**Non-Disclosure Agreement – Two way (Mutual)**

**Is this template for me?**

This template provides the basic format for a non disclosure agreement to be used where you are exchanging information with another party.

**How to use this template**

Areas highlighted in yellow are for you fill in with details specific to your business or contain notes for you to consider.

Do not forget to remove any square brackets and highlights before finalising.

To edit this template, you will need to download it (top right hand corner).

**Disclaimer**

This template is provided for free to be used as a guide only. To obtain a document that meets your specific business needs we recommend you discuss this further with a qualified lawyer.

**Contacts**

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1 Rimu Street, Riccarton

**DEED** dated [ ]

**PARTIES**

| 1. |  (“**\*\*\***”) |
| --- | --- |

| 2. |  (“**Contractor**”) |
| --- | --- |

**BACKGROUND**

A \*\*\* intends to make certain Confidential Information available to the Contractor including information about \*\*\*’s business, and \*\*\* requires that it be kept confidential. Contractor also possesses certain Confidential Information which it may need to disclose to \*\*\*.

B The parties have agreed to regulate the use of the Confidential Information, and the Contractor has agreed not to compete with \*\*\* in agreed areas, on the terms and conditions of this Deed.

**OPERATIVE PROVISIONS**

# Definitions

## In this Deed:

### **Confidential Information** in respect of a Party means \*\*\*'s Confidential Information or the Contractor's Confidential Information (as the case may be).

### **\*\*\*’s Confidential Information** means all trade secrets, ideas, know-how, concepts and information whether in writing or otherwise, and all other information relating to \*\*\* and its affairs or businesses, sales, marketing or promotional information, which is not in the public domain and includes any such information in \*\*\*'s power, possession or control concerning or belonging to any other person (except Contractor);

### **Contractor's Confidential Information** means all trade secrets, ideas, know-how, concepts and information whether in writing or otherwise, and all other information relating to the Contractor and its affairs or businesses, sales, marketing or promotional information, which is not in the public domain and includes any such information in the Contractor's power, possession or control concerning or belonging to any other person (except \*\*\*);

# Confidential Information

## The Parties acknowledge that each Party may be given access to certain Confidential Information of the other Party, for [*Purpose*].

## In consideration of:

### being given access to Confidential Information of the other Party; and

### the mutual promises contained in this agreement,

each of the Parties agrees that it will keep and will ensure that its employees, consultants and advisers keep confidential the Confidential Information of the other Party unless and until the other Party agrees that the Confidential Information is in the public domain other than by a breach of this agreement.

## Each Party will:

### Keep the other Party’s Confidential Information confidential at all times in the future, including after the termination of all other terms and obligations between the parties.

### Only use the other Party’s Confidential Information for [*Purpose*] (“the Purpose”) and will not commercially exploit the other Party’s Confidential Information made available to it, without the other Party’s prior written consent.

### Not use, or attempt to use, the other Party’s Confidential Information for its own purposes or the purposes of any third party, or do or omit to do any act or thing involving the use of the other Party’s Confidential Information which may injure or cause loss to, or be calculated to injure or cause loss to the other Party.

### Only disclose the other Party’s Confidential Information to such of its employees, consultants and advisers as is required to fulfil the Purpose and its obligations under this Deed, and only on condition that each person to whom the other Party’s Confidential Information is disclosed agrees to abide by the terms and conditions of this Deed as if they had contracted directly with \*\*\*.

### Make any such disclosure on the basis that if the employee discloses the other Party’s Confidential Information in an unauthorised manner, the said Party shall be liable to the other Party as if it had itself made such disclosure.

### At all times effect and maintain the same security measures to preserve the confidential nature of the other Party’s Confidential Information as it has in place to protect its own Confidential Information.

### In respect of any of the other Party’s Confidential Information that is Personal Confidential Information (as that term is defined in the Privacy Act 2020 (‘the Act’)):

#### Comply with any obligations imposed on recipients of Personal Confidential Information under the Act;

#### Refrain from doing anything which would cause the other Party to breach the Act; and

#### Comply with the other Party’s reasonable directions in relation to the handling of the Personal Confidential Information.

### Return or destroy all copies of the other Party’s Confidential Information in its possession or the possession of its employees, consultants and advisers, upon request of the other Party or on termination of this Deed for any reason, and to certify to the other Party that it has done so.

# New Confidential Information

## Any Confidential Information developed by the Contractor based on the Confidential Information will be owned by \*\*\*. The Contractor hereby assigns to \*\*\* all right, title and interest in such Confidential Information and any copyright or other intellectual property rights relating to the Confidential Information.

## The Confidential Information will at all times be and remain \*\*\*’s property. The Contractor has no right to use the Confidential Information except as expressly set out in this Deed. Nothing contained in this Deed shall be deemed to grant the Contractor, whether directly or by implication, any right, (whether by licence or otherwise), under any patent(s), patent applications, copyrights or other intellectual property rights with respect to any of the Confidential Information.

## ***[Note: Consider what position you wish to take on this, or delete it]***

# Exceptions

## Neither Party will be bound to keep confidential any information if and to the extent that:

### the information is, or becomes part of the public domain otherwise than by breach of this agreement by that Party;

### the information is lawfully obtained by that Party from another person without any restriction as to use and disclosure;

### the information was in that Party's possession prior to disclosure to it by the other Party;

### the information is required to be disclosed by the operation of any law, stock exchange, judicial or parliamentary body or governmental agency provided that the said Party must seek the highest level of protection available for the other Party’s Confidential Information and, when possible, give the other Party enough prior notice to provide a reasonable chance to seek a protective order preventing or restriction disclosure of the other Party’s Confidential Information; or

### the other Party has authorised in writing the disclosure of the information.

# Remedy

## Each Party acknowledges and accepts that:

### the other Party would suffer financial and other loss and damage if the Confidential Information of the other Party were disclosed to any other person or used for any purpose other than the Specified Purpose and that monetary damages would be an insufficient remedy;

### in addition to any other remedy which may be available in law or equity, the other Party is entitled to injunctive relief to prevent a breach of this agreement and to compel specific performance of this agreement; and

### it will immediately reimburse the other Party for all costs and expenses, (including legal costs and disbursements on a full indemnity basis) incurred in enforcing the obligations of that Party under this agreement.

## Each Party indemnifies the other Party against all costs, expenses, actions or claims directly or indirectly incurred or suffered by the other Party as a result of any breach of this agreement by that Party.

## The indemnity in clause 5.2 extends to and includes all costs, damages and expenses incurred by the other Party in defending or settling any such costs, expenses, actions, suits proceedings, claims or demands (including legal costs and disbursements on a full indemnity basis).

# Non-Competition

## In consideration for the opportunity of obtaining access to the Confidential Information, the Contractor agrees that it will not prior to the conclusion of the Purpose and for [*Time Period*] from the date of this Deed, in [*Location*], either solely or jointly with any person, directly or indirectly, carry on, be engaged or concerned or interested or in any way assist in, a project the same as, similar to, or in competition with any project of \*\*\* which uses the Confidential Information.

# Non-solicitation

## The Contractor undertakes that for the period of [*Time Period*] commencing on the date of this Deed that neither it nor any of its related companies (as that term is defined in the Companies Act 1993) will directly or indirectly for itself or on behalf of or in conjunction with any other person:

### solicit or entice any employees of \*\*\* to terminate their employment with \*\*\*, provided that this clause will not prevent the Contractor (or its related companies) from employing an employee of \*\*\* that has responded without solicitation or enticement to a general employment advertisement placed by the Contractor; or

### solicit, entice or accept the custom of, or deal with, any person, firm or company with which the Contractor has been associated with in connection with any project of \*\*\*.

# Termination

## This Deed may be terminated at any time by either party providing the other party with [ ] days prior written notice.

# Assignment

## The Contractor may not assign its rights and obligations in terms of this Deed without \*\*\*’s prior written permission.

# No Representations or Warranties by \*\*\*

## The Confidential Information is provided solely on the basis that the Contractor will be responsible for the Contractor’s own independent evaluation of the Confidential Information. \*\*\* does not make any representations or warranties (express or implied) about the accuracy, completeness and currency of the Confidential Information. \*\*\* will not have any liability to the Contractor resulting from the Contractor’s use of the Confidential Information.

# No Partnership, Joint Venture of Agency

## This Deed will not be deemed to create a partnership, joint venture or agency relationship of any kind between \*\*\* and the Contractor. This Deed does not impose any obligation on:

### \*\*\* any project; or

### either party to enter into any further agreements.

# Counterparts

## This Deed may be executed by the parties in counterparts, each of which will be deemed to be an original and all of which will constitute one and the same Deed.

# Further Assurances

## The parties must each do all such further acts (and sign any documents) as may be necessary or desirable for ensuring that .

# Severability

## In the event that any part or parts of this Deed shall be held illegal or null and void, the remaining terms shall remain in full force and effect as if such part or parts held to be illegal or void had not been included in this Deed and \*\*\* may replace the invalid or unenforceable provision with a valid and enforceable provision that achieves the original intent and economic effect of this Deed.

# Privity

## The Contractor’s obligations under this Deed are for the benefit of \*\*\* and [*describe any group or associated companies or other parties that have provided Confidential Information*] and are enforceable by any or all of them.

# Notices

## Each notice under this Agreement shall be in writing and delivered personally or sent by post or email. A notice is deemed to be received if:

## (a) delivered personally, when delivered;

 (b) if posted, five business days after posting; or

 (c) if sent by email, when actually received.

# Applicable Law

## This Deed shall be governed by and construed under the laws of New Zealand regardless of conflict of law principles and any proceedings arising out of or in connection with this Deed may be brought in any court of competent jurisdiction in New Zealand. The Parties submit to the exclusive jurisdiction of the New Zealand Courts.

## The Contractor acknowledges that money damages will not be sufficient compensation for breach of this Deed. In addition to any other rights and remedies available to \*\*\* for breach of this Deed, \*\*\* will be entitled to enforcement by court injunction or restraining order.

## This submission to jurisdiction does not (and is not to be construed to) limit the rights of \*\*\* to take proceedings against the Contractor for breach of the terms of this Deed in another court of competent jurisdiction, nor is the taking of proceedings in one or more jurisdictions to preclude the taking of proceedings in another jurisdiction, whether concurrently or not.

**SIGNED AS A DEED**

| **SIGNED** by the saidin the presence of:  Witness Signature Witness   Witness Name  Witness Occupation  Town/City of Residence | )))) |   |
| --- | --- | --- |

| **SIGNED** for and on behalf of by two of its Directors | )))) |   **Director**  **Director** |
| --- | --- | --- |

| **SIGNED** by the saidin the presence of:  Witness Signature  Witness Name  Witness Occupation  Town/City of Residence | )))) |   |
| --- | --- | --- |

| **SIGNED** for and on behalf of by two of its Directors | )))) |   **Director**  **Director** |
| --- | --- | --- |