

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is dated

BETWEEN

- (1) ABC Limited, a company incorporated in [England and Wales], with registered number [insert number], whose registered address is at [insert address].
- (2) Acme, Inc., a company incorporated in [England and Wales] with registered number [insert number], whose registered office is at [insert address].

BACKGROUND

- (A) The parties have expressed an interest in [to follow] (**Proposed Transaction**) and intend to engage in discussions in connection with the Proposed Transaction (**Purpose**).
- (B) Disclosing Party (as defined below) requires that Confidential Information (as defined below) be kept confidential and Receiving Party (as defined below) is willing to do so, subject to this agreement.

AGREED TERMS

1. INTERPRETATION

The definitions and rules of interpretation in Schedule I (*Interpretation*) apply.

2. COMMENCEMENT

This agreement comes into effect on the Effective Date.

3. CONFIDENTIALITY AND SECURITY

- 3.1 Subject to this agreement, Receiving Party shall keep the Confidential Information confidential and not use or disclose the Confidential Information other than as necessary for the Purpose.

4. EXCLUDED INFORMATION

- 4.1 Nothing in this agreement applies to information (**Excluded Information**) that is in the public domain or that is Receiving Party's Knowledge or that is Developed Information.
- 4.2 Nothing in this agreement prevents or hinders disclosure of information where and to the extent the application of any provision of this agreement would be contrary to applicable law or regulation.
- 4.3 Information shall not be considered in the public domain even though it is revealed or obtained by analysing or examining other information or by disassembling, decompiling or other reverse engineering of a product that is in the public domain, provided the requisite analysis, examination, disassembly, decompiling or reverse engineering is appreciable or requires the expenditure of significant cost.

- 4.4 A compilation of information is not to be considered in the public domain by reason only that the individual items of information forming the compilation are in the public domain.
- 4.5 Where and to the extent Confidential Information is only relatively confidential at the time of its disclosure, or any Confidential Information becomes wholly in the public domain after its disclosure, the Confidential Information is not to be considered as Excluded Information until a person in the same or similar circumstances as Receiving Party (who is not in possession of the Confidential Information) could reasonably be expected to acquire the Confidential Information in question by any lawful means, including by compiling the information, analysing or examining other information, or by disassembling, decompiling or other reverse engineering of a product

5. PERMITTED DISCLOSURES

- 5.1 Receiving Party may disclose Confidential Information in accordance with this clause to Representatives in connection with the Purpose and who are informed in advance as to the confidential nature of the information.
- 5.2 Except in relation to a Representative who is for the time being subject to written undertakings of confidentiality in favour of Disclosing Party, Receiving Party is liable for the acts and omissions of Representatives in relation to Confidential Information as if they were its own.
- 5.3 Where this agreement confers a right, power or benefit on Receiving Party, that right, power or benefit may be exercised by Representatives to whom Confidential Information has been disclosed under this agreement (except that the parties may vary or discharge this agreement without reference to the Representatives).

6. MANDATORY DISCLOSURES

- 6.1 Receiving Party may disclose Confidential Information where doing so is necessary for Receiving Party to comply with law, regulation (including the rules of any exchange or similar trading facility on which the securities of Receiving Party or any of its Affiliates are or are to be listed), the order of a court, or other requirement of a Competent Authority.
- 6.2 Where Receiving Party proposes to disclose or has disclosed (as appropriate) Confidential Information in reliance on this clause, to the extent legally permissible, Receiving Party shall comply with the following requirements of this clause.
 - 6.2.1 At the earliest opportunity, provide Disclosing Party with written notice of the existence, terms, and circumstances of the requirement so that Disclosing Party may take appropriate action.
 - 6.2.2 Keep Disclosing Party promptly informed of all matters and developments which have, or may reasonably be expected to have, a bearing or influence on its decisions relating to, or concerning, the Confidential Information.

7. EXCLUSION OF LIABILITY

Disclosing Party undertakes no duty of care or responsibility to Receiving Party or its Representatives in relation to the Confidential Information, makes no representation and gives no warranty, undertaking or other assurance as to the quality of the

Confidential Information or the timeliness of its disclosure, and hereby excludes all liability under or in connection with this agreement for all loss, damage, cost, and expense incurred by Receiving Party or any of its Representatives arising from or in connection with its or their use or reliance on the Confidential Information, except that nothing in this agreement affects the liability of Disclosing Party to the extent the liability may not be excluded or limited by law.

8. TERMINATION

- 8.1 A party may terminate the Purpose by notice to the other at any time.
- 8.2 This agreement terminates at midnight on the day immediately before the second anniversary of the Effective Date or, if earlier, the date on which the parties enter into an agreement in writing in respect of the Proposed Transaction.
- 8.3 Termination or expiry of this agreement does not affect liabilities of the parties which have accrued on or before termination or expiry.
- 8.4 With effect from termination of this agreement, Receiving Party shall also be released and discharged from all (if any) non-contractual duties of confidence in relation to the use or disclosure of Confidential Information in relation to the Purpose.

9. DELIVERY-UP AND DESTRUCTION

- 9.1 Except to the extent provided in this clause, as soon as reasonably practicable after termination of the Purpose or this agreement, or being requested to do so in writing by Disclosing Party, whichever is the earlier, Receiving Party shall:
 - 9.1.1 return or destroy Confidential Information and all copies then in its possession or control; and
 - 9.1.2 cleanse Confidential Information from any system into or on which it is stored or running.
- 9.2 Receiving Party shall deliver to Disclosing Party a certificate signed by a duly authorised officer on behalf of Receiving Party that it has complied with this clause, as soon as reasonably practicable after having done so.
- 9.3 Receiving Party may retain:
 - 9.3.1 Derivative Information;
 - 9.3.2 information that Receiving Party is required to retain to comply with any applicable law or regulation, or court order; and
 - 9.3.3 data stored in back-up or archive systems.

10. DATA PROTECTION

Disclosing Party and Receiving Party shall process Relevant Personal Data in accordance with Data Protection Regulations.

11. GENERAL

11.1 Capacity

Receiving Party represents and warrants that it has entered into this agreement on its own account and not as agent or broker on behalf of any third party.

11.2 Entire agreement

This agreement constitutes the entire agreement between the parties in respect of the Confidential Information and supersedes all representations, including all pre-contract representations, misrepresentations, and misstatements negligently or innocently made, previous agreements, understandings, and arrangements, whether in writing or oral in respect of the Confidential Information.

11.3 Amendment

An amendment to this agreement is ineffective unless it is in writing, expressly purports to amend this agreement, and is executed by both parties.

11.4 Remedies

11.4.1 Receiving Party acknowledges that a breach or threatened breach of this agreement may cause Disclosing Party irreparable harm for which damages may not be an adequate remedy; Disclosing Party is entitled to seek remedies of specific performance, injunction, and other equitable relief without proof of special damage in respect of any breach or threatened breach of this agreement.

11.4.2 The rights and remedies provided by this agreement are cumulative and (unless otherwise provided in this agreement) are not exclusive of any rights or remedies provided by law or in this agreement.

11.5 Further assurance

Each party shall at the request and cost of the other execute all deeds and other documents and do all things that the other may require (acting reasonably) in order to give effect to the terms of this agreement.

11.6 Notices

11.6.1 Any notice to be given under this agreement shall be in writing, and shall either be delivered by hand, email or sent by first class pre-paid post (or in the case of overseas post, by airmail). Delivery by courier shall be regarded as delivery by hand.

11.6.2 A notice under this agreement must be marked for the attention of the representative (if any) nominated by a party in writing from time to time and, in default of a nomination, to the company secretary or other officer.

11.6.3 A notice shall be deemed to have been served where it is:

- (a) delivered by hand at the address set out in this agreement, at the time of delivery;

- (b) sent by first class pre-paid post to the address set out in this agreement, at the expiration of two (2) Business Days after the time of posting;
- (c) sent by airmail to the address set out in this agreement, at the expiration of seven (7) Business Days after the time of posting; and
- (d) sent by email (with receipt confirmed), immediately, except that if the email produces an automated response reporting a failure to deliver, delayed delivery to the intended recipient, or an "out of office" (or similar) notification, the email shall not be taken to have been served.

11.6.4 If a notice would otherwise be deemed to have been delivered outside working hours (being 9.00 am to 5.00 pm) on a Business Day under the preceding provisions of this clause, it shall be deemed to have been delivered at the opening of such normal working hours on the next Business Day.

11.6.5 A party may notify the other of a change to its name, relevant person, or address for the purposes of this clause, provided that the notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is deemed to have been served, the date falling five (5) Business Days after notice of the change is deemed to have been given.

11.6.6 In proving service of the notice, it shall be sufficient to show (as appropriate) that delivery by hand was made or that the envelope containing the notice was properly addressed and posted as a pre-paid letter.

11.6.7 For the avoidance of doubt, the parties agree that the provisions of this clause shall not apply in relation to the service of any claim form, application notice, order, judgment, or other document relating to or in connection with any proceedings.

11.7 Waiver

Any failure or neglect by either party to enforce any of the provisions of this agreement shall not be construed nor deemed to be a waiver of that party's rights and does not affect the validity of the whole or part of this agreement nor prejudice that party's rights; any waiver by either party of its rights under this agreement does not operate as a waiver in respect of any subsequent breach.

11.8 Invalidity

If any provision of this agreement is held to be illegal, invalid, or unenforceable in whole or part, that provision shall to that extent be deemed not to form part of this agreement and the legality, validity, and enforceability of the remainder of this agreement shall be unaffected.

11.9 **Assignment and sub-contracting**

Neither party shall without the prior written consent of the other assign, transfer, charge, dispose of, deal with, or subcontract its rights or obligations under this agreement.

11.10 **No partnership**

Nothing in this agreement shall or shall be deemed to create a partnership between the parties.

11.11 **Costs**

Each party shall bear its own costs and expenses incurred in connection with the negotiation, preparation, execution, and performance of this agreement, including in relation to the Purpose.

12. **GOVERNING LAW**

This agreement, and any non-contractual obligations in connection with this agreement, shall be governed by and construed in accordance with English law.

13. **JURISDICTION**

The parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, this agreement, its subject matter, or its formation (including non-contractual disputes or claims).

14. **COUNTERPARTS**

14.1 This agreement may be executed in any number of counterparts, all of which constitute one single agreement between the parties.

14.2 The exchange of copies of this agreement and of signature pages by electronic mail in portable document format (pdf) or by any other electronic means shall constitute effective execution of this agreement by the parties.

AS WITNESS, the duly authorised representatives of the parties have executed this agreement after the schedules.

Signed for and on behalf of

ABC Limited

Signature

Name

Position:

Date:

Signed for and on behalf of

Acme, Inc.

Signature

Name

Position:

Date:

SCHEDULE I

Interpretation

1. DEFINITIONS

In this agreement, unless the context otherwise requires, capitalised expressions have the meaning given to them and the following definitions apply.

Affiliate means, in relation to any company, partnership or other legal person, any other company, partnership or other legal person which Controls, is Controlled by, or is under common Control with, that company, partnership or other legal person, and for these purposes, **Control** means, in relation to a company, partnership or other legal person, the beneficial ownership of more than fifty per cent (50%) of the issued share capital of, or the legal power to direct or cause the direction of, the company, partnership or other legal person in question (or its holding company as the case may be), and **Controlled** shall be construed accordingly.

Business Day means Monday to Friday excluding public and bank holidays in England and Wales.

Competent Authority means any court, governmental body, or regulatory authority having authority over or in respect of a party or its Affiliates, including a branch, office or agency, or in respect of any business or ancillary activity conducted by the party or its Affiliates.

Confidential Information means the fact and terms of this agreement, the Purpose, the Proposed Transaction, and all information which is disclosed by or on behalf of Disclosing Party to Receiving Party or its Representatives in connection with the Purpose (whether orally or in documentary, electronic or other form), including Derivative Information.

Data Protection Regulations means all directives, regulations, statutes, laws, secondary legislation, and rules relating to data protection and privacy.

Developed Information means information that according to the written records of Receiving Party or any of its Affiliates has been created by Receiving Party or any of its Affiliates without reference to any Confidential Information.

Derivative Information means analyses, compilations, notes, studies, reports, and similar forms of information created by or on behalf of Receiving Party or its Representatives in connection with the Purpose that contain or reflect Confidential Information.

Disclosing Party means a party who discloses information under this agreement.

Effective Date means the date of this agreement.

Receiving Party means a party receiving information under this agreement.

Receiving Party's Knowledge means information that is, according to the records of Receiving Party or any of its Affiliates, known to Receiving Party or its Affiliates at the time of the disclosure of the Confidential Information, except where the known information is already subject to a duty of confidence owed to Disclosing Party, any of its Affiliates, or any other third party.

Relevant Personal Data means Confidential Information that is personal data.

Representative means any of Receiving Party's Affiliates, and Receiving Party's or any of its Affiliate's, directors, employees, agents, contractors, and professional advisers.

2. REFERENCES

2.1 In this agreement:

2.1.1 references to:

- (a) a statutory provision includes a reference to any modification, consolidation or re-enactment of the provision from time to time in force and all subordinate instruments, orders or regulations made under it except that, as between the parties, no modification, consolidation or re-enactment shall apply for the purposes of this agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, either party;
- (b) either party includes, where appropriate, persons deriving title under it;
- (c) **subsidiary** and **holding company** shall have the meanings given to them by section 1159 of the Companies Act 2006;
- (d) **includes** or **including** shall be construed without limitation to the generality of the preceding words;
- (e) **indemnify** means on demand to indemnify and keep indemnified, and hold harmless, the party to be indemnified on an after-tax basis;
- (f) any document (including this agreement) or a provision of it shall be construed as a reference to that document or provision as amended from time to time by agreement between the parties in accordance with this agreement;
- (g) **writing** includes any method of reproducing words in a legible and non-transitory form, including email;
- (h) **rights** includes the rights and remedies of the party in question; and
- (i) words and phrases that are defined in Data Protection Regulations have the meaning in the Data Protection Regulations, including **data subject**, **personal data**, **processing**, **disclosure**, **controller**, and **processor**;

2.1.2 the singular includes the plural and vice versa; and

2.1.3 the headings are for convenience only and shall not affect the interpretation of this agreement.

2.2 Each obligation of a party under this agreement, and any reference to an act or omission of a party, unless the context otherwise requires, includes (in the case of the former) an obligation to procure that the obligation (where necessary) is performed by an Affiliate of the party, and (in the case of the latter) any act or omission of an Affiliate of that party.

