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**HREF Agency LTD**

**And**

CONFIDENTIALITY UNDERTAKING

## CONFIDENTIALITY UNDERTAKING

**THIS AGREEMENT** is made on

**BETWEEN:**

**HREF Agency LTD** (Scroop Suite, Radium House, Bridgewater Road, Altrincham, WA14 1LZ)

AND

The Parties are entering into commercial discussions, as a result of which it may become necessary or desirable to disclose to each other confidential information. The Parties understand that their relationship is one of mutual trust and confidence and wish to exchange such confidential information subject to the terms of this Agreement.

### 1 DEFINITIONS

1.1 In this Agreement, unless the context requires otherwise, the following words shall have

the following meanings:

**“Confidential Information”**

means all information or data disclosed by or on behalf of a Party or otherwise acquired by a Party in the course of discussions (in whatever medium including in written, oral, visual or electronic form) including, but not limited to, all business, financial, commercial, technical, operational, organisational, legal, management and marketing information and the fact that the Parties are discussing and considering a business relationship;

**“Effective Date”**

means DATE ON PAGE 1

**“Group”**

means in relation to a company, that company, any holding company of that company and/or any subsidiary of that company or any holding company of that company, and “subsidiary” and “holding company” shall have the meanings given to them in section 736 and 736A of the Companies Act 1985;

**“Permitted Purpose”**

Means the delivery of technology services.

**“Records”**

means records or embodiments of Confidential Information (or any further information derived from the Confidential Information) including but not limited to any document, electronic file, note, extract, analysis, model, prototype or other representation or means of recording or recovering information;

1.2 In this Agreement, unless otherwise specified or the context otherwise requires:-

1.2.1 headings used in this Agreement are for reference only and shall not affect its construction or interpretation; and

1.2.2 references to any legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept, state of affairs or thing shall in respect of any jurisdiction other than England be deemed to include that which most closely approximates in that jurisdiction to the English legal term.

**2 UNDERTAKING**

In consideration of the disclosure of the Confidential Information, the receiving Party

shall:-

2.1 use the Confidential Information disclosed to it (by whoever disclosed) only for the Permitted Purpose;

2.2 not without the disclosing Party’s written consent disclose or permit the disclosure of the Confidential Information disclosed to it;

2.3 only make such Records as are strictly necessary for the Permitted Purposes and clearly mark all Records as confidential;

2.4 take all necessary and proper security precautions (and at least as great as those it takes to safeguard its own confidential information) to safeguard every part of the Confidential Information to prevent it from being disclosed or otherwise made available to any third party except as permitted by this Agreement, and

2.5 without keeping any copies, delete or deliver to the disclosing Party, within three (3) days of receipt of a request to do so made at any time, all Records.

### **3 EXCEPTIONS**

3.1 The receiving Party may disclose Confidential Information to those of its employees, officers and professional advisers who need to have access to it for the Permitted Purpose, provided that before disclosure is made, the receiving Party shall have obtained from such employees, officers and professional advisers binding obligations of confidence no less onerous than those set out in this Agreement. The receiving Party undertakes to enforce such undertakings [to the greatest extent reasonably practicable];

3.2 The provisions of Clause 2 shall not apply to Confidential Information that:

3.2.1 the receiving Party can prove, using written records, was known to the receiving Party or in its possession before that information was acquired from, or from some person on behalf of, the disclosing Party;

3.2.2 is in or enters the public domain through no wrongful default of the receiving Party or any person on its behalf, provided that this clause 3.2.2 shall only apply from the date that the relevant Confidential Information enters the public domain;

3.2.3 the receiving Party receives from a third party without similar obligations of confidence in circumstances where the third party did not obtain that information as a result of a breach of an obligation of confidence;

3.2.4 is required to be disclosed by any applicable law or by order of any Court of competent jurisdiction or any government body, agency or regulatory body (including without limitation the London Stock Exchange plc, the UK Listing Authority or the Panel on Take-Overs and Mergers or the Financial Services Authority), provided that the receiving Party shall use all reasonable endeavours:

(a) to give the other Party as much written notice of the disclosure as it reasonably can to enable the other Party to take action to protect the Confidential Information from disclosure:

(b) to furnish only that portion of the Confidential Information that it is legally obliged to disclose; and

(c) to consult with the other Party with a view to agreeing the timing and content of any such disclosure;

3.2.5 the receiving Party can prove, using written records, was independently developed by any of the receiving Party's employees who have not had any direct or indirect access to, or use or knowledge of, the Confidential Information imparted by the disclosing Party; or

3.2.6 because of its nature is not capable of protection as confidential information even if it remains secret.

3.3 The receiving Party shall notify the disclosing Party promptly if it becomes aware that any of the Confidential Information falls within the provisions of this Clause 3.

#### **4 DURATION**

The provisions of this Agreement shall apply from the Effective Date.

#### **5 ACKNOWLEDGEMENTS**

Each Party acknowledges, agrees and covenants with the other Party that:

5.1 except in the case of fraud, no representation, warranty or undertaking (express or implied) is made with respect to the accuracy, completeness, reasonableness or otherwise in respect of the use of the Confidential Information supplied by the other Party;

5.2 this Agreement shall not constitute the grant of or an agreement to grant a licence in respect of the Confidential Information or any intellectual property rights of any nature protecting the Confidential Information, and

5.3 it is solely responsible for making its own decisions in relation to the Confidential Information and any other documentation or data supplied by or on behalf of the other party in relation to the Permitted Purpose.

#### **6 GENERAL**

6.1 The terms of this Agreement may be enforced by any company which is part of the Group of a Party subject to and in accordance with the terms of this Agreement and the Contracts (Rights of Third Parties) Act 1999, but subject thereto a person who is not a Party has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce, or to enjoy the benefit of, any provision of this Agreement. Nevertheless, the terms of this

Agreement or any of them may be varied, amended or modified or this Agreement may be suspended, cancelled or terminated by agreement in writing between the Parties or this Agreement may be rescinded (in each case), without the consent of any such third party.

6.2 The rights of the disclosing Party under this Agreement are in addition to and not exclusive of rights under the general law and may be waived only in writing and specifically. Delay in exercising or non-exercise of any right under this Agreement is not a waiver of that or any other right, partial exercise of any right under this Agreement shall not preclude any further or other exercise of that right or any other right under this Agreement and waiver of a breach of any term of this Agreement shall not operate as a waiver of breach of any other term or any subsequent breach of that term.

6.3 If any provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:-

6.3.1 the legality, validity or enforceability in that jurisdiction of any other provision of this Agreement; or

6.3.2 the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.

6.4 This Agreement shall be governed by and construed in accordance with the laws of England and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

Signed by NAME:           duly authorised for and on behalf of

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Dated:

Signed by NAME: **Leigh Rostron**, duly authorised for and on behalf of **HREF Agency LTD**  
Scroop Suite, Radium House, Bridgewater Road, Altrincham, WA14 1LZ

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Dated: