



Foreign & Commonwealth Office

Non-Disclosure Agreement – Foreign and Commonwealth Office

THIS AGREEMENT is made the day of, 2016

BETWEEN

The Secretary of State for Foreign and Commonwealth Affairs (“FCO”), having its offices at King Charles Street, London SW1A 2AH

AND

.....
..... (the “Company”).

Together known as “The Parties”

WHEREAS

- (A) The Parties intend to disclose Confidential Information to one another in the course of entering into discussions which may lead to a contract between the (company) and the Authority.
- (B) In order to facilitate discussions between the Parties, both Parties have agreed to enter into this Agreement to keep Confidential Information confidential and not to disclose any Confidential Information to any third party or to use any Confidential Information other than in the course of these discussions.

NOW IT IS AGREED between The Parties as follows:

NON-DISCLOSURE AGREEMENT

Definition

'Agreement' means this Non-Disclosure Agreement;

'Confidential Information' means as against each Party to this Agreement all information relating to the other Party or any member of the other Party's Group, the disclosure of which would constitute an actionable breach of confidence, which has either been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored). Such information shall include but not be limited to all information relating to the operations, plans, proposals, intentions, know-how, trade secrets, copyright and other intellectual property rights, software, market opportunities, strategies, customers and potential customers, competitors and potential competitors, business and/or financial affairs of any member of the other Party's Group or of any customer or potential customer of any members of the Party's Group and all personal data and sensitive personal data within the meaning of the Data Protection Act 1998 including both Parties' data and that of any member of the other Party's Group. It is understood by each party to this Agreement, that the failure to refer to such information as confidential shall not prejudice the effect of this Agreement.

Obligation to Keep Confidential

1. Each Party undertakes, in respect of the Confidential Information disclosed to it under or in relation to this Agreement, including all accompanying documentation:
 - a) to keep all Confidential Information strictly confidential and safeguard it accordingly;
 - b) not to use any Confidential Information for any purpose other than familiarisation with the contents thereof, in pursuance of the Purpose;
 - c) not to copy in any manner any document or other media whatsoever containing any Confidential Information without the prior written consent in writing of the disclosing Party;
 - d) to restrict access to any Confidential Information to such of its employees as need to know such information;
 - e) not to disclose any Confidential Information to any third party without the prior written consent of the disclosing Party, and in the event that such disclosure is permitted, the

receiving Party will procure that such third party is fully aware of and agrees to be bound by the terms of this Agreement;

- f) to procure that all persons associated with it, whether as directors, administrators employees, consultants, representatives, advisers or otherwise comply with the same obligation of confidentiality set out under this clause;
 - g) to be responsible for any breach of these undertakings by any of its directors, administrators, employees, consultants, advisers or representatives.
2. The foregoing obligations and restrictions shall not apply to Confidential Information received by one Party from the disclosing Party:
- a) which was, by reasonable proof, already in the possession of the receiving Party, without restriction as to its disclosure prior to receipt;
 - b) which is now or becomes public knowledge otherwise than by breach of this Agreement;
 - c) which is received from a third party in lawful possession of such information without restrictions as to use and disclosure;
 - d) which is independently developed by the receiving Party without access to the Confidential Information;
 - e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom Of Information Act 2000, the Code of Practice on Access to Government Information (2nd Edition) or the Environmental Information Regulations 2004;
 - f) which is approved for unlimited release or use by written authorisation of the disclosing Party.

Secrecy

3. The Supplier:
- a) must not contravene the Official Secrets Acts 1911 to 1989; (See Annex B)

- b) must familiarise itself with these Acts and take all reasonable steps to ensure that its all persons associated with it, whether as directors, employees, consultants, representatives, advisers or otherwise are familiar with them; and
- c) must take all reasonable steps to ensure that these people comply with sub-clauses 3a and 3b above.

Further Undertaking

- 4. Upon request in writing from the FCO, the Company will within 5 working days deliver to the FCO, all Confidential Information in written form or stored in an electronic database and supplied by or on behalf of or relating to the FCO supplied under this Agreement or immediately destroy any documents (including any information relating to the FCO stored in a database) to the extent that such documents include any Confidential Information together with any copies thereof and confirm such destruction in writing to the FCO. The FCO destruction policy is detailed at Annex A to this agreement.
- 5. This Agreement may be terminated by either Party by giving thirty (30) days written notice to the other Party. Both Parties' obligation to protect Confidential Information shall survive such termination.
- 6. This Agreement shall be governed by and construed in accordance with the Law of England and shall be subject to the exclusive jurisdiction of the Courts of England.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed as of the day and year first written above.

For and on behalf of

.....

Signature:

Name:

Title:

For and on behalf of

The Secretary of State for Foreign and Commonwealth Affairs

Signature:

Name:

Title:

Annex A

FCO DISPOSAL POLICY (Extract)

1. Shredding is the most convenient method when the need is for frequent destruction of relatively small amounts of paper. Burning is more suitable for large quantities of protectively marked waste, Floppy disks can be shredded once the outer casing and metal have been removed but, whenever possible should be incinerated. In some areas local commercial shredding, pulping or burning facilities exist. These may be used providing all waste is transported to such facilities in sealed burn bags, and escorted the whole time. TOP SECRET and SECRET material must be destroyed not taken to a commercial destruction facility. You should consult the Authority's representative if material of this classification needs to be disposed of.
2. All incinerators, stoves or furnaces used for burning waste must be fitted with a wire mesh to prevent unburnt paper rising up the flue. All residue left in the combustion chamber must be reduced to ash before being removed. To facilitate burning, files, papers etc must be broken up and fed into the fire screwed up. Whenever possible incinerators should be located in the Confidential Area or Secure Zone, so that waste can be easily protected until destroyed. If waste has to be taken outside the building for incineration, it should be placed in secured burn bags before being removed.
3. A disintegrator can deal with large amounts of material, including some items not suitable for destruction by shredding. It is therefore useful in areas where burning is not permitted. However, disintegrators are noisy, produce large quantities of dust and are prone to breakdown unless well maintained. They need to be installed in a sound insulated room. Heavy duty shredders are generally a better option than disintegrators.
4. RESTRICTED material can be destroyed in any shredder in any quantity but material marked CONFIDENTIAL or above must be cross-cut in a shredder meeting DIN level 5 standard (a cross cut into pieces measuring 0.8 by 11mm). Such material can then be treated as unclassified waste. A DIN level 4 cross cut shredder (producing pieces measuring 1.9 by 15mm) is also acceptable but such waste cannot be considered as unclassified and must be incinerated unless at least 50 A4 sheets, if possible of the same colour, have been shredded and thoroughly mixed, preferably with a quantity of unclassified material. DIN 5 level shredders are much preferred

Annex B – OFFICIAL SECRETS ACTS 1911 and 1989

AN OVERVIEW

ANNEX 1 – Guide to the Official Secrets Act 1989¹

1. The Official Secrets Act 1989, which came into force on 1 March 1990, replaced section 2 of the Official Secrets Act 1911. The purpose of the Act is to limit the protection given to classes of official information.
2. Six classes of official information are protected by the Act. These are:
 - Security and intelligence;
 - Defence;
 - International Relations;
 - Crime and special investigation powers;
 - Information resulting from unauthorised disclosures or entrusted in confidence;
 - Information entrusted in confidence to other States or international organisations.

Persons affected by the Act

3. Crown Servants; Government Ministers; Civil servants (including members of the Diplomatic Service); Members of the Armed Forces and the Police.
4. Government Contractors

Any person who is not a Crown servant but who provides, or is employed in the provision of, goods or services to those who are deemed to be Crown servants.

5. Others

Members and staff of non-government organisations who do not fall within the definition of Crown servants or government contractors;
Members of the public who have, or have had, official information in their possession.

Official Information

6. Official information is defined as information in any form, which any person affected by the Act has or has had in his or her possession by virtue of his or her position.

Authorised Disclosure

7. Crown servants may disclose official information only in accordance with their official duty.

8. Government contractors may disclose official information if officially authorised to do so or for performing the function for which he/she is employed and without contravening an official restriction.
9. A disclosure by any other person is lawful only if it is made to a Crown servant in the exercise of his/her duty or in accordance with an official authorisation.

Unauthorised Retention/Disclosure

10. It is an offence for a Crown servant or government contractor to have in his/her possession or control any document or article, which is retained contrary to his official duty or instructions for its return or disposal. It is also an offence if there is unauthorised disclosure of the document or article due to a lack of reasonable care.
11. Different standards are set for determining damage for each of the six classes of information. In general terms, the disclosure of information must be seen to have damaged the national interest.
12. Offenders under the Act are liable:
 - (a) if convicted on indictment², to imprisonment for a term not exceeding two years or a fine or both;
 - (b) on summary conviction³, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.
13. The 1989 Act does not affect the operation of section 1 of the Official Secrets Act 1911, which protects information useful to an enemy. The maximum penalty for offences under this section is fourteen years¹ imprisonment.

² This means a conviction after a Crown Court trial (by jury).

³ This means conviction in a Magistrates Court.