

# Example Confidentiality Letter

To: *(Potential Investor/Acquirer)* Limited

Dear Sirs

We understand that you wish to investigate the business of *(Name of Company)* (the "Company") [and of its subsidiaries (together the "Group")] [in connection with *(Nature of Transaction)* (the "Permitted Purpose")] and that you, your directors and employees, other potential syndicate members or other providers of finance and your financial and professional advisers in relation to the Permitted Purpose, (together referred to as the "Disclosees"), will need access to certain information relating to the Group (the "Confidential Information") including, without limitation:....]

1. In consideration of our agreeing to supply, and so supplying, the Confidential Information to you and agreeing to enter into discussions with you, you hereby represent that you are a person who falls within Article 19 (disregarding paragraph (6) of that Article) or Article 49 (disregarding paragraph 2(e) of that Article) of the Financial Services and Markets Act 2000 (Financial Promotion) Order and undertake and agree as follows:
  - (a) to hold the Confidential Information in confidence and not to disclose or permit it to be made available to any person, firm or company (except to other Disclosees) without our prior [written] consent;
  - (b) only to use the Confidential Information for the Permitted Purpose;
  - (c) to ensure that each person to whom disclosure of Confidential Information is made by you is fully aware in advance of your obligations under this letter and that, in the case of other potential syndicate members, each such person gives an undertaking in respect of the Confidential Information, in the terms of this letter;
  - (d) upon written demand from us either to return the Confidential Information and any copies of it or to confirm to us in writing that, save as required by law or regulation, it has been destroyed. You shall not be required to return reports, notes or other material prepared by you or other Disclosees or on your or their behalf which incorporate Confidential Information (Secondary Information) provided that the Secondary Information is kept confidential;
  - (e) to keep confidential and not reveal to any person, firm or company (other than Disclosees) the fact of your investigations into the Group or that discussions or negotiations are taking place or have taken place between us in connection with the proposed transaction or that potential investors/acquirers are being sought for the Company;
  - (f) that no person gives any warranty or makes any representation as to the accuracy or otherwise of the Confidential Information, save as may subsequently be agreed. This paragraph 1 does not exclude liability for, or any remedy in respect of, fraudulent misrepresentation.
2. Nothing in paragraph 1(a) to (f) of this letter shall apply to any information or Confidential Information:
  - (a) which at the time of its disclosure is in the public domain;
  - (b) which after disclosure comes into the public domain for any reason except your failure, or failure on the part of any Disclosee, to comply with the terms of this letter;

(c) which is disclosed by us or the Company, its directors, employees or advisers on a non-confidential basis;

(d) which was lawfully in your possession prior to such disclosure;

(e) which is subsequently received by you from a third party without obligations of confidentiality (and, for the avoidance of doubt, you shall not be required to enquire whether there is a duty of confidentiality); or

(f) which you or a Disclosee are required to disclose, retain or maintain by law or any regulatory or government authority.

3. In consideration of the representation and undertakings given by you in this letter, we undertake and agree:

(a) to disclose Confidential Information to you;

(b) to keep confidential and not to reveal to any person, firm or company (other than persons within our group who need to know, our bankers and professional advisers) the fact of your investigation into the Group or that discussions or negotiations are taking place or have taken place between us; (and

(c) that we will not prior to [insert date], directly or indirectly enter into negotiations or have discussions of any kind with any other potential investors which relate to the Permitted Purpose without your prior written consent and we recognise that in reliance on this undertaking you and other Disclosees may incur substantial costs.) [This relates to exclusivity and is a matter for negotiation.] and

(d) Confirm that any personal information contained or referred to in any of the Confidential Information, has been obtained, maintained and handled and all relevant licences, authorities and consents have been obtained in accordance with all applicable data protection laws, rules and regulations.

4. No term, condition or provision of this letter shall be enforceable under the Contracts (Right of Third Parties) Act 1999 by a person who is not a party to it.

(a) This letter shall be governed by and construed in accordance with English law [and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of England and Wales in respect of any claim, dispute or difference arising out of or in connection with this letter.]

(b) The obligations in this letter will terminate on [insert expiry date].

Please indicate your acceptance of the above by signing and returning the enclosed copy of this letter as soon as possible.

Yours faithfully

We have read and agree to the terms of the above letter.

Signed by \_\_\_\_\_

for and on behalf of (*Potential investor/acquirer*) Limited

Date: \_\_\_\_\_