**IMPORTANT: PLEASE READ THESE NOTES BEFORE USING THIS TEMPLATE
AND DELETE PRIOR TO ISSUING AGREEMENT**

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| **Template description:** | **Template mutual (two-way) non-disclosure agreement** |
| **Author:** | Ian Day |
| **Last updated:** | April 2014 |
| **Drafting notes:** | **OTHER THAN TO COMPLETE THE HIGHLIGHTED FIELDS, NO AMENDMENTS TO THE BODY OF THIS AGREEMENT MAY BE MADE WITHOUT THE APPROVAL OF THE LEGAL DEPARTMENT.** |
|  | 1. This document is intended for use where obligations of confidentiality are intended to be placed on both parties. If obligations of confidentiality are to be imposed on one party only, you should use the template one-way NDA.
 |
|  | 1. The definition of “Purpose” is a very important part of this Agreement; it is essential that this accurately covers the purpose of the disclosure.
 |
|  | 1. Please exercise caution when considering the disclosure of Heathrow confidential information. The presence of an NDA does not guarantee that information will be kept secret and so a risk analysis should be carried out on a case by case basis. Where possible, the amount of information disclosed should be limited or redacted. See the checklist below.
 |
|  | 1. Please ensure all yellow fields are completed/edited.
 |
|  | **PLEASE CONTACT THE LEGAL DEPARTMENT FOR FURTHER ASSISTANCE IN USING THIS DOCUMENT.** |

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| **USEFUL CHECKLIST ON CONFIDENTIALITY AGREEMENTS** |
|  | **✓** |
| * Where you already have an agreement in place, consider whether you need more extensive confidentiality provisions in the form of a confidentiality or non-disclosure agreement or whether existing provision are adequate.
 |  |
| * No matter how robustly a confidentiality agreement is drafted there is always a risk that the recipient of confidential information may breach the agreement.  Once the sensitive information is public, it can never be made private again.
 |  |
| * Therefore, even if a discloser becomes aware of a breach and manages to enforce the agreement that may be little consolation. Damages for breach of confidentiality agreements may, in some cases, be nominal only and courts will not always grant injunctions. Prevention is better than cure.
 |  |
| * Confidentiality agreements are difficult to enforce and the remedies available for breach do not always adequately compensate for loss of confidentiality. If a recipient uses or discloses confidential information it may be too late or, at the very least, very expensive to seek a meaningful remedy.
 |  |
| * Consider whether disclosure of particularly sensitive information should be deferred until negotiations are sufficiently advanced for there to be a good prospect of the relevant transaction completing.
 |  |
| * It may be prudent to disclose the information in hard copy only or only to specific named individuals.
 |  |
| * Keep a record of confidential and commercially sensitive information that is disclosed. This should include details of who it is disclosed to and when it was disclosed.  Keep minutes of meetings where confidential information is shared orally.  Ask recipients of confidential information to give written acknowledgements of information they receive.
 |  |
| * Enter into the confidentiality agreement prior to disclosing any information - a confidentiality agreement entered into after disclosure of information may not protect that information.
 |  |
| * Prior to disclosing any information, check that we have the right to disclose it and is not itself subject to obligations of confidence.  Ensure that our own personnel are aware of the confidential nature of the relevant information.
 |  |
| * Sometimes the Court will not uphold confidentiality agreements on other grounds (for example where they believe there is a public interest in disclosure).
 |  |
| * Employee data should be disclosed in anonymised or statistical form only unless there is no reasonable alternative than to disclose it in identifiable form (convenience or administrative ease is not of itself sufficient reason to disclose identifiable data).
 |  |
| * Sensitive personal data (ie information about an employee’s race/ethnic origin, political opinions, religious or similar beliefs, trade union membership, health or medical condition, sexual life, actual/alleged criminal offences or proceedings relating thereto) can only be disclosed without the subject’s consent in very limited circumstances.  Specialist advice should be sought as to whether sensitive data can be disclosed without the subject’s consent.  Remember “personal data” includes information in structured paper files not just computerised records.
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**THIS AGREEMENT** is made on 201[●]

**Between**

HEATHROW AIRPORT LIMITED **OR [INSERT AIRPORT OPERATING COMPANY NAME]** whose registered office is at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW **OR [INSERT REGISTERED OFFICE]** and whose registered number is 01991017 **OR [INSERT REGISTERED NUMBER]** ("**Heathrow**"); and

**[INSERT NAME OF COMPANY]** whose registered office is at **[INSERT REGISTERED OFFICE]** and whose registered number is **[INSERT REGISTERED NUMBER]** (the **"Company"**).

**Background**

1. Heathrow and the Company wish to work together for their mutual benefit in connection with the Purpose.
2. In order to work together the parties need to exchange certain confidential and proprietary information.
3. The parties have agreed to enter into this Agreement to record their rights and obligations with respect to the disclosure of such information.

**Agreed Provisions**

1. Definitions and interpretation
	1. For the purposes of this Agreement the following expressions shall have the meanings given below unless the context requires otherwise:

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| 1. Confidential Information
 | 1. means all confidential information (however recorded, preserved or disclosed) disclosed by a party or its Representatives to the other party and that party’s Representatives after the Effective Date including but not limited to:
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|  | * 1. the fact that discussions and negotiations are taking place between the parties and the status of those discussions and negotiations;
 |
|  | * 1. the existence and terms of this Agreement;
 |
|  | * 1. any information concerning airport security, law enforcement or investigations by authorities;
 |
|  | * 1. any information that would be regarded as confidential by a reasonable business person relating to:
 |
|  | * + 1. the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party or of the Disclosing Party’s Group; and
 |
|  | * + 1. the operations, processes, product or service information, know-how, designs, trade secrets or software of the Disclosing Party or of the Disclosing Party’s Group;
 |
|  | * 1. any information or analysis derived from Confidential Information;
 |
|  | * 1. any other information specifically designated by the Disclosing Party as confidential;
 |
|  | but not including any information that: |
|  | * 1. is or becomes generally available to the public other than as a result of its disclosure by the Recipient or its Representatives in breach of this Agreement or any other undertaking of confidentiality addressed to the party to whom the information relates; or
 |
|  | * 1. was, is or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient’s knowledge, is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient; or
 |
|  | * 1. was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party;
 |
| 1. DPA
 | means the Data Protection Act 1998, and all legislation made under it, as amended or re-enacted from time to time; |
| 1. Disclosing Party
 | means a party to this Agreement (or a member of such party’s Group) who discloses Confidential Information (either on its own behalf or on behalf of a member of its Group) to the other party (or a member of such party’s Group); |
| 1. Effective Date
 | means **[INSERT DATE FROM WHICH AGREEMENT SHOULD BE EFFECTIVE]**; |
| 1. Group
 | means in respect of either party, that party, its holding company, its subsidiaries and any subsidiaries of such holding company from time to time; |
| 1. Purpose
 | means **[INSERT REASON FOR EXCHANGE OF DATA AND WHY IT CAN BE USED EG EVALUATION, SUBMISSION OF A TENDER, POSSIBLE COLLABORATION ETC]**; |
| 1. Recipient
 | means a party to this Agreement (or a member of such party’s Group) who receives Confidential Information (either on its own behalf or on behalf of a member of its Group) from the other party (or a member of such party’s Group); and |
| 1. Representatives
 | means employees, officers, contractors and professional advisers of the Recipient or a member of the Recipient’s Group. |

* 1. The clause headings are for convenience only and shall not affect the interpretation of this Agreement. References to clauses are to clauses in this Agreement.
	2. “Holding company” and “subsidiary” have the meaning given in section 1159 of the Companies Act 2006.
1. Obligations of the parties
	1. The Recipient undertakes to keep confidential any Confidential Information which it obtains under or in connection with this Agreement and (except with the prior written consent of the Disclosing Party) shall:
		1. not disclose the Confidential Information to any other person (other than as permitted under this Agreement);
		2. not use the Confidential Information other than for the Purpose; and
		3. apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information.
	2. Clause shall not apply to the disclosure of Confidential Information if and to the extent:
		1. required by law; or
		2. required by any competent regulatory authority or recognised stock exchange,

provided that any Confidential Information shall only be disclosed by the Recipient after notification to the Disclosing Party to which the information relates if such notification is practicable in the circumstances.

* 1. The Recipient may only disclose the Disclosing Party’s Confidential Information to those of its Representatives who need to know the Confidential Information for the Purpose, provided that:
		1. it informs the Representatives of the confidential nature of the Confidential Information before disclosure and obtains from its Representatives enforceable undertakings to keep the Confidential Information confidential in terms at least as extensive and binding upon the Representatives as the terms of this Agreement are upon the parties; and
		2. at all times, the Recipient is responsible for the Representatives’ compliance with the obligations set out in this Agreement.
	2. The Recipient shall notify the Disclosing Party immediately in the event that it becomes aware of any unauthorised use, copying, or disclosure of the Disclosing Party’s Confidential Information, and the Recipient shall furnish to the Disclosing Party all necessary assistance to terminate such unauthorised use and/or disclosure.
1. Return of Confidential Information

The Recipient shall, on receipt of a request from the Disclosing Party to do so immediately return to the Disclosing Party all copies and analyses of the Confidential Information of the Disclosing Party which it may have in its possession (or procure the same from any member of the Recipient’s Group), or (if instructed to do so by the Disclosing Party) destroy the same (including erasing all such information which may be stored on its computer systems, to the extent possible). If required by the Disclosing Party, the Recipient shall certify in writing that it has complied with the requirements of this clause.

1. Data protection
	1. For the purposes of the DPA, the Recipient shall process any Personal Data and Sensitive Personal Data (each as defined in the DPA) contained within the Confidential Information of the Disclosing Party on behalf of the Disclosing Party as a Data Processor (as defined in the DPA). The Recipient shall:
		1. only carry out processing of such Personal Data on the Disclosing Party’s instructions;
		2. implement appropriate technical and organisational measures to protect such Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access; and
		3. take reasonable steps to ensure the reliability of staff who have access to such Personal Data.
	2. The Recipient may not process any Personal Data outside the EEA.
2. Entire agreement

This Agreement constitutes the entire agreement between the parties in relation to its subject matter, and replaces and extinguishes all prior agreements, draft agreements, arrangements, undertakings or collateral contracts of any nature made by the parties (whether oral or written) in relation to such subject matter.

1. General
	1. No variation of this Agreement shall be effective unless made in writing and signed by each of the parties or by their duly authorised representatives.
	2. Both parties reserve all of their rights in their respective Confidential Information (including the Confidential Information of any member of the respective party’s Group). No rights in respect of a Disclosing Party’s Confidential Information are granted to the Recipient of that information other than as expressly stated in this Agreement. Neither party warrants the accuracy or completeness of any Confidential Information supplied by it to the other party pursuant to this Agreement, nor its fitness for any particular purpose.
	3. No party may assign, sub-contract or deal in any way with any of its rights or obligations under this Agreement.
	4. The failure to exercise, or delay in exercising, a right, power or remedy provided by this Agreement or by law shall not constitute a waiver of that right, power or remedy. If a party waives a breach of any provision of this Agreement this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.
	5. The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.
	6. This Agreement may be entered into by any number of counterparts and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one single agreement between the parties.
2. Governing law and jurisdiction

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with English law. All disputes arising out of or relating to this Agreement (or any non-contractual obligations arising out of or in relation to this Agreement) shall be submitted to the exclusive jurisdiction of the English courts.

**SIGNED** by the parties on the date first written above.

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| for and on behalf of Heathrow |  |
| Name | ………………………………………… |
| Position | ………………………………………… |
| Signature | ………………………………………… |
|  |  |
| for and on behalf of the Company |  |
| Name | ………………………………………… |
| Position | ………………………………………… |
| Signature | ………………………………………… |