CONFIDENTIALITY AGREEMENT

### between

### [Insert full legal name of [University/Institution]]

### and

### [Insert full legal name of other party]

# CONFIDENTIALITY AGREEMENT

between

**[Insert full legal name of [University/Institution]]**, a charitable body registered in Scotland under registration number [Insert charitable body registration number of [University/Institution]], incorporated under the Universities (Scotland) Acts and having its main administrative offices at [Insert full legal address of [University/Institution]] (the “[University/Institution]”)

and

**[Insert full legal name of party]**, [Insert full legal address of party] (“[Insert definition of party]”)

hereinafter referred to as “the Parties” and each of them being “a Party”)

## BACKGROUND

1. The Parties are willing to disclose certain Confidential Information (as hereinafter defined) for the purposes of [insert purpose of discussions - please be as specific as possible] (the “Purpose”);
2. The Parties wish to protect such Confidential Information and accordingly have agreed to the terms and conditions of protection contained in this agreement (the “Agreement”).

## TERMS AND CONDITIONS

It is hereby agreed as follows:

1. In this Agreement "Confidential Information" shall mean any information (including samples, materials, drawings, specifications, photographs, designs, computer code, computer programs, software, data, formulae, processes, know-how, any technical or commercial information), reports, papers, correspondence or documents which is disclosed by or on behalf of one Party to the other, or to any of such other’s employees, directors, officers, advisors or representatives, in whatever form, (including written, oral, visual or electronic), and which is, or which should reasonably be expected to be, of a confidential nature.
2. [Option A: This Agreement shall commence on the [INSERT DATE], notwithstanding the date or dates of execution hereof, and shall continue in force, for a period of [one (1)] year (the “Term”).]

OR

[Option B: The obligations of confidentiality in this Agreement shall apply to all Confidential Information disclosed by the Parties for the Purpose, whether disclosed before or after the date or dates of this Agreement, and shall continue in force for a period of [five (5)] years from disclosure [or, for information which remains confidential in nature after the initial five year period, the obligations continue for a further [3] [5] years from the expiry of the initial [five] year period].]

1. The Party receiving or acquiring Confidential Information (the “Receiving Party”) from the other Party (the “Disclosing Party”) undertakes for [Option A: the Term and for a period of [[three (3)][five [5]] years thereafter] OR [Option B: so long as such Confidential Information remains confidential in character in accordance with Clause 2]:
	1. to keep all such Confidential Information confidential, and to take all reasonable steps to ensure that copies of the Confidential Information made by or on behalf of the Receiving Party are protected against theft or other unauthorised access;
	2. not to communicate or otherwise make available any such Confidential Information to any third party except with specific prior written consent from the Disclosing Party [Optional: or where disclosure is to a third party already bound under obligations of confidence to the Receiving Party at least as onerous as those contained herein and the Receiving Party hereby accepts liability for any breach by such third party of said obligations as if that breach was the Receiving Party’s breach under this Agreement];
	3. to disclose Confidential Information only to such employees, directors, officers, advisors or representatives of the Receiving Party who have a specific need to receive such Confidential Information for the Purpose, and who are aware and have accepted that the Confidential Information is, and should be treated as, of a confidential nature; and
	4. not to use, or allow to be used, Confidential Information other than solely for or in relation to the Purpose, unless (and then only to the extent to which) any other use shall have been specifically authorised in writing by the Disclosing Party.
2. The obligations in Clause 3 shall not apply, or shall cease to apply, to such Confidential Information as the Receiving Party can show to the reasonable satisfaction of the Disclosing Party:
	1. has become public knowledge other than through any fault of the Receiving Party;
	2. was already known to the Receiving Party prior to disclosure by the Disclosing Party;
	3. was independently developed by the Receiving Party without recourse to or use of any Confidential Information;
	4. has been received by the Receiving Party from a third party who did not acquire it in confidence from the Disclosing Party, or someone owing a duty of confidence to the Disclosing Party; or
	5. the Receiving Party is required to disclose by law or by a requirement of a regulatory body and, in the case of the [University/Institution], under the Freedom of Information (Scotland) Act 2002 and/or the Environmental Information (Scotland) Regulations 2004.
3. The Receiving Party may make only such copies of Confidential Information as are strictly necessary for the Purpose, and must ensure that all such copies are clearly marked as confidential, and can be clearly separated from the Receiving Party’s own information. Any copy so made shall also constitute Confidential Information. The Receiving Party shall, upon the Disclosing Party’s written request, return to the Disclosing Party all Confidential Information as is in tangible form (together with all copies thereof within its possession or control) or make such other disposal thereof as may be stipulated by the Disclosing Party. Without prejudice to the foregoing the Receiving Party may retain a copy of the Confidential Information for the purposes of demonstrating its compliance with this Clause and any copies which are made pursuant to the Receiving Party’s IT backup and disaster recovery processes, provided such copies are retained as confidential for such period as the Confidential Information is retained.
4. Except as expressly provided, nothing in this Agreement nor the subsequent disclosure of Confidential Information pursuant to this Agreement shall be construed as granting or confirming any rights, licence or relationship between the Parties.
5. The rights and obligations of the Parties are personal and may not be assigned at any time without the prior written consent of the other Party which consent shall not be unreasonably withheld; provided that it shall be a requirement in all cases of assignation that the assignee undertakes to perform all outstanding obligations of the assignor as though the assignee had been an original party hereto.
6. The Parties shall procure that in carrying out their obligations under this Agreement, they will comply with all applicable laws, regulations and statutes, including those relating to anti-bribery as detailed in the Bribery Act 2010 and other analogous legislation.
7. Except as otherwise expressly provided for herein, the Parties confirm that nothing in this Agreement shall confer or purport to confer on any third party any benefit or any right to enforce any term of this Agreement for the purposes of the Contract (Third Party Rights) (Scotland) Act 2017.
8. This Agreement may be executed in any number of counterparts and by each of the Parties on separate counterparts.  A copy of this executed Agreement delivered by electronic means (including e-mail) shall be deemed to be a duly signed original for all purposes. Where executed in counterparts each counterpart will be held as undelivered for the purposes of the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015 until the last date of signature hereof.
9. This Agreement, all questions of construction, validity and performance under this Agreement and all claims and disputes arising out of or in connection with the subject matter of this Agreement (whether or not contractual in nature), shall be governed by laws of Scotland. The Parties hereby irrevocably prorogate the exclusive jurisdiction of the Scottish courts.

IN WITNESS WHEREOF this Agreement is executed as follows:

[NB. Use of witness signatures to be determined on a case by case basis]

|  |  |  |
| --- | --- | --- |
| for and on behalf of [Insert full legal name of [University/Institution]] |  |  |
| Signed: |  |  | Witness: |  |
| Name: |  |  | Name: |  |
| Title: |  |  | Address: |  |
| Dated: |  |  |  |  |

|  |  |  |
| --- | --- | --- |
| for and on behalf of [insert full legal name of party] |  |  |
| Signed: |  |  | [Witness: |  |
| Name: |  |  | Name: |  |
| Title: |  |  | Address: |  |
| Dated: |  |  |  |  |