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BSI Standards Publication

# Specification for the provision of services relating to the commercialization of intellectual property rights

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### Summary of pages

This document comprises a front cover, an inside front cover, pages i to ii, pages 1 to 18, an inside back cover and a back cover.

## Foreword

### Publishing information

This British Standard is published by BSI and came into effect on 28 February 2011. It was prepared by Subcommittee IMS/1/1, *Services to inventors*. A list of organizations represented on this committee can be obtained on request to its secretary.

### Presentational conventions

The provisions of this standard (the normative elements) are presented in roman (i.e. upright) type. Its requirements are expressed in sentences in which the principal auxiliary verb is "shall". Compliance with the provisions is necessary for compliance with the standard.

*Commentary, explanation and general informative material is presented in smaller italic type, and does not constitute a normative element.*

### Contractual and legal considerations

This publication does not purport to include all the necessary provisions of a contract. Users are responsible for its correct application.

### **Compliance with a British Standard cannot confer immunity from legal obligations.**

In particular, attention is drawn to the following legislation.

The Fraud Act 2006 [1]

The Patents Act 1977, as amended by the Patents Act 2004 [2]

The Legal Services Act 2007 [3]

The Data Protection Act 1998 [4]

The Trade Descriptions Act 1968 [5]

The Trade Marks Act 1994 [6]

The Copyright, Designs and Patents Act 1988 [7]

The Registered Designs Act 1949, as amended by the Regulatory Reform (Registered Designs) Order 2006 [8]

## 0 Introduction

In recent years there has been a substantial increase in the number of organizations offering services to the originators and developers of ideas, often referred to as inventors. These include the UK Intellectual Property Office (UK-IPO), Business Link, commercial service providers, universities that specialize in invention and product design, and inventors' clubs.

The UK-IPO has long promoted the need for individuals and organizations to take stock of their own novel creations and to secure the legal rights to them by way of patents, registered designs, trade marks, etc. Success in securing the legal rights can positively influence the business success for the idea. However, the law concerning intellectual property (IP) can be complex and the UK-IPO recommends that the creator of a new idea should always consider seeking advice from a firm of chartered patent attorneys or trade mark attorneys (who are legally qualified and independently regulated), or other advisers with the skills needed to assess whether the idea is appropriate for patent protection, trade mark registration or design registration, and who can prepare an application for the creator seeking potential legal rights.

As well as these practitioners there are other advisers, consultants, invention brokers and inventor-support organizations who offer help and advice covering the commercialization of these novel creations.

It follows that if every UK individual and organization secured the intellectual property (IP) to which they are entitled and then used it to commercial advantage, the UK would gain in the long term.

## 1 Scope

This British Standard specifies requirements for the provision of services to the originators of intellectual property with a view to their commercialization.

It specifies principles for the ethical behaviour of the service provider relating to:

- a) integrity and competence;
- b) transparency regarding fees, costs and finances;
- c) confidentiality and the disclosure of information;
- d) the declaration of interests and conflicts; and
- e) complaints handling.

It also specifies a process for service provision, covering:

- 1) initial engagement with the originator;
- 2) Non-Disclosure Agreements (NDAs);
- 3) evaluation of the originator's idea; and
- 4) commercial agreements for the provision of advice and/or services.

## 2 Terms and definitions

For the purposes of this British Standard the following terms and definitions apply.

### 2.1 idea

result of mental activity that is a process, product, device or artistic work

**2.2 intellectual property (IP)**

legally protectable products of mental activity

*EXAMPLE*

*Inventions, patents, designs, trade marks, logos, brand names, and artistic or aesthetic created works.*

**2.3 intellectual property rights (IPR)**

legally enforceable rights, generally conferred by statute, that give their owner exclusive control over the IP, including the use and production of the protected work and the right to authorize or prohibit certain other activities relating to the work

*NOTE The IPR can include patents, utility models, registered designs, registered trade marks, applications for and the right to apply for any of the foregoing IP, unregistered design rights, copyright and similar or analogous rights in any part of the world.*

**2.4 originator**

creator or inventor of an idea or the owner of the rights in any intellectual property associated with the idea

*NOTE "Owner" here includes any assignee or licensee, or legal representative (e.g. executor or executrix).*

**2.5 regulated person**

person regulated under the Legal Services Act 2007 [3]

*EXAMPLES*

*A solicitor regulated by the Solicitors Regulation Authority, a trade mark attorney regulated by the Intellectual Property Regulation Board, and a patent attorney regulated by the Intellectual Property Regulation Board or by the Institute of Professional Representatives before the European Patent Office under its Code of Conduct.*

**2.6 service**

action taken to assist an originator in identifying, evaluating, promoting, protecting by acquisition of IPR and/or commercializing the originator's idea

**2.7 service provider**

individual or organization not being a regulated person (2.5) and offering the service

## 3 Principles for ethical behaviour

**3.1 Integrity and competence**

**3.1.1** The service provider shall at all times act with integrity, putting the originator's interests foremost.

*NOTE Publicity and promotional activity of any kind by a service provider may be undertaken if it is fair, honest, accurate, not misleading, does not imperil the validity of the originator's IP rights, and is not otherwise contrary to the provisions of this British Standard.*

**3.1.2** All work for the originator shall be carried out in a timely manner and with proper regard for good service and care. The originator shall be informed of any potential delays that arise.

**3.1.3** All work for the originator shall be carried out with due skill and diligence and with proper regard for the technical standards expected. Only work within the expertise or competence of the service provider or its advisers and consultants shall be undertaken.

### 3.2 Transparency of service offered, charges and other payments or receipts

3.2.1 Any fees shall be clearly related to the actual services agreed and performed (see 4.1.6).

3.2.2 The service provider's finances shall be managed so that any amounts owed to, or by, the originator are fully documented and separately accounted for.

3.2.3 Payments to other parties paid or due on behalf of the originator, and receipts from or due from other parties, shall be clearly identified together with any handling charges, commissions or other charges that have been applied.

### 3.3 Confidentiality and disclosure of information

3.3.1 Regardless of any specific written agreement of confidentiality, confidential information concerning any originator (past or present) shall be kept confidential except where disclosure is required and/or permitted by law or requested by the originator.

*NOTE* The storage and use of personal information is covered by the Data Protection Act 1998 [4].

3.3.2 Subject to this duty of confidentiality and any circumstance where disclosure of information is prohibited by law, all relevant information shall be disclosed to the originator unless the originator expressly agrees that no duty to disclose arises or a different standard of disclosure applies.

3.3.3 Any material information relevant to the interests of the originator that arises shall be communicated to the originator in a timely manner. So that the service provider can act in their best interests, the originator shall be requested to communicate to the service provider in a timely manner any relevant or material information of which they become aware.

### 3.4 Declaration of interests and conflict

A service provider shall not act for an originator where:

- a) a conflict of interests is likely to arise as between the originator and any other existing or former originator;
- b) the service provider is aware, or has reasonable grounds for suspecting, that the interests of the service provider and any partner, director, employee, servant or agent of the service provider conflict with those of the originator,

unless those interests have been declared and the originator(s) has agreed in writing to proceed.

*NOTE* A service provider may act for two or more originators in relation to the same or a related matter in a situation of conflict, or possible conflict, but only if all of the parties have given their informed consent in writing. A conflict of interest arises where the actions of the service provider could put an originator at a disadvantage or lead to a benefit to the service provider to which they are not properly entitled.

### 3.5 Complaints handling

An established procedure for complaints handling shall be put in place, which covers the acknowledgement, assessment and investigation of complaints. Written details of the procedure shall be available upon request and the originator shall be informed in writing, when first engaging the service provider, that such a procedure exists.

*NOTE Detailed guidance on complaints handling procedures is given in BS ISO 10002.*

## 4 Process for service provision

### 4.1 Terms of engagement

#### 4.1.1 General

Before providing a service the service provider shall provide the information specified in 4.1.2 to 4.1.6. The information shall be either displayed publicly (e.g. on the service provider's website) or provided in writing to the originator.

*NOTE The provision of such information is subject to the Trade Descriptions Act 1968 [5].*

#### 4.1.2 Statement of competence

A statement of the experience of the service provider shall indicate:

- a) the length of time that it has been operating as a service provider;
- b) the general level of skill, specialist knowledge, experience and relevant qualifications (e.g. membership of professional institutions) of its partners, directors, employees and any consultants;
- c) the basis for any claims of success or operational activity used in promoting its services, unless this would be in conflict with any governing professional standards; and
- d) whether the service provider is regulated by any professional body or legal statute.

#### 4.1.3 Statement of excluded business

The service provider may reserve the right not to process any idea, but the reason for any such rejection shall be given and any relevant fees paid refunded.

#### 4.1.4 Statement regarding IPR

A statement regarding IPR shall clearly indicate that the submission of an idea to the service provider does not of itself grant IPR to either party and does not transfer any rights in the idea to the service provider unless there is a written agreement to the contrary or an assignment to that effect.

The IPR statement shall include a recommendation that the originator seeks the advice of an appropriately qualified and regulated advisor, such as a Chartered Patent Attorney, a Registered Trade Mark Attorney or an Intellectual Property Solicitor, in assessing the available IPR to protect the idea.



#### 4.1.5 Statement of confidentiality

Unless the service provider is a regulated person, a statement shall indicate that the exchange of confidential information with any originator will be subject to a written confidentiality agreement.

#### 4.1.6 Statement of fees

The basis for any fees or other charges payable by the originator shall be clearly stated. The statement shall make it clear that, by submitting an idea, the originator is entering into an obligation to pay any relevant fees. The statement shall set out the services to which these fees apply.

The statement shall set out any circumstances in which relevant fees might be refunded.

A commitment to inform the originator in advance of the basis for any subsequent fees or other charges payable by the originator shall also be clearly stated.

### 4.2 Non-Disclosure Agreement (NDA) or confidentiality rules

#### 4.2.1 General

To avoid the originator's idea being placed in the public domain a binding NDA shall be executed between the service provider and the originator (unless the service provider is a regulated person).

*NOTE The purpose of this protection is to enable the confidential exchange of information between the originator and the service provider in order for the service provider to perform the proposed services without compromising the rights of the originator, e.g. when applying for a patent.*

#### 4.2.2 Content of the NDA

Regardless of its style, the NDA shall, as a minimum:

- a) identify all the parties to the NDA;
- b) confirm that no IPR are transferred between the parties and that no commercial relations are created between the parties, other than those concerning confidentiality;
- c) state the date of commencement of the NDA, during which confidential information can be transferred, and when and how the NDA is to be terminated (e.g. expiry of a period, reaching a date or occurrence of an event);

*NOTE 1 The term of an NDA is typically the length of time that it might reasonably be expected for the service provider to provide the agreed services plus some contingency time. Such an NDA can be subject to renewal on the termination date.*

- d) state the period of time for which the parties are to keep any information exchanged confidential, e.g. the parties might agree to exchange confidential information for a period of up to one year and then agree to keep that information confidential for a further five years following disclosure;

*NOTE 2 This period reflects the sensitivity of the information and, for the service provider, is typically longer than the term of the NDA.*

- e) state that only information exchanged within the term of the NDA is the subject of the NDA;
- f) include confirmation from the originator that they:
  - 1) have the right to disclose the confidential information; and
  - 2) agree to identify any third parties to whom the information has been, or will be, disclosed, and confirm that such disclosures were or will be made in confidence in order to avoid conflicts of interest or nugatory action;
- g) include a statement that the originator grants to the service provider the right to disclose confidential information to third parties (not being regulated persons) for the purposes of providing the services to the originator provided that the third parties enter into a written confidentiality agreement that provides at least the same protection to the originator as the NDA with the service provider;
- h) include a statement that the originator acknowledges the right of the service provider to disclose the information to anyone having a legal right to it provided that the service provider informs the originator before such disclosure;
- i) include a statement that the NDA does not give the originator any rights in any information provided by a third party, including the right to know the identity of any third party providing such information, unless there are reasonable grounds for suspecting the third party of a breach of confidentiality or a misuse of the information subject thereto;
- j) include a statement that defines the originator's rights in the event of a breach of confidentiality by a third party to whom information has been provided and provide a clear indication whether the originator obtains legal rights directly against third parties in the event of their unauthorized disclosure;
- k) include a statement on the rights of the originator to disclose to third parties any information provided by the service provider;
- l) include a statement on the legal jurisdiction under which the NDA is issued; and
- m) include an indication that the parties intend to be bound by the NDA, e.g. by signing the document.

*NOTE 3 An example of an NDA is given in Annex A. Alternative, less extensive, examples are available from UK-IPO, ICASS, and the Institute of Inventors, and a modified version of one of these is given in Annex B. Any NDA has to be tailored to the service provider and originator.*

#### **4.2.3 Explanation of legal agreements**

Before the originator is asked to sign any agreement, an explanation of the key points of the agreement shall be made available. The originator shall be advised to seek legal advice if any part of the agreement is unclear or in doubt, but the originator shall also be advised whether the terms of the agreement are negotiable. If the service provider is not prepared to consider revisions, the originator shall be informed before any legal costs can be incurred.

### 4.3 Disclosure event

*NOTE* An originator might disclose an idea in a number of ways, e.g. by providing a written description, drawings and/or a prototype.

If the originator discloses the idea to the service provider in a written or physical (e.g. prototype) form, written acknowledgement of receipt of the idea shall be provided specifying the material received.

If the originator discloses the idea to the service provider orally, a written disclosure shall be recorded by either or both of the parties as soon as possible after the event.

If on disclosure of the idea it becomes apparent that the services cannot be performed because it is excluded business (see 4.1.3), the information shall be returned to the originator together with the relevant part of any prepaid fees and explanations, if appropriate.

The relevant provisions of the NDA or professional rules of conduct (see 4.2) shall continue to apply.

If the service provider is engaged in activities which are likely to expose the originator's idea in the public domain (e.g. by broadcast media, public competition or exhibition), the originator shall be advised that such public disclosure might void any IPR subsequently sought and that the originator ought to seek IP protection before submitting any proposals.

### 4.4 Provision of the services

If the service provider is engaged to evaluate the prospects for commercial exploitation of the idea it shall do so in a timely manner as set out in the description of the services.

If the services require opinions to be sought from third parties because of the need for specialist knowledge, the service provider shall either confirm that the third parties are bound by a professional duty of confidentiality or enter into suitable confidentiality agreements as defined in the main NDA.

Written confirmation of any opinions or recommendations and any important matters of timing concerning the idea shall be supplied.

If, during the course of the provision of services, it becomes clear that the idea would be rejected, the originator shall be informed as soon as possible and, if appropriate, any confidential information shall be returned, together with any unspent fees.

### 4.5 Decision

#### 4.5.1 No further action and closure

If, following the provision of the services, further action is deemed unnecessary or impossible by the service provider, all the information and material supplied by the originator, together with all copies supplied to third parties, shall at the originator's request and expense be returned to the originator or destroyed, with a consequential signed certificate of destruction being provided to the originator.

*NOTE* The service provider may retain such copies or summaries as might be professionally desirable or legally required.

If, during the provision of the service, the service provider has become aware of material facts concerning the originator's idea that need to be disclosed to the originator, these facts shall be passed on to the originator unless such action would breach confidentiality with a third party. If the facts cannot be passed on for reasons relating to confidentiality, this shall be explained to the originator but without obligating the service provider to refund any unattributed fees already paid.

## **4.5.2 Commercial agreement offer**

### **4.5.2.1 General**

If the service provider is engaged to obtain a commercial agreement for exploitation of the originator's idea, the commercial agreement shall:

- a) set out clearly the roles and responsibilities of the parties; and
- b) identify how any benefits and costs are to be shared and the liabilities of the parties.

The originator shall be provided with an explanation of the key points of the agreement and a recommendation that the originator seek independent legal advice if in any doubt as to the meaning of the terms and conditions in the agreement.

### **4.5.2.2 Purpose of the agreement**

The commercial agreement shall clearly state whether its purpose is to appoint the service provider as the sole and exclusive representative for commercializing the originator's idea but without guarantee that the service provider will succeed in this.

The agreement shall also clearly state whether the service provider is appointed as an agent and whether the service provider is entitled to sign contracts on behalf of the originator, with the originator retaining control of the idea and its exploitation, subject to the terms of the commercial agreement.

### **4.5.2.3 Exclusivity and performance**

The commercial agreement shall provide information regarding exclusivity and performance and may include:

- a) a statement that, in return for using all reasonable endeavours to promote the originator's idea, the service provider will be appointed the exclusive representative for the originator and will be entitled to the benefits described in the agreement in the event that commercial benefits are obtained by the service provider;
- b) a disclaimer indicating that the service provider will take all reasonable steps to promote the idea, but that no warranty is implied that any commercial benefits can be achieved;
- c) a statement that the service provider and the originator are entitled to participate in and/or be made aware of all communications or meetings concerning the originator's idea, provided that the parties have entered into any necessary confidentiality agreements with third parties;
- d) a statement that the originator will be required to provide all reasonable support to the service provider in describing and presenting the originator's idea to a third party.

#### 4.5.2.4 Apportionment of benefits and costs

The commercial agreement shall clearly state:

- a) how any benefits derived from the originator's idea are to be apportioned;
- b) how any costs incurred in promoting the idea are to be apportioned;
- c) how any taxes and other charges are to be apportioned;
- d) that the originator is not obliged to accept any offer made by a third party, but also that the service provider is not obliged to find further offers and is permitted to terminate the agreement;
- e) that the originator and the service provider are required to take all reasonable steps to apply for, maintain and protect the IP concerning the idea;
- f) how the costs and responsibilities of such IPR-related activities are to be allocated; and
- g) whether, in the event that prompt and prudent action is necessary to protect the idea or the IPR therein, the service provider has the "Power of Attorney" to take such action in trust and to sign and execute all necessary documents to achieve that end, or how the costs of failing to take prudent action will be apportioned.

*NOTE* The commercial agreement may also include:

- 1) a statement that the service provider will be entitled to its share of any benefits arising from its activities prior to termination of the agreement;
- 2) a condition that, if the originator declines any third party offer, the commercial agreement is terminated and the originator subsequently enters into any commercial agreement with the same third party, then the service provider will be entitled to the same proportion of the benefits as though the agreement had not been terminated;
- 3) a statement that the service provider will monitor payments from third parties so that the originator receives the correct benefits.

#### 4.5.2.5 Liability for claims

The commercial agreement shall clearly state:

- a) that the originator warrants that they are entitled to enter into agreements concerning the idea and accepts liability to third parties for any losses arising out of any deliberate or negligent failure to describe correctly the characteristics, ownership, novelty or safety of the idea or failure to comply with the terms of any third party agreement freely entered into;
- b) that the originator warrants that they know of no reason why the idea cannot be licensed or sold or that any other party has a pecuniary interest in the idea;
- c) that the service provider will be responsible for any liability to the originator for any losses arising out of the negligence of the service provider; and
- d) the limitations to the service provider's liability [see item c)].

#### 4.5.2.6 Term of the commercial agreement

The commercial agreement shall include a statement setting out the term for which the service provider can act as the exclusive promoter of the idea.

The commercial agreement shall set out either the term for which the service provider can receive the benefits defined in the agreement or the conditions under which they can continue to receive the benefits.

The commercial agreement shall also include statements setting out the conditions under which the agreement can be terminated and the rights and responsibilities of the parties on termination.

*NOTE In the event that an arm's-length offer from a third party, deemed reasonable by the service provider, is rejected by the originator, the service provider may cease to promote the originator's idea and be entitled to end the commercial agreement. In these circumstances, the originator might, subject to the terms of the commercial agreement, be liable for a proportion of any costs incurred in the creation of the offer.*

#### 4.6 Acceptance or rejection of the commercial agreement

Before the originator enters into the commercial agreement, the following key points shall be explained.

- a) The fact that the originator and the service provider are expected to act in good faith and undertake no action that prejudices the interests of the other party.
- b) The fact that the originator is not obliged to enter into a commercial agreement and should not be liable for any payments to the service provider for promoting the originator's idea in the event that the commercial agreement with the service provider is not entered into.
- c) The proposed course of action.
- d) Any estimated costs resulting from the proposed course of action.
- e) The rights and responsibilities of the originator and the service provider contained in the commercial agreement.

*NOTE The originator should be encouraged to seek legal advice if there is any concern that the agreement and the responsibilities it describes have not been understood so as to limit the possibility of the contract being declared unfair.*

- f) The rights of the originator to withdraw from the commercial agreement and, in the event of such withdrawal, any liabilities for costs and residual obligations to the service provider or any third party.
- g) The fact that the originator is not obliged to accept any reasonable arm's-length offer from a third party but such rejection entitles the service provider to stop promoting the originator's idea and the originator could be liable for a proportion of any costs incurred in the creation of the offer.

**Annex A (informative) Typical Non-Disclosure Agreement (NDA)**

Figure A.1 gives an example of an NDA that includes the important terms and conditions. It can be modified or simplified to suit the services being offered and the location; in particular statements A to D and the jurisdiction referred to in Clause 14.

Figure A.1 Typical Non-Disclosure Agreement

**Non-Disclosure Agreement***Summary of the Agreement*

This is a summary of the Initial Confidentiality and Non-Disclosure Agreement to be entered into between The Invention Promotions Company referred to as "we", or "us", and the Originator referred to as "you".

This summary is to clarify the main points of the Agreement. If you are still not sure what the Agreement means, please take professional advice. It should not be necessary for you to disclose your idea to any proper professional advisor in order to receive legal advice.

The purpose of this Agreement is to enable you to disclose to us details of your Idea, secure in the knowledge that we are under an obligation to keep the information confidential. This may also be of importance to you for other reasons, for example, in the case where you are applying for a patent and you are required to maintain confidentiality.

- We do not normally acquire any rights in your Intellectual Property (IPR) and the Idea (see Clause 1).
- The duty of confidentiality remains for a period of five (5) years from the time that any Confidential Information is disclosed (see Clause 3).
- You are assuring us that you have not, to date, offered any interest in the Idea or disclosed any confidential information to any person and are not in negotiations with any party relating to any interest whatsoever in the Invention (see Clause 5). Please let us know in writing prior to signing the Agreement if this is not the case. If your idea has been publicly disclosed or there are other interested parties we may not be able to act for you.
- We are entitled to disclose your Confidential Information to our professional advisors and other select parties (see Clause 6) and to third parties, provided they enter into a Non-Disclosure Agreement with us similar to this one (see Clause 7) or are professionally bound by a similar duty of confidentiality.
- During the term of the Agreement until we confirm otherwise you must inform us of all negotiations which you have with any third party with respect to the Idea (see Clause 10). We cannot act on your behalf unless we have all the relevant information.
- For the protection of any of our or our Advisers' Confidential Information that we disclose to you, the Agreement is a mutual confidentiality and Non-Disclosure Agreement.

*Disclaimer*

This page describing the Non-Disclosure Agreement has been prepared for the sole purpose of providing you with a summary of some of the key terms contained within the Agreement. The above summary is not intended to be a substitute for reading the Agreement in full, which you are strongly advised to do. Nor is it intended to be a substitute for specific legal advice and you are advised to take your own such advice on the implications of the Agreement. In addition, this summary is not intended to have any legal effect and neither party is entitled to rely on anything contained within it.



Figure A.1 Typical Non-Disclosure Agreement (continued)

<b>Non-Disclosure Agreement</b>	
THIS AGREEMENT is made on _____	
BETWEEN: <i>The Invention Promotions Company, Registration No. 0001234</i> whose business address is: (the "Company")	
AND:	
of address: (the "Originator")	
WHEREAS:	
A.	The Originator has developed a novel product or idea and/or a process for its manufacture (the "Idea"), details of which will be disclosed to The Company following the date hereof.
B.	The Company has extensive knowledge and experience in providing services (the "Services") concerning the consideration and development of novel ideas.
C.	The Originator wishes to have access to The Company Expertise .
D.	The Company is willing to provide the Services to the Originator.
E.	In connection with the Services each party (the "Disclosing Party") may disclose to the other (the "Receiving Party") certain of its own proprietary information, including, but not limited to, samples, specifications, formulae, manufacturing processes, know-how, technical descriptions and other technical and economic data, records and information pertaining to the Services (excluding oral information except as set out in Clause 2) (the "Confidential Information").
F.	Each party is agreeable to disclosing its Confidential Information to the other party upon the terms and conditions set forth below.
NOW, THEREFORE,	
in consideration of the mutual obligations and undertakings hereinafter set forth, the parties hereto hereby agree as follows:	
1.	Each party will disclose to the other such of its Confidential Information as may be necessary for the Services. For the avoidance of doubt, all intellectual property rights that the Originator has in the Idea and the related Confidential Information shall, subject to any subsequent written agreement to the contrary, remain the absolute property of the Originator.
2.	Confidential Information shall be disclosed in writing or other physical or electronic form, or if orally disclosed, the confidentiality thereof shall be confirmed in writing by the Disclosing Party as soon as practicable after such oral disclosure.
3.	Subject to Clauses 6 and 7, for a period of five (5) years from the date of disclosure, each party shall maintain the other party's Confidential Information in strict confidence and shall not itself use, except for the benefit of the Disclosing Party, or disclose the same to others without the prior written consent of the Disclosing Party, except when and to the extent that such Confidential Information:
3.1.	was known to the Receiving Party prior to the disclosure thereof by the Disclosing Party;
3.2.	is, or hereafter becomes, through no act of the Receiving Party, available to the public;
3.3.	is disclosed to the Receiving Party by a third party having a bona fide right to do so;
3.4.	is developed by the Receiving Party independently of any disclosure made hereunder, as may be evidenced by written records of the Receiving Party; or
3.5.	is agreed by the parties not to be confidential.



Figure A.1 Typical Non-Disclosure Agreement (*continued*)

4. The Receiving Party may disclose Confidential Information to the minimum extent required by:
  - 4.1. any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body;
  - 4.2. the rules of any listing authority or stock exchange on which the shares of any company in the Receiving Party's group are listed or traded; or
  - 4.3. the laws or regulations of any country with jurisdiction over the affairs of any company within the Receiving Party's group.
5. The Originator hereby warrants and represents to The Company that, except as otherwise disclosed in writing to The Company at the date hereof:
  - 5.1. the Originator has the right to disclose the Confidential Information;
  - 5.2. the Originator has not offered any interest or disclosed any confidential information whatsoever in the Idea to any person; and
  - 5.3. the Originator is not in negotiations with any party relating to any interest whatsoever in the Idea.
6. The Disclosing Party agrees that the Receiving Party is entitled to make available the Disclosing Party's Confidential Information to persons within its organisation and professional advisors and consultants, on a "need to know" basis and that all persons to whom such Confidential Information is made available will be made aware of the strictly confidential nature of such Confidential Information and the restrictions imposed hereunder on the use thereof.
7. Without prejudice to the rights contained in Clause 6, either party may make available the other party's Confidential Information to any other person provided that that person is professionally bound by a duty of confidentiality equivalent to those contained in this Agreement or first enters into a confidentiality agreement with the Receiving Party containing confidentiality provisions equivalent to those contained in this Agreement (other than the right contained in this clause to pass the Confidential Information on to third parties). This Agreement does not grant the Originator any rights in any information provided by or concerning any other person or organisation. In the event that the Originator believes that the confidentiality undertakings may have been breached by a third party that has entered into a confidentiality agreement with the Company then the Originator will immediately inform the Company who, if it considers those beliefs credible, will take up the matter with the third party and if appropriate seek redress on behalf of the Originator.
8. Except as set out herein no rights or licences under any patent or under Confidential Information owned by the Disclosing Party are granted hereunder by such party to the other.
9. Neither party will disclose the other party's interest in the Idea or the fact that the parties hereto are working on the Idea without such other party's written consent.
10. During the period of this Agreement or until The Company confirms in writing sooner that it is taking no further action in respect of the Idea the Originator shall not alone or with other persons, directly or indirectly, without first informing The Company, procure or induce any other person to acquire any interest of any kind whatsoever in the Idea or enter into any agreement, arrangement or understanding (whether legally binding or not) or do or omit to do any act as a result of which any other person may acquire such an interest in the Idea.
11. Upon the conclusion of the work undertaken by the parties in connection with the Services or at such earlier time as either party may request, each party shall return to the other or destroy at the other's request such Confidential Information within its possession or control and belonging to such other party.

Figure A.1 Typical Non-Disclosure Agreement (*continued*)

12. Save for the provisions of Clause 3 above the terms of this Agreement shall terminate three (3) years from the effective date hereof (being the date set out on page 1).
13. In the event that one or more of the provisions contained in this Agreement are, for any reason, held invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by law, the remaining provisions of this Agreement shall remain in full force and effect to the maximum extent possible.
14. This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate.

SIGNED BY:

Name and Title:

For and on behalf of The Company

SIGNED BY:

Originator

Annex B (informative) **Additional example of a Non-Disclosure Agreement**

Figure B.1 gives an additional example of an NDA

Figure B.1 **Alternative example of a Non-Disclosure Agreement**

<b>Non-Disclosure Agreement</b>
<p>This Agreement is Dated [insert date]</p>
<p>Parties:</p> <p><b>[NAME OF INDIVIDUAL RECEIVING INFORMATION]</b> of [address of individual]</p>
<p>OR <b>[NAME OF COMPANY RECEIVING INFORMATION]</b>, a company registered in [England] under company number [number on Register of Companies] whose registered office is at [address of office on the Register of Companies]</p>
<p><b>(the Recipient)</b> and</p>
<p><b>[NAME OF INDIVIDUAL DISCLOSING INFORMATION]</b> of [address of individual]</p>
<p>OR <b>[NAME OF COMPANY DISCLOSING INFORMATION]</b>, a company registered in [England] under company number [number on Register of Companies] whose registered office is at [address of office on the Register of Companies]</p>
<p><b>(the Discloser)</b></p>
<ol style="list-style-type: none"><li>1. The Discloser intends to disclose information (<b>the Confidential Information</b>) to the Recipient for the purpose of [insert details, e.g. discussing the possibility of the Recipient and the Discloser entering into a joint venture] (<b>the Purpose</b>).</li><li>2. The Recipient undertakes not to use the Confidential Information for any purpose except the Purpose, without first obtaining the written agreement of the Discloser.</li><li>3. The Recipient undertakes to keep the Confidential Information secure and not to disclose it to any third party [except to its employees [and professional advisers] who need to know the same for the Purpose, who know they owe a duty of confidence to the Discloser and who are bound by obligations equivalent to those in Clause 2 above and this Clause 3.</li><li>4. The undertakings in Clauses 2 and 3 above apply to all of the information disclosed by the Discloser to the Recipient, regardless of the way or form in which it is disclosed or recorded but they do not apply to:<ol style="list-style-type: none"><li>a) any information which is or in future comes into the public domain (unless as a result of the breach of this Agreement); or</li><li>b) any information which is already known to the Recipient and which was not subject to any obligation of confidence before it was disclosed to the Recipient by the Discloser.</li></ol></li><li>5. Nothing in this Agreement will prevent the Recipient from making any disclosure of the Confidential Information required by law or by any competent authority.</li></ol>

Figure B.1 Alternative example of a Non-Disclosure Agreement (continued)

- 6. The Recipient will, on request from the Discloser, return all copies and records of the Confidential Information to the Discloser and will not retain any copies or records of the Confidential Information.
- 7. Neither this Agreement nor the supply of any information grants the Recipient any licence, interest or right in respect of any intellectual property rights of the Discloser except the right to copy the Confidential Information solely for the Purpose.
- 8. The undertakings in Clauses 2 and 3 will continue in force [indefinitely][for [insert number] years from the date of disclosure of the Confidential Information].
- 9. This Agreement will terminate [insert number] years from the date of this Agreement but the undertakings in Clauses 2 and 3 will survive termination of this agreement for any reason.
- 10. This Agreement is governed by, and is to be construed in accordance with, English law. The English Courts will have non-exclusive jurisdiction to deal with any dispute which has arisen or may arise out of, or in connection with, this Agreement.

[If the Recipient is an individual]  
 Signed and Delivered as a Deed by  
 [Signature of Recipient]  
 [name of Recipient] in the  
 presence of:

.....

Signature of witness

.....

Name of witness

.....

.....

.....

Address of witness

[If the Recipient is a company]  
 Executed and Delivered as a Deed by  
 [name of Recipient] acting by  
 [signature of director]  
 [name of director], a director,  
 and  
 [signature of director or secretary]  
 [name of director or secretary], a director [or secretary],

.....

## Bibliography

### Standards publications

For dated references, only the edition cited applies. For undated references, the latest edition of the referenced document (including any amendments) applies.

BS 7000-10, *Design management systems – Part 10: Vocabulary of terms used in design management*

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### Other publications

- [1] GREAT BRITAIN. The Fraud Act 2006. London: The Stationery Office.
- [2] GREAT BRITAIN. The Patents Act 1977, as amended by the Patents Act 2004. London: The Stationery Office.
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