertaking not to steal customers and staff**

We have intentionally used a strong word. This is an area of confidentiality not often covered, but

#### **9. Miscellaneous matters**

A number of points

.

**End of notes**