

NON-DISCLOSURE AGREEMENT

STRICTLY CONFIDENTIAL

Assessment and production of software, goods or services with Formation Media Limited (the "Project")

INTRODUCTION

("The Customer") is intending to enter into discussions with Formation Media Limited ("The Supplier") about the possibility of assisting in delivering the Project.

During the course of such discussions information may be disclosed to the receiving party ("Receiving Party") which the disclosing party ("Disclosing Party") considers to be confidential. This letter therefore contains provisions to protect the confidentiality of such information.

This letter does not commit The Customer to enter into a formal agreement with The Supplier, (whether alone or in association with others) in relation to the Project or any part of it. In particular, but without limitation, nothing in this letter shall imply that The Customer will obtain any goods or services from The Supplier, either in connection with the Project or any other project. The Customer shall be free to obtain any such goods and services from any person.

If Formation Media Limited is selected as a supplier for the purposes of the Project, any supplies in relation to the Project will be subject to Formation's standard terms and conditions, available on request or displayed on our website (formationmedia.co.uk/Terms_Conditions.pdf) but the confidentiality provisions set out in this letter shall remain valid and enforceable unless and until terminated by any separate agreement.

DEFINITIONS AND INTERPRETATION

1. In this letter:-

1.1 Any two persons are to be treated as "**Associated**": if one is a corporate body of which the other directly or indirectly has control; or if both are corporate bodies directly or indirectly controlled by the same person or group of persons. For these purposes a person or group of persons who are able directly or indirectly to control or materially to influence the policy of a corporate body, but without having a controlling interest in that corporate body, may be treated as having control of it. The terms "**Associate**" and "**Associated Company**" are to be interpreted accordingly.

1.2 "**Confidential Information**" means the terms of this Agreement together with all information including, without limitation, any ideas; business methods; finances; prices, business, financial, marketing development or manpower plans; customer lists or details; computer systems or software; products or services; relationships with actual or potential clients or suppliers and any other information which, if disclosed, would be liable to cause harm to the Disclosing Party and which is received by the Receiving Party or any of its Associated Companies or Representatives directly or indirectly from the Disclosing Party or any of its Associated Companies or Representatives;

"**Representatives**" of a company shall mean directors, officers, employees, agents, sub-contractors, bankers or advisers of that company or of any Associated Company.

CONFIDENTIALITY AND ASSOCIATED MATTERS

2. In consideration of the Disclosing Party providing the Receiving Party with Confidential Information the Receiving Party undertakes that it will:-

2.1 only use the Confidential Information for the Project;

2.2 treat the Confidential Information as being strictly confidential and will not without the Disclosing Party's prior written consent or as expressly permitted by this letter disclose or use or allow others to disclose or use it;

2.3 only disclose the Confidential Information to such of its Associated Companies and/or Representatives as need to have access to it for the Project provided the Receiving Party ensures that each of the Associated Companies and Representatives to whom the Confidential Information is disclosed is made aware of the terms of this letter and agrees to abide by those terms;

2.4 on the request of the Disclosing Party procure that each Associated Company or Representative to whom Confidential Information is disclosed shall enter into a written undertaking in favour of the Disclosing Party in similar terms to this letter and use all reasonable endeavours to assist the Disclosing Party in enforcing any such undertaking (but in any event the Receiving Party shall be responsible for their acts and omissions including, without limitation, any breach of any of the provisions of this letter by any such Associated Companies or Representatives);

2.5 at the Disclosing Party's request immediately cease to use the Confidential Information and within 14 days of such request return to the Disclosing Party all the Confidential Information received by the Receiving Party, its Associated Companies and Representatives in whatever form together with any copies thereof and destroy any notes, analyses, studies or interpretations incorporating any Confidential Information and certify to the Disclosing Party that such destruction has taken place;

2.6 treat all Confidential Information with the same degree of care and protection as it treats its own confidential information; and not use, reproduce, transform or store any of the Confidential Information in any externally accessible computer or electronic retrieval system or transmit it in any form or by any means whatsoever outside the Receiving Party's usual place of business (other than in accordance with its normal backup procedures).

3. The obligations placed upon the Receiving Party pursuant to clause 2 of this letter shall not apply to information which:

3.1 is in or comes into the public domain otherwise than as a result of any breach by the Receiving Party or its Associated Companies or Representatives of any of the obligations contained in this letter; or

3.2 the Receiving Party can prove by documentary evidence was lawfully known to the Receiving Party or its Associated Companies or Representatives before it was disclosed by the Disclosing Party unless such knowledge arises from a breach of confidence owed to the Disclosing Party or any of its Associated Companies or Representatives; or

3.3 is received or obtained by the Receiving Party or its Associated Companies or Representatives from a third party otherwise than in breach of a confidence owed to the Disclosing Party or any of its Associated Companies; or

3.4 the Receiving Party can prove by documentary evidence was independently developed by or on behalf of the Receiving Party or its Associated Companies or Representatives as a result of work which is independent of and not based on any of the Confidential Information.

4. Confidential Information disclosed by the Disclosing Party shall remain the sole property of the Disclosing Party. Neither this letter nor any disclosure of Confidential Information under this letter grants the Receiving Party any right or licence under any trademark, copyright, patent or other form of intellectual property right now or hereafter owned or controlled by the Disclosing Party.
5. If the Receiving Party or any of its Associated Companies or Representatives receives a request for disclosure of the Confidential Information from any court, tribunal, government department or agency or other official body of competent jurisdiction (an "Official Request") the Receiving Party shall provide the Disclosing Party with prompt written notice of any such Official Request so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this letter. If, in the absence of a protective order or other remedy the Receiving Party or any of its Associated Companies or Representatives are nonetheless legally compelled to disclose Confidential Information pursuant to the Official Request the Receiving Party or its Associated Companies or relevant Representatives may, without liability under this letter, disclose only that portion of the Confidential Information which is legally required to be disclosed provided that the Receiving Party exercises its best efforts to preserve the confidentiality of the Confidential Information. Unless the Receiving Party is legally prohibited from doing so, it will provide the Disclosing Party with notice of such disclosure and the content of such disclosure prior to the time such disclosure is made.
6. The parties agree that damages alone would not be an adequate remedy for the breach of any of the provisions of this agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this agreement.
7. The Disclosing Party does not make any representation or warranty (express or implied) as to the accuracy or completeness of the Confidential Information. The Disclosing Party shall not have any responsibility or liability in respect of any Confidential Information supplied to the Receiving Party and no representation is made or is to be implied that the contents of the Confidential Information will remain unchanged. The Disclosing Party shall not be liable for any damages arising out of the use of Confidential Information disclosed by it under this letter.
8. Neither party nor any of their respective Associated Companies or Representatives shall make any announcement or any disclosure of or otherwise publicise the contents or existence of this letter or the Project
9. The rights and obligations of the parties under this letter may not be sold, assigned or otherwise transferred.
10. Each party confirms that it is acting in this matter as principal and not as an agent or broker for any person.
11. Nothing in this letter shall put any obligation on either party to enter into any further agreement regarding the Project or any other matter.
12. If any provision of this letter is held by any court or other competent authority to be void or unenforceable in whole or part, the other provisions of this letter and the remainder of the affected provisions shall continue in full force and effect.
13. No failure by a party in exercising any right, power or privilege under this letter shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege under this letter.
14. This letter does not create any warranty, representation or promise enforceable by any person who is not a party to it, nor does it purport to confer any benefit on any such person. All rights on the part of or for the benefit of, any person not a party to this letter, which arise or may arise out of this letter under the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

The validity, construction and performance of this letter shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English Courts.

The obligations of confidentiality shall continue for two years after the disclosure of the last item of Confidential Information.

Duly authorised for and on behalf of The Customer

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