

Mutual Confidentiality Agreement

Health warning:

This Mutual Confidentiality Agreement is a template designed to keep confidential the exchange of information between two parties.

This is NOT an agreement that covers all elements of your commercial relationship with another party. It can only cover confidentiality obligations. Many businesses make the mistake of signing one of these and not signing the bigger contract that governs and regulates their commercial dealing.

A template agreement is not a substitute for legal advice and all liabilities are disclaimed for the use or reliance on this document without prior legal advice as to its appropriateness and applicability. If you require advice, please contact the author using the details below.

This template is in draft format. Highlighted sections or wording in [square brackets] indicate that information is required or, where options are presented, that you have to choose and delete as appropriate.

The Agreement is governed by the law of Northern Ireland and does not take account of your local law if you are outside of this jurisdiction. If you are based in the Ireland or England & Wales please contact the author.

Shirley Madden, Director
shirley@maddenblack.com
+44 (0)7535 583 655
www.maddenblack.com
@madden_black



MUTUAL CONFIDENTIALITY AGREEMENT

AGREEMENT dated day of 20....

BETWEEN

(1) insert your name or all names in a partnership or limited company name here, trading as enter your business trading name, whose [registered office][principal place of business][personal address] is insert address and official registered address if a ltd company;

and

(2) Name and address of other party:

Three horizontal lines for entering the name and address of the other party.

BACKGROUND

The parties may have exchanged and wish further to exchange Confidential Information (as defined below). Each party wishes to ensure that the other party maintains the confidentiality of its Confidential Information. In consideration of the benefits to the parties of the disclosure of the Confidential Information, the parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information.

AGREEMENT

1. DEFINITIONS

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

“Confidential Information” shall mean all confidential information or data (however recorded, preserved or disclosed) disclosed by a party or its employees or officers whether in writing, orally or by any other means to the other party or its employees or officers in connection with:-

- (a) the Purpose (as defined below); or
(b) any information that would be regarded as confidential by a reasonable person relating to:-
(i) the business, affairs, customers, clients, suppliers, plans, intentions or market opportunities of the Disclosing Party (as defined below); and
(ii) the operations, concepts, ideas, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party;

- (c) any information developed by the parties in the course of carrying out this agreement;

whether before or after the date of this Agreement but shall exclude any part of such disclosed information or data which:-

- (a) is or becomes generally available to the public without breach of this Agreement by the Receiving Party;
- (b) the Receiving Party can show (a) was in its possession or known to it by being in use or being recorded in its files or computers or other recording media prior to receipt from the Disclosing Party and was not previously acquired by the Receiving Party from the Disclosing Party under an obligation of confidence, or (b) to have been developed by or for the Receiving Party at any time independently of any information disclosed to it by the Disclosing Party;
- (c) the Receiving Party obtains or the disclosed information or data was available from a source other than the Disclosing Party without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the Disclosing Party;
- (d) is hereafter disclosed by the Disclosing Party to a third party without restriction on disclosure or use; or
- (e) is disclosed by the Receiving Party (a) with the prior written approval of the Disclosing Party, or (b) without such approval, after a period of [five] years from the date of signature of this agreement.

“Disclosing Party” a party to this agreement which discloses or makes available, directly or indirectly, Confidential Information.

“Purpose” shall mean discussions and exchanges of information to explore the possibility of engaging in a mutually beneficial commercial arrangement.

“Receiving Party” a party to this agreement which receives or obtains, directly or indirectly, Confidential Information.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s legal and personal representatives, successors and permitted assigns.
- 1.4 Words in the singular shall include the plural and vice versa.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking into account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- 1.6 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

SMadden 21/3/14 17:20

Comment: You are entering into an exchange of confidential information for a specific purpose. You will see the word “Purpose” used at key points of the Agreement so it is very important to define this properly.

I have suggested as an example one particular purpose but you will have to tailor this definition so that it captures the reason that you are exchanging information. By defining this, the parties’ obligations of confidentiality will relate to specific confidential information. If this is not correctly or appropriately defined then there is a risk that you disclose information and it is not understood by the party to be confidential.

Other purposes could be:
-Exploring whether you can work with the other person on a project
-Exchanging information in the performance of a project

Where appropriate, name any project that this Agreement will relate to under the definition of “Purpose”.

If you need help with this, contact the author.

2. HANDLING OF CONFIDENTIAL INFORMATION

- 2.1 The Receiving Party shall maintain the Disclosing Party's Confidential Information in confidence and shall exercise no lesser security measures and degree of care than those which the Receiving Party applies to its own confidential information which the Receiving Party warrants as providing adequate protection against unauthorised disclosure, copying or use.
- 2.2 The Receiving Party shall ensure that disclosure of Confidential Information is restricted to those employees or officers of the Receiving Party having the need to know the same for the Purpose.
- 2.3 Copies or reproductions of Confidential Information shall not be made except to the extent reasonably necessary for the Purpose and all copies made shall be the property of the Disclosing Party.
- 2.4 All Confidential Information and copies thereof shall be returned to the Disclosing Party within 30 days of receipt of a written request from the Disclosing Party.
- 2.5 The Receiving Party shall:-
 - 2.5.1 use the Confidential Information only for the Purpose;
 - 2.5.2 not divulge the other party's Confidential Information, in whole or in part, to any third party; and
 - 2.5.3 make no commercial use of the same or any part thereof without the prior written consent of the Disclosing Party.

3. LIMITATIONS AND WARRANTY

- 3.1 A party shall be entitled to make any disclosure required by law of the other party's Confidential Information provided that it gives the other party as much notice of such disclosure as possible and it takes into account the reasonable requests of the other party in relation to the content of such disclosure not less than five business days' notice of such disclosure.
- 3.2 Each party warrants its right to disclose its Confidential Information to the other party and to authorise the other party to use the same for the Purpose.
- 3.3 The disclosure to the Receiving Party of any Confidential Information shall not give the Receiving Party any licence or other rights whatsoever in respect of any part of such Confidential Information beyond the rights contained in this agreement.

4. RETURN OF INFORMATION

- 4.1 At the request of the Disclosing Party, the Receiving Party shall:
 - 4.1.1 return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information;
 - 4.1.2 erase all the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and

4.1.3 certify in writing to the Disclosing Party that it has complied with the requirements of this clause,

4.2 If the Receiving Party develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the Disclosing Party's Confidential Information, the Receiving Party shall, at the request of the Disclosing Party, supply to the Disclosing Party information reasonably necessary to establish that the Disclosing Party's Confidential Information has not been used or disclosed.

5. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT

5.1 All Confidential Information shall remain the property of the Disclosing Party. Each party reserves all rights in its Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of a party's Confidential Information are granted to the other party and no obligations are imposed on the Disclosing Party other than those expressly stated in this agreement.

5.2 Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.

5.3 The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of, the Disclosing Party to enter into any further agreement in relation to the Purpose, or the development or supply of any product or service to which the Confidential Information relates.

5.4 The Receiving Party acknowledges 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.

6. NOTICES

All notices under this Agreement shall be in writing, sent by first-class registered or recorded delivery post to the other party being served at its address specified above or at such other address of which such party shall have given notice as aforesaid, and marked for the attention of that party's signatory of this Agreement. The date of service shall be deemed to be the day following the day on which the notice was transmitted or posted as the case may be.

7. TERM AND TERMINATION

7.1 If either party decides not to become, or continue to be, involved in the Purpose it shall notify the other party in writing immediately. The obligations of each party shall, notwithstanding any earlier termination of negotiations or discussions between the parties in relation to the Purpose, continue for a period of [five] years from the termination of this agreement.

7.2 Termination of this agreement shall not affect any accrued rights or remedies to which either party is entitled.

7.3 In the event that that parties decide, further to discussions, to engage with each other in a commercial capacity, the parties acknowledge that this agreement does not cover confidential information outside of the Purpose. The parties shall ensure that an agreement setting out their commercial arrangement shall contain confidentiality obligations no less strict than those set out in this agreement.

8. NO WAIVER

8.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.

8.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

9. NO PARTNERSHIP

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

10. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under or in connection with it.

11. NON-ASSIGNMENT

This Agreement is personal to the parties and shall not be assigned or otherwise transferred in whole or in part by either party without the prior written consent of the other party.

12. COUNTERPARTS

This Agreement may be executed in counterparts (including electronically transmitted signatures), each of which shall be deemed to be an original and both of which shall constitute one and the same Agreement. Signatures submitted electronically shall have the same force and effect as original signatures and, as such, shall be valid and binding upon the parties hereto.

13. GOVERNING LAW

This agreement and any disputes or claims arising out of, or in connection with, its subject matter are governed by and construed in accordance with the law of Northern Ireland and the parties irrevocably agree that the courts of Northern Ireland have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.

AS WITNESS this Agreement has been signed on behalf of each party by its duly authorised representative as of the day and year first above written.

**SIGNED by a company director or duly authorised signatory
for and on behalf of:-**

insert your full name(s) here (individual/partnership/ltd company)

Signature:

Print Name:

Date:

**SIGNED by a company director or duly authorised signatory
for and on behalf of:-**

Insert name of other party – find out if they're acting as individual or ltd company

Signature:

Print Name:

Date: