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Two-way Non- Disclosure Agreement

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Confidentiality agreement

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DBA members can speak with the DBA lawyers, Humphries Kirk, for 30 minutes free on each and every different topic they encounter. For further information contact Darrell Stuart-Smith, Partner, Humphries Kirk on 01305 251007 or d.stuart-smith@hklaw.eu.

Confidentiality agreement

Signature date: This Agreement is made on:

Parties: The parties to this Agreement (the 'Parties') are:

1. [ABC Limited ('ABC')] a [company incorporated in England and Wales] [registration number •] [whose registered office is at •]; and
2. [XYZ, Inc. ('XYZ')] [incorporated in] [whose principal place of business is at •].

Field and purpose: The Parties wish to hold discussions about the possible provision of design services by to (the 'Field'). Each party wishes to receive confidential information in the Field from the other party for the purpose of considering whether to enter into a further agreement with the other party (the 'Permitted Purpose').

It is agreed as follows:

1. Confidentiality obligations

- 1.1 In consideration of the Disclosing Party providing Confidential Information, at its discretion, to the Receiving Party, the Receiving Party shall:
 - 1.1.1 Keep the Confidential Information secret and confidential;
 - 1.1.2 Neither disclose nor permit the disclosure of any Confidential Information to any person, except for disclosure to Authorised Persons in accordance with clause 2, or to a court or other public body in accordance with clause 3;
 - 1.1.3 Not use the Confidential Information for any purpose, whether commercial or non-commercial, other than the Permitted Purpose;
 - 1.1.4 Make no copies of the Confidential Information, and
 - 1.1.5 Take proper and all reasonable measures to ensure the confidentiality of the Confidential Information.
- 1.2 For the purposes of this Agreement, the following words shall have the following meanings:

- 1.2.1 'Information' shall include information whether of a technical, commercial or any other nature whatsoever including artwork, literary work and design work and intellectual property rights therein provided directly or indirectly by the Disclosing Party to the Receiving Party in oral or documentary form or any other media in any tangible form or by demonstrations and whether before, on or after the date of this Agreement.
- 1.2.2 'Confidential Information' shall mean:
- 1.2.2.1 Information provided in documentary or in any other tangible form, whether or not marked or otherwise designated or indicated to show that it is imparted in confidence; and
- 1.2.2.2 in respect of Confidential Information imparted orally, any note or record of the disclosure and any evaluation materials prepared by the Receiving Party that incorporate any Confidential Information; and
- 1.2.2.3 any copy of any of the foregoing; and
- 1.2.3 'Disclosing Party' shall mean the party to this Agreement that discloses Information, directly or indirectly to the Receiving Party under or in anticipation of this Agreement.
- 1.2.4 'Receiving Party' shall mean the party to this Agreement that receives Information, directly or indirectly from the Disclosing Party.

2. Disclosure to employees

- 2.1 The Receiving Party may disclose the Confidential Information to those of its officers, employees and professional advisers (together, 'Authorised Persons') who:
- 2.1.1 reasonably need to receive the Confidential Information to enable the Receiving Party to achieve the Permitted Purpose;
- 2.1.2 have been informed by the Receiving Party (a) of the confidential nature of the Confidential Information and (b) that the Disclosing Party provided the Confidential Information to the Receiving Party subject to the provisions of a written confidentiality agreement;

- 2.1.3 in the case of the Receiving Party's officers and employees, have written confidentiality obligations to the Receiving Party that (a) are no less onerous than the provisions of this Agreement and (b) apply to the Confidential Information, and who have been instructed to treat the Confidential Information as confidential;
- 2.1.4 in the case of the Receiving Party's professional advisers have been provided with a copy of this Agreement and have agreed with the Receiving Party in writing to comply with the obligations of the Receiving Party under this Agreement, and
- 2.2 The Receiving Party shall be responsible for taking reasonable action to ensure that its Authorised Persons comply with the Receiving Party's obligations under this Agreement and shall be liable to the Disclosing Party for any breach of this Agreement by such Authorised Persons.

3. Disclosure to court

To the extent that the Receiving Party is required to disclose Confidential Information by order of a court or other public body that has jurisdiction over the Receiving Party, it may do so. Before making such a disclosure the Receiving Party shall, if the circumstances permit:

- 3.1 Inform the Disclosing Party of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information);
- 3.2 Ask the court or other public body to treat the Confidential Information as confidential; and
- 3.3 Permit the Disclosing Party to make representations to the court or other public body in respect of the disclosure and/or confidential treatment of the Confidential Information.

4. Exceptions to confidentiality obligations

The Receiving Party's obligations under clause 2 shall not apply to Confidential Information that:

- 4.1 The Receiving Party possessed before the Disclosing Party disclosed it to the Receiving Party;

4.2 Is or becomes publicly known, other than as a result of breach of the terms of this Agreement by the Receiving Party or by anyone to whom the Receiving Party disclosed it; or

4.3 The Receiving Party obtains from a third-party, and the third-party was not under any obligation of confidentiality with respect to the Confidential Information; or

4.4 Is developed by any of the Receiving Party's employees who have not had any direct or indirect access to, or use or knowledge of, the Disclosing Party's Confidential Information.

5. **Return of information and surviving obligations**

5.1 Subject to clause 5.2, the Receiving Party shall (a) at the Disclosing Party's request, and also (b) upon any termination of this Agreement:

5.1.1 Return and provide to the Disclosing Party all documents and other materials that contain any of the Confidential Information, including all copies made by the Receiving Party representatives;

5.1.2 Permanently delete all electronic copies of Confidential Information from the Receiving Party's computer systems; and

5.2 Following the date of any termination of this Agreement, or any return of Confidential Information to the Disclosing Party ('Final Date'), (a) the Receiving Party shall make no further use of the Confidential Information, and (b) the Receiving Party's obligations under this Agreement shall otherwise continue in force, in respect of Confidential Information disclosed prior to the Final Date, in each case [for a period of [5] years from the Final Date.

6. **General**

6.1 The Receiving Party acknowledges and agrees that all property, including intellectual property, in Confidential Information disclosed to it by the Disclosing Party shall remain with and be vested in the Disclosing Party.

6.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

- 6.2.1 To grant the Receiving Party any licence or rights other than as may be expressly stated in this Agreement;
- 6.2.2 To require the Disclosing Party to disclose, continue disclosing or update any Confidential Information;
- 6.2.3 To require the Disclosing Party to negotiate or continue negotiating with the Receiving Party with respect to any further agreement, and either party may withdraw from such negotiations at any time without liability; nor
- 6.2.4 As to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any information or materials provided under this Agreement.
- 6.3 The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the non-exclusive jurisdiction of the courts of England and Wales, to which the parties to this Agreement submit.

Agreed by the parties through their authorised signatories:

For and on behalf of

For and on behalf of

[.....]

[.....]

Signed

Signed

Name

Name

Title

Title