

Standard NDA Terms and Conditions ref 251113

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (unless the context otherwise requires), the following words and phrases shall have the following meanings:

"Conditions" means these Standard NDA Terms and Conditions

"NDA Letter" means the letter issued by SHEFFIELD to the Contractor(s) together with all documents referred to in it;

"Agreement" means this Non-Disclosure Agreement made by or on behalf of SHEFFIELD with the Contractor(s) which incorporates these Standard NDA Terms and Conditions and the NDA Letter;

"Contractor" means the party/ies identified as the Contractor(s) in the NDA Letter

"SHEFFIELD" means University of Sheffield, whose details are set out on the NDA Letter

1.2 In these Conditions (unless the context otherwise requires):

1.2.1 construction of these Conditions shall ignore the headings (all of which are for reference only); and

1.2.2 any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

2. APPLICATION

These Conditions shall govern and be incorporated into the Agreement, and shall prevail over any terms or conditions (whether or not inconsistent with these Conditions) contained or referred to in any correspondence, order, documentation submitted by the Contractor(s) or elsewhere or implied by custom, practice or course of dealing, save for the NDA Letter.

3. ACCEPTANCE

The Contractor(s) execution and return of the NDA Letter to SHEFFIELD constitutes the Contractor(s) acceptance of the NDA letter subject to these Conditions.

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4. In order for Sheffield and Contractor(s) (each a “**Party**” together the “**Parties**”) to enter into discussions regarding the Purpose (as defined in the NDA Letter) a Party may disclose (“**Disclosing Party**”) to the other (“**Receiving Party**”) information and associated documentation which is secret and confidential information.
5. For the purposes of this Agreement:

“Confidential Information” means any and all information which would be deemed as confidential in nature by a reasonable business person or which shall be designated as confidential by the Disclosing Party from time to time and in any form or format whether oral, written or otherwise.,

- 1 “Representative(s)” means in relation to each Party:
 - 1a) its officers and employees that need to know the Confidential Information for the Purpose;
 - 1b) its professional advisers or consultants who are engaged to advise that in connection with the Purpose;
 - 1c) its contractors and sub-contractors engaged by that Party in connection with the Purpose; and
 - 1d) any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.

6. OBLIGATIONS

In consideration of the Disclosing Party disclosing to the Receiving Party the Confidential Information, the Receiving Party agrees to keep it, and all information relating to it and its use, secret and confidential and not to use it for any purpose other than the Purpose, to take all reasonable steps to protect the confidentiality of the Confidential Information and to prevent it from being disclosed otherwise than in accordance with this Agreement and, except with the express prior consent in writing of the Disclosing Party, not to disclose it in whole or in part to any third party and not to make copies of any records of Confidential Information. The Receiving Party shall not reverse-engineer, decompile, disassemble, deconstruct or modify any Confidential Information or records containing Confidential Information without the Disclosing Party's prior written permission.

7. ACCURACY AND COMPLETENESS

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The Disclosing Party does not represent nor warrant nor undertake that the Confidential Information disclosed hereunder is accurate or complete.

8. RELIANCE AND USE

The Disclosing Party shall have no liability resulting from any reliance on or use of Confidential Information by the Receiving Party.

9. DAMAGES AND REMEDIES

The Receiving Party acknowledges that damages alone may 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 seek the granting of equitable relief (including, without limitation, injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.

10. INTELLECTUAL PROPERTY

Nothing in this Agreement shall be construed to grant each Party any right or licence in any patent, know-how, trademark, copyright or other intellectual property of the other Party.

11. LIMITED DISCLOSURE

The Receiving Party shall disclose the Confidential Information only to such Representatives as are necessary for the Purpose and not further or otherwise and all such Representatives shall be made aware of the provisions of this Agreement and the duty of confidentiality and be subject to obligations of confidentiality in relation to the Confidential Information to at least the level of those set out in this Agreement. The Receiving Party shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the Receiving Party.

12. PERMITTED DISCLOSURE

The restrictions above shall not apply to information which can be proved by the Receiving Party upon the written request of the Disclosing Party:

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- 12.1 was already in the Receiving Party's possession or developed independently of, and without access to, the information disclosed by the Disclosing Party ;
- 12.2 was disclosed to the Receiving Party by a third party at liberty to disclose that information and without breach of the terms of this Agreement; or
- 12.3 is or comes into the public domain through no act or default of the Receiving Party, its officers, agents or employees.

13. MANDATORY DISCLOSURE

Confidential Information may be disclosed to the minimum extent required where such disclosure is required by law or by any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction, in which case the Receiving Party will (to the extent it is permitted to do so) notify the Disclosing Party of such requirement as early as possible before such disclosure, and shall provide the Disclosing Party with material details of the requirement and of the Confidential Information that is proposed to be disclosed and shall use reasonable endeavours to obtain confidentiality undertakings from the recipients in respect of the Confidential Information disclosed.

14. RETURN AND DESTRUCTION OF CONFIDENTIAL INFORMATION

The Receiving Party shall delete (to the extent technically and legally possible) from its computer systems and shall return to the Disclosing Party all documents, records, and materials in its possession, custody or control incorporating any Confidential Information (except where created during automatic system backups that are subsequently stored securely and to which its directors, officers or employees do not have routine or unrestricted access or for one single electronic or written copy of the Confidential Information which may be retained for audit purposes):

- 14.1 (except as otherwise agreed in writing) within thirty (30) days of termination of the Agreement; or
- 14.2 forthwith at any time on written request by the Disclosing Party;

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The return of Confidential Information shall not release each Party from its obligations under this Agreement.

15. TERM AND TERMINATION

This Agreement shall come into force on the Effective Date, and shall have the Duration stated in the NDA Letter. Upon termination of this Agreement, the confidentiality obligations imposed in this Agreement shall remain in full force and effect for a further the Further Period set out in the NDA Letter. Each Party may decide not to become, or continue to be, involved in the Purpose with the other Party by giving thirty (30) days' written notice to the other, in which case the Receiving Party shall immediately cease all use of the Disclosing Party's Confidential Information. The end of discussions relating to the Purpose in accordance with this clause shall not affect any accrued rights or remedies to which each Party is entitled.

16. APPLICABLE LAWS

The Parties shall comply with all applicable laws, regulations and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and shall not give, provide or offer to the other Party any loan, fee, reward, gift (except items of negligible or intrinsic value), or any emolument or advantage whatsoever to the other Party. Non-compliance or suspected non-compliance shall constitute a material breach of this Agreement and this Agreement may be terminated by the non-breaching Party with immediate effect without prejudice to any other rights the non-breaching Party may possess.

17. FREEDOM OF INFORMATION

Nothing in this Agreement shall be interpreted as contravening any of the provisions of the Freedom of Information Act 2000 to which each Party may be subject.

18. ASSIGNMENT AND OTHER DEALINGS

No Party shall assign, transfer, subcontract or deal in any other manner with any of its rights and obligations under this Agreement.

19. SEVERANCE

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Agreement.

20. ENTIRE AGREEMENT

This Agreement sets out the entire agreement between the Parties in respect of the Confidential Information disclosed by each Party to the other and supersedes all previous undertakings.

21. GOVERNING LAW AND JURISDICTION

This Agreement shall be read and construed in accordance with English law and each Party hereby submits to the exclusive jurisdiction of the English Courts.

22. EXECUTION

This Agreement may be executed in any number of counterparts, each of which when executed (and delivered or transmitted by electronic means), will constitute one original, and photocopy, electronic or other copies shall have the same effect for all purposes as an ink-signed original. Each Party hereto consents to be bound by photocopy signatures of such Party's representative. No counterpart will be effective until each Party has executed at least one counterpart.
