TEMPLATE MUTUAL CONFIDENTIALITY AGREEMENT – USER NOTES

This is a simple mutual (or two way) confidentiality agreement setting out the terms on which each party will keep confidential the other party's information.

It has been drafted to be fair to both parties and to enable easy signing (without the need for lengthy negotiation). If the purpose for which the information is being exchanged is highly sensitive or has unique aspects, consider whether a more "belts and braces" agreement may be required.

USING THIS TEMPLATE

The ***User Notes*** and the statements in the footer (all marked in red) are included to assist you to prepare this document. They are for reference only. You should delete all user notes and the statements in the footer from the final form of your document.

The use of [*square brackets*] around black text means that:

- the requested details need to be inserted
- there are different options for you to consider
- the whole clause is optional and you need to consider whether to include it, based on your circumstances and the user notes.

Before finalising your document, check for all square brackets to ensure you have considered the relevant option and deleted the brackets.

If you delete any clause or schedule, remember to cross reference check the document.

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MUTUAL CONFIDENTIALITY AGREEMENT

DATE

PARTIES

1 [***INSERT FULL LEGAL NAME***], company number [*insert company number*]

2 [***INSERT FULL LEGAL NAME***], company number [*insert company number*]

AGREEMENT

Each party agrees to keep confidential all Confidential Information disclosed to it by the other party on the terms of the Agreement.

SIGNED

[User note: Assumes two companies are entering into the Agreement. Different signature clauses may be required for other persons.]

SIGNED for and on behalf of **[*INSERT NAME OF COMPANY*] LIMITED** by:)
)

_____
Signature of authorised signatory

_____
Print full name of authorised signatory

SIGNED for and on behalf of **[*INSERT NAME OF COMPANY*] LIMITED** by:)
)

_____
Signature of authorised signatory

_____
Print full name of authorised signatory

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TERMS OF THIS AGREEMENT

1 INTERPRETATION

1.1 **Definitions:** In the Agreement, the following terms have the stated meaning:

TERM	MEANING
Affiliate	in relation to a party, a Related Company, director, officer, shareholder, owner, employee or professional advisor of that party.
Agreement	the cover page (including the signatures) and clauses 1 to 8 of this document.
Confidential Information	includes: • all information (whether in oral, written, electronic or other recorded form) disclosed by or on behalf of a party to the other party in connection with the Purpose, whether before or after the date of the Agreement; • all copies of that information; and • the fact that discussions are taking place related to the Purpose, but does not include: • publicly available information; or • information which becomes known to the other party from a third person who is not in breach of any obligation of confidentiality to the party who disclosed the information.
Purpose	[*To insert, e.g. assessing a party's interest in acquiring all or part of the business of the other party by way of an acquisition of shares and/or assets*]. **[*User note: To obtain better protection under the Agreement, the Purpose should be specific.*]**
Related Company	has the meaning given in the New Zealand Companies Act 1993, adapted as required to apply to any company regardless of the jurisdiction of its incorporation.
Unauthorised Activity	any unauthorised access, use, copying or disclosure of Confidential Information.

1.2 **Interpretation:** In the Agreement:

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a clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;

b words in the singular include the plural and vice versa; and

c a reference to:

i a **party** to the Agreement includes that party's permitted assigns;

ii **including** and similar words do not imply any limit; and

iii a **person** includes an individual, body corporate, unincorporated body or other entity.

1.3 **No obligation:** Nothing in the Agreement obliges a party to disclose Confidential Information to the other party.

1 USE AND DISCLOSURE

1.1 **Use:** Each party must use the other party's Confidential Information solely for the Purpose.

1.2 **Disclosure:** A party must not disclose the other party's Confidential Information to any person except an Affiliate who has:

a a need to know for the Purpose, but only to the extent of that need to know; and

b agreed to comply with obligations the same or substantially similar to those under the Agreement.

1.3 **Breach by Affiliate:** A breach of the Agreement by an Affiliate of a party is deemed to be a breach of the Agreement by that party.

1.4 **On supply:** The exception in clause 1.2 does not extend to enable an Affiliate to disclose Confidential Information to its affiliates.

2 CONFIDENTIALITY

2.1 **Acknowledgement:** Each party acknowledges that the other party's Confidential Information is provided on terms of strict confidentiality.

2.2 **Security:** Each party must:

a establish and maintain proper and effective security measures to safeguard the other party's Confidential Information at all times from Unauthorised Activity;

b subject to any express clause to the contrary in the Agreement, keep the other party's Confidential Information under its control;

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c immediately notify the other party of any suspected or actual Unauthorised Activity relating to the other party's Confidential Information, including by an Affiliate; and

d take all steps to stop any Unauthorised Activity, including providing all assistance that is reasonably requested by the other party in relation to any proceedings that the other party takes against any person for Unauthorised Activity.

3 DISCLOSURE REQUIRED BY LAW

3.1 **Types of disclosure:** Clause 3.2 applies if a party is obliged to disclose the other party's Confidential Information by:

a law (including under the New Zealand Official Information Act 1982 or the rules of any stock exchange to which the relevant party is subject); or

b a court order.

3.2 **Action to take:** The party must:

a promptly, and prior to disclosure, give written notice of the requirement to the other party to enable the other party to seek a protective order or other appropriate remedy; and

b where the other party's Confidential Information is disclosed as a result of the requirement, use all reasonable endeavours to obtain, from the recipient, assurances that the Confidential Information will be treated as confidential.

4 BREACH

Each party acknowledges that in the case of a breach of the Agreement by it or an Affiliate:

a the breach may result in loss to the other party that may not be adequately compensated by payment of damages; and

b the other party is entitled to equitable relief, including enforcing its rights by specific performance or injunction proceedings.

5 DISCLAIMER

5.1 **No warranty:** Neither party makes or gives any express or implied representation, undertaking or warranty that:

a the Confidential Information is or will be:

i complete or accurate; or

ii audited or independently verified; or

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b reasonable care has been or will be taken in compiling or preparing the Confidential Information.

5.2 **No liability for use:** A party will not be liable to the other party (or the other party's Affiliates) in respect of its Confidential Information or the use of that Confidential Information.

6 OWNERSHIP

Each party retains all intellectual property rights, title and interest in the Confidential Information that it discloses.

7 COMPLETION OF PURPOSE

7.1 **Obligations continue:** The obligations under the Agreement continue to apply to the parties after completion or termination of the Purpose.

7.2 **Return of information:**

a At the request of a party after completion or termination of the Purpose, the other party must promptly return to it or destroy all Confidential Information which is in the party's, or its Affiliates', possession or control.

b Despite clause 7.2a, a party, or any of its professional advisors, may retain Confidential Information that it is legally required to retain, but only to the extent of that legal requirement.

c The other party must provide the first party with written confirmation that it has complied with clauses 7.2a and 7.2b.

8 GENERAL

8.1 **Waiver:** To waive a right under the Agreement, the waiver must be in writing and signed by the waiving party.

8.2 **Assignment:** Neither party may assign or otherwise transfer any of its rights or obligations under the Agreement unless with the other party's prior written consent.

8.3 **Law:** The Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with the Agreement.

8.4 **Severability:** f any provision of the Agreement is, or becomes, unenforceable, illegal or invalid for any reason, the relevant provision is deemed to be varied to the extent necessary to remedy the unenforceability, illegality or invalidity. If variation is not possible, the provision must be treated as severed from the Agreement without affecting any other provisions of the Agreement.

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8.5 **Counterparts:** The Agreement may be signed in counterparts, each of which constitutes an original and all of which constitute the same agreement. A party may enter the Agreement by signing and sending (including by facsimile or email) a counterpart copy to the other party.

8.6 **Variation:** Any variation to the Agreement must be in writing and signed by both parties.

8.7 **Further acts:** Each party must sign and deliver any document and undertake any act, matter and thing which is reasonably requested by the other party to give effect to the intent and purpose of the Agreement.

8.8 **Entire agreement:** The Agreement sets out everything agreed by the parties relating to its subject matter and supersedes and cancels anything discussed, exchanged or agreed prior to the date of the Agreement. The parties have not relied on any representation, warranty or agreement relating to the subject matter of the Agreement that is not expressly set out in the Agreement, and no such representation, warranty or agreement has any effect from the date of the Agreement.

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