IHOR CHYSHKALA · TEMPLATE

Mutual Non-Disclosure Agreement

Symmetric confidentiality terms

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Mutual Non-Disclosure Agreement

THIS MUTUAL NON-DISCLOSURE AGREEMENT is made on [EFFECTIVE DATE] (the "Effective Date")

BETWEEN:

(1) IHOR CHYSHKALA, a sole trader carrying on business in England and Wales, of 13 Charlton Avenue, Eccles, Greater Manchester, M30 0JQ, United Kingdom, email ihor@chyshkala.com ("Ihor"); and

(2) [CLIENT LEGAL NAME], a company incorporated in [CLIENT JURISDICTION] with company number [CLIENT COMPANY NUMBER], whose registered office is at [CLIENT REGISTERED ADDRESS], email [CLIENT EMAIL] (the "Client").

Each of Ihor and the Client is a "Party" and together they are the "Parties". Ihor provides, or is considering providing, services to the Client, and in this Agreement either Party may be the disclosing party or the receiving party.

BACKGROUND

(A) The Client wishes to engage Ihor, or is considering engaging him, to provide Fractional CTO, technology advisory and related services. Those services may include reviewing and evaluating proposals submitted by third-party suppliers ("Vendors"), recommending and helping to select Vendors, overseeing Vendor delivery, and acting as Chief Technology Officer on the Client's side.

(B) To perform those services, and to decide whether to engage Ihor at all, each Party may need to disclose confidential and proprietary information to the other.

(C) The Parties wish to protect that information on the terms set out below. This Agreement is mutual and applies equally whichever Party discloses and whichever Party receives.

IT IS AGREED AS FOLLOWS:

1. Definitions and interpretation

1.1 In this Agreement, the following terms have the following meanings.

"Affiliate" means, in relation to a Party, any entity that directly or indirectly controls, is controlled by, or is under common control with that Party, where "control" means the ownership of more than 50% of the voting rights or the ability to direct the management of the entity.

"Business Day" means a day other than a Saturday, Sunday or public holiday in England and Wales.

"Confidential Information" means any information of any nature, in any form or medium (including oral, written, electronic, visual, machine-readable or observed), whether or not marked or described as confidential, that is disclosed by or on behalf of a Discloser to a Recipient before or after the Effective Date in connection with the Purpose, including:

a. business plans, strategy, budgets, forecasts, financial information, pricing, margins, cost models and commercial terms;

b. client, customer, supplier and Vendor information, including Vendor proposals, bids, quotations, rate cards, references, due-diligence materials and evaluation records;

c. technical information, including source code, scripts, architectures, system designs, data models, schemas, APIs, infrastructure configurations, security assessments, penetration-test results, roadmaps and product plans;

d. requirements, specifications, requests for proposal, statements of work, audit findings, discovery notes, decision logs and project documentation;

e. information about personnel, including Personal Data;

f. the existence, content and status of the Parties' discussions, negotiations and any resulting agreement, and the terms of this Agreement; and

g. any notes, analyses, compilations, summaries, extracts, models or other materials prepared by or for the Recipient that contain, reflect or are derived from any of the above.

"Discloser" means the Party disclosing Confidential Information (or on whose behalf it is disclosed), and **"Recipient"** means the Party receiving it.

"Personal Data", **"Controller"**, **"Processor"**, **"Data Subject"**, **"Personal Data Breach"** and **"Processing"** have the meanings given in Data Protection Laws.

"Data Protection Laws" means the UK GDPR, the Data Protection Act 2018, and any other data protection or privacy laws applicable to the Processing concerned, in each case as amended or replaced from time to time.

"Purpose" means:

a. evaluating, negotiating, documenting and performing an engagement under which Ihor provides Fractional CTO and related technology advisory services to the Client;

b. Ihor's performance of those services, including assessing Vendor proposals, running or supporting a Vendor selection process, providing technical leadership, architecture and delivery oversight, and acting as CTO on the Client's side;

c. administering and enforcing this Agreement and any master services agreement or statement of work between the Parties; and

d. any other purpose agreed by the Parties in writing.

"Representatives" means, in relation to a Party, its directors, officers, employees, workers, contractors, professional advisers, insurers and financing sources, and in relation to Ihor also includes actual or prospective Vendors, in each case who have a need to know the relevant Confidential Information for the Purpose.

"Master Agreement" means any master services agreement between the Parties under which Ihor provides services to the Client.

"Trade Secret" means information that meets all of the following conditions: (a) it is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among, or readily accessible to, persons within the circles that normally deal with that kind of information; (b) it has commercial value because it is secret; and (c) it has been subject to reasonable steps, by the person lawfully in control of it, to keep it secret. This definition follows regulation 2 of the Trade Secrets (Enforcement, etc.) Regulations 2018.

"Vendor" means any third-party supplier, agency, systems integrator, software vendor, development studio or individual contractor that provides, or may provide, goods or services to the Client in connection with the Client's technology projects.

"Service Provider" means a provider of the services listed in Annex 1 to Schedule 4 of the Master Agreement, acting as the Recipient's sub-processor. A Service Provider is not a Vendor for the purposes of this Agreement.

1.2 In this Agreement, unless the context requires otherwise:

a. headings are for convenience only and do not affect interpretation;

b. "including" means "including without limitation";

c. the singular includes the plural and vice versa, and references to a person include a body corporate, unincorporated body, partnership, firm, trust or government body;

d. references to a statute or statutory provision include that provision as amended, re-enacted or replaced, and any subordinate legislation made under it;

e. "writing" includes email and other electronic communication that is capable of being stored and reproduced; and

f. references to "clauses" are to clauses of this Agreement, and references to "Schedules" are to schedules to this Agreement.

2. Confidentiality obligations

2.1 The Recipient shall:

a. use the Confidential Information solely for the Purpose;

b. not disclose the Confidential Information to any person except as permitted by clause 4;

c. protect the Confidential Information using at least reasonable care and, in any event, no less care than it uses to protect its own information of similar importance or sensitivity;

d. not copy, reproduce or reduce to writing the Confidential Information except to the extent reasonably necessary for the Purpose, and ensure that every copy carries any confidentiality notice appearing on the original;

e. not reverse engineer, decompile, disassemble or otherwise attempt to derive source code, trade secrets, algorithms or underlying ideas from any Confidential Information, except to the extent expressly permitted in writing by the Discloser or required by law; and

f. not make the Confidential Information available to any person who is not a Representative with a need to know it for the Purpose.

2.2 The Recipient is responsible for any breach of this Agreement by its Representatives as if the breach were its own, and shall procure that each Representative complies with obligations no less protective than those in this clause 2.

2.3 The Recipient shall notify the Discloser without undue delay, and in any event within 48 hours, after becoming aware of any actual or suspected unauthorised access to, use of, or disclosure of Confidential Information. The Recipient shall provide reasonable cooperation and information to help the Discloser mitigate the incident, meet any legal or regulatory notification obligation, and communicate with affected individuals. Notification is not an admission of fault.

2.4 The Recipient may retain Confidential Information to the extent required by law, regulation, a regulatory authority or a bona fide backup or records-retention policy, provided that such retained information remains subject to this Agreement for as long as it is retained.

3. Exclusions

3.1 Confidential Information does not include information that the Recipient can demonstrate by written records:

a. was lawfully in the Recipient's possession or known to it, free of any duty of confidence, before it was disclosed by the Discloser;

b. is or becomes generally available to the public other than as a result of a breach of this Agreement or of another duty of confidence owed to the Discloser;

c. was lawfully received by the Recipient from a third party that was not, to the Recipient's knowledge, under a duty of confidence to the Discloser, and that did not obtain it in breach of that duty; or

d. was independently developed by the Recipient without use of, or reference to, the Confidential Information.

3.2 Information is not made confidential merely because it is similar to information in the public domain; the specific combination, compilation or arrangement of information remains protected even if its individual elements fall within an exclusion.

3.3 If only part of any Confidential Information falls within an exclusion, the remainder remains protected by this Agreement.

3.4 The burden of proving that an exclusion applies rests on the Recipient.

4. Permitted disclosures

4.1 The Recipient may disclose Confidential Information to those of its Representatives who need to know it for the Purpose, provided that the Recipient informs them of the confidential nature of the information and they are bound by confidentiality obligations at least as protective as this Agreement. Professional advisers and insurers may instead be bound by their professional or regulatory duties.

4.2 Vendor disclosures. The Client acknowledges that Ihor cannot evaluate Vendor proposals, obtain quotations or assess technical capability without disclosing some of the Client's Confidential Information to Vendors. Accordingly, Ihor may disclose the Client's Confidential Information to actual or prospective Vendors solely to the extent reasonably necessary for the Purpose, and only where:

a. the Vendor has signed a written confidentiality agreement with the Client or with Ihor on terms at least as protective as this Agreement (a "Vendor NDA"), in the form approved by the Client or in a form the Client has approved in writing;

b. the disclosure is limited to the minimum information the Vendor needs in order to respond to the relevant request; and

c. Ihor keeps a written register of the Vendors to whom the Client's Confidential Information has been disclosed, and provides that register to the Client on request.

4.2A Permitted service providers. Notwithstanding clause 4.1, a Recipient may disclose Confidential Information to the service providers listed in Annex 1 to Schedule 4 of the master services agreement between the Parties as updated from time to time under that agreement or, if none is in force, to the service providers identified by the Recipient in writing and approved by the Client, solely for the Purpose, provided that:

a. the provider is bound by a data processing agreement that requires it to keep the information confidential, to implement appropriate technical and organisational measures including encryption in transit and at rest, and not to use the information to train or improve its foundation models;

b. the provider does not use the information for its own purposes;

c. the disclosure is limited to the minimum information necessary;

d. the Recipient remains responsible for the acts and omissions of the provider as if they were its own; and

e. Personal Data is handled in accordance with clause 5 and the transfer mechanism recorded for that provider.

This clause does not authorise disclosure to a Vendor in a procurement exercise, which remains subject to clause 4.2 and requires the Client's written agreement.

4.3 The Client may, by written notice, require that a particular Vendor is not given access to Client Confidential Information, or that a particular category of information is withheld from Vendors. Ihor shall comply with that notice.

4.4 Compelled disclosure. The Recipient may disclose Confidential Information to the extent required by law, court order, a competent regulatory authority or the rules of a recognised stock exchange, provided that, where it is lawfully able to do so, the Recipient:

a. gives the Discloser prompt written notice before disclosing, or as soon as practicable afterwards;

b. provides reasonable cooperation, at the Discloser's cost, so that the Discloser may seek a protective order or other appropriate remedy; and

c. discloses only the portion of Confidential Information that is legally required, and uses reasonable efforts to obtain confidential treatment for it.

4.5 Neither Party shall disclose the terms of this Agreement except to its Representatives, professional advisers, insurers and financing sources on a need-to-know basis, or as required by law.

5. Personal data

5.1 Each Party shall comply with Data Protection Laws when Processing Personal Data received under or in connection with this Agreement.

5.2 Where a Party discloses Personal Data, it does so as Controller, or as a Processor acting on the lawful instructions of the relevant Controller and with authority to disclose. The Recipient shall Process that Personal Data as an independent Controller for the Purpose, or, where it acts solely on the Discloser's documented instructions, as a Processor.

5.3 Where the Recipient acts as a Processor, it shall:

a. Process the Personal Data only on the Discloser's documented instructions, including in respect of international transfers, unless required otherwise by law;

b. ensure that persons authorised to Process the Personal Data are bound by appropriate confidentiality obligations;

c. implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing, and against accidental loss, destruction or damage;

d. not engage any sub-processor without the Discloser's prior written authorisation, and impose equivalent obligations on any authorised sub-processor; a general written authorisation in the master services agreement, or the list in Annex 1 to Schedule 4 of that agreement, satisfies this requirement;

e. assist the Discloser, at the Discloser's cost, in responding to Data Subject requests and in meeting its obligations regarding security, breach notification, data protection impact assessments and prior consultation;

f. notify the Discloser without undue delay, and in any event within 24 hours, after becoming aware of a Personal Data Breach affecting the Personal Data; and

g. at the Discloser's choice, delete or return the Personal Data at the end of the provision of the relevant services, and delete existing copies unless storage is required by law.

5.4 Neither Party shall disclose special category data or criminal offence data under this Agreement without the other Party's prior written agreement.

5.5 The Recipient shall not transfer Personal Data outside the United Kingdom or the European Economic Area unless a lawful transfer mechanism is in place under Data Protection Laws.

5.6 Nothing in this Agreement relieves either Party of its own obligations under Data Protection Laws as a Controller.

6. No licence, no warranty, no obligation

6.1 All Confidential Information remains the property of the Discloser. No licence, assignment or other right in any intellectual property is granted to the Recipient, except the limited right to use the Confidential Information for the Purpose in accordance with this Agreement.

6.2 Nothing in this Agreement obliges either Party to disclose any particular information, to continue any discussion, to enter into any further agreement, or to engage or be engaged by the other.

6.3 Confidential Information is provided "as is". The Discloser gives no representation or warranty, express or implied, as to its accuracy, completeness or fitness for any purpose, and the Recipient relies on it at its own risk. This clause does not exclude liability for fraud or fraudulent misrepresentation.

6.4 The Recipient is solely responsible for its own decisions and for its own assessment of any information received, including any Vendor proposal it reviews or any recommendation it makes or receives.

6.5 Non-exclusivity. Nothing in this Agreement restricts either Party from providing services to, working with, or engaging any third party, including a Vendor or a competitor of the other Party, or from developing products, services and know-how that are similar to those of the other Party. The Client acknowledges that Ihor may act as a Fractional CTO or adviser to other clients in the same market, and Ihor acknowledges that the Client may engage other advisers and Vendors, in each case provided that the Party complies with clause 2 and does not use the other Party's Confidential Information.

7. Term and survival

7.1 This Agreement starts on the Effective Date and continues until:

a. either Party terminates it by giving 30 days' written notice to the other; or

b. the third anniversary of the Effective Date, if the Parties have not by then entered into a master services agreement, statement of work or other engagement under which Confidential Information continues to be exchanged.

7.2 The obligations in this Agreement continue after termination or expiry:

a. for Confidential Information that is not a Trade Secret, for three years after termination or expiry;

b. for a Trade Secret, for as long as it remains a Trade Secret within the meaning of clause 1.1; and

c. for Personal Data, for as long as the Recipient holds it.

7.3 Designation of Trade Secrets. A Discloser that wishes to rely on clause 7.2(b) shall identify the information as a Trade Secret in writing, either when it is disclosed or within 10 Business Days after the Recipient asks it to identify the information. Information that is not identified in that way is treated as Confidential Information that is not a Trade Secret, and clause 7.2(a) applies to it. Identification does not make information a Trade Secret if it does not meet the definition in clause 1.1, and does not reduce the protection that the information has under clause 7.2(a).

7.4 Termination or expiry does not affect any rights or obligations that accrued before it, including any obligation to pay for services already performed.

7.5 If the Parties enter into a master services agreement, the confidentiality and data protection provisions of that agreement apply in addition to this Agreement. Where the two conflict, the provision that gives greater protection to the Discloser prevails.

8. Return or destruction

8.1 On the Discloser's written request, or on termination or expiry of this Agreement, the Recipient shall, within 10 Business Days, return or destroy all Confidential Information in its possession or control and, if the Discloser requests, certify in writing (email is sufficient) that it has done so.

8.2 The Recipient may retain copies that are:

a. stored in routine backup or archival systems that are not readily accessible in the ordinary course, until they are overwritten or deleted in the ordinary course; or

b. required to be retained by law, regulation, professional obligation or a bona fide records-retention policy.

8.3 Any retained copies remain subject to this Agreement.

9. Remedies

9.1 The Parties acknowledge that damages may not be an adequate remedy for a breach of this Agreement, and that the Discloser may suffer irreparable harm. Accordingly, the Discloser is entitled to seek injunctive or other equitable relief, without the need to prove actual loss or to post security, in addition to any other remedy available to it.

9.2 The rights and remedies in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

10. Residual knowledge

10.1 Nothing in this Agreement prevents the Recipient from using general knowledge, skills, experience and ideas retained in the unaided memory of individuals who had access to the Confidential Information, provided that this does not:

a. involve the use or disclosure of Personal Data;

b. amount to a disclosure of Confidential Information to any third party; or

c. infringe any intellectual property right of the Discloser.

10.2 This clause does not grant any licence and does not apply to information that constitutes a trade secret.

11. Publicity, references and use of names

11.1 Factual identification. Notwithstanding clause 1.1(f), either Party may identify the other Party as a client, supplier or adviser, and may use the other Party's name and logo, solely to state factually that the Parties have worked, or are working, together. That use may appear on a website, in a proposal or credentials document, in a professional biography, in a social media post or in a conference profile, provided that it:

a. is accurate and not misleading;

b. does not suggest an endorsement, partnership, sponsorship or certification, or a level of involvement beyond the facts;

c. complies with any reasonable written brand or trade mark guidelines notified by the owner of the name or logo; and

d. does not disclose Confidential Information, commercial terms or Personal Data.

11.2 Withdrawal. Either Party may withdraw the permission in clause 11.1 at any time by written notice, without giving reasons. The other Party shall stop using the name and logo, and remove them from the materials it controls, within 10 Business Days of the notice. Withdrawal does not require the recall of printed material already in circulation, and does not affect any use required by law or by a professional body.

11.3 Case studies and detailed publicity. Neither Party shall publish a case study, testimonial, press release, interview or other detailed public description of the engagement without the other Party's prior written approval, which shall not be unreasonably withheld or delayed. Approval covers the specific text, version and channels submitted, and any material change requires fresh approval.

11.4 Anonymised material. Either Party may publish an anonymised description of the engagement, including the problem, the approach and the outcome, provided that it contains no Confidential Information and no Personal Data, and no information from which the other Party or its personnel could reasonably be identified.

11.5 No other publicity. Except as permitted by this clause 11, neither Party shall publicise the relationship or use the other Party's name, logo or trade marks.

11.6 References. Ihor may identify the Client as a referee and give a reference only with the Client's prior written consent, and shall ensure that any reference he gives is accurate.

12. General

12.1 Entire agreement. This Agreement sets out the entire agreement between the Parties in respect of the confidentiality of Confidential Information and supersedes all prior discussions, proposals and understandings on that subject. It does not supersede any master services agreement, statement of work or other agreement between the Parties, which continue in full force.

12.2 Variation. No variation of this Agreement is effective unless made in writing and signed by both Parties (electronic signature is sufficient).

12.3 Assignment. Neither Party may assign, transfer or subcontract its rights or obligations under this Agreement without the other Party's prior written consent, except to a successor to all or substantially all of its business or assets, on written notice to the other Party.

12.4 Severability. If any provision of this Agreement is or becomes illegal, invalid or unenforceable, that provision is deemed modified to the minimum extent necessary to make it legal, valid and enforceable. If that is not possible, the provision is severed and the remainder of this Agreement continues in full force.

12.5 Waiver. No failure or delay in exercising any right or remedy operates as a waiver of it, and no single or partial exercise prevents any further exercise. A waiver is effective only if given in writing.

12.6 Notices. Notices under this Agreement must be in writing and are deemed received:

a. if delivered by hand, at the time of delivery;

b. if sent by email to the address set out at the start of this Agreement (or to any address notified under this clause), at the time the sender receives an automated delivery confirmation or a written reply, provided that if that time is outside 09:00 to 17:00 UK time on a Business Day, the notice is deemed received at 09:00 on the next Business Day; and

c. if sent by recorded post, two Business Days after posting.

12.7 Third party rights. A person who is not a Party has no right to enforce any term of this Agreement, and the Parties exclude the operation of the Contracts (Rights of Third Parties) Act 1999.

12.8 Counterparts and electronic signature. This Agreement may be signed in counterparts, each of which is an original and all of which together constitute one instrument. Signatures exchanged by email or by a recognised electronic signature platform are valid and binding.

12.9 Governing law and jurisdiction. This Agreement and any dispute or claim arising out of or in connection with it (including non-contractual disputes) are governed by the laws of England and Wales. The Parties submit to the exclusive jurisdiction of the courts of England and Wales.

12.10 Language. This Agreement is made in the English language, which is the controlling language of the Agreement.

12.12 Limitation of liability. A claim for breach of confidence or of clause 5 under this Agreement is subject to the limitation of liability in clause 14 of the Master Agreement, where that agreement is in force. Where no Master Agreement is in force, each Party's total aggregate liability under this Agreement is limited to £100,000, except for liability that cannot lawfully be limited.

13. Signatures

The Parties have signed this Agreement as of the Effective Date.

IHOR CHYSHKALA	**[CLIENT LEGAL NAME]**
Signature:	Signature:
Name: Ihor Chyshkala	Name: [CLIENT SIGNATORY NAME]
Title: Sole trader	Title: [CLIENT SIGNATORY TITLE]
Date:	Date:
Email: ihor@chyshkala.com	Email: [CLIENT EMAIL]
Address: 13 Charlton Avenue, Eccles, Greater Manchester, M30 0JQ, United Kingdom	Address: [CLIENT REGISTERED ADDRESS]