

Capital Programme

Now the drawing board Then all aboard

ORIGINAL

Date
19 April 2017
Version
1.0

C5200 – Engineering Advisor
**Appendix 5 – Model Non-Disclosure
Agreement**

Perform today. Create tomorrow.

Schiphol

Agreement

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

THE UNDERSIGNED:

1. **SCHIPHOL NEDERLAND B.V.**, a private company with limited liability, with corporate seat in Haarlemmermeer, and having its offices at Evert van de Beekstraat 202 (1118 CP) Schiphol Airport, The Netherlands ("Schiphol"),
2. **[NAME]**, located in [address], [postal code] [city], [country], ("the Receiving Party").

Hereafter individually referred to as "Party" or jointly as "Parties"

WHEREAS:

- A. Schiphol and [name Consultant] have entered into an agreement for the delivery of the Engineering Advisor Services. Schiphol, solely for the purpose of providing these Services, will provide the Receiving Party with Confidential Data, as defined below, hereinafter referred to as the "Authorised Purpose".
- B. The Parties wish to enter into this non-disclosure and confidentiality agreement (the "Agreement") to (i) ensure the confidentiality of (a) the Authorised Purpose and (b) the Confidential Data to be disclosed by Schiphol to the Receiving Party and (ii) agree upon the restrictions and conditions of use, reproduction and disclosure of such Confidential Data.

HEREBY AGREE AS FOLLOWS:

1. In this Agreement, the following terms shall have the following meanings:

Affiliated Party: in respect of a person or company:

- a. any person who, or company which, belongs to the same group as that person or company;
 - b. any subsidiary of that person or company;
 - c. any person of whom, or company of which, that person or company is a subsidiary, and any other person who, or company which, is a subsidiary of the first-mentioned person or company;
- in this definition, "subsidiary" and "group" shall mean, respectively, a subsidiary and group as referred to in Sections 2:24a and 2:24b Dutch Civil Code; where

Agreement

necessary, said sections shall apply mutatis mutandis with regard to natural persons and companies;

Confidential Data: all information be it written, oral, recorded, on tapes, computer format or otherwise about a Party's or its Affiliated Party's businesses and plans, including, but not limited to, (i) financial information, technical information, systems information, consumer research, information processing, delivery systems, product development, service development, data, reports, interpretations, forecasts and records containing or otherwise reflecting information and/or (ii) certain information and material identified by the Parties as confidential, including the information that the Parties are contemplating the Authorised Purpose;

Representatives: all agents, attorneys, accountants, financial advisors and employees of the Receiving Party or its Affiliated Parties who need to know such Confidential Data with regard to the Authorised Purpose;

2. The Receiving Party undertakes not to use, reproduce or disclose, and shall cause its Affiliated Parties and its Representatives not to use, reproduce or disclose, to any third party any Confidential Data concerning Schiphol and its Affiliated Parties. The Receiving Party shall keep and treat, and shall cause its Affiliated Parties and its Representatives to keep and treat, the Confidential Data regarding Schiphol and its Affiliated Parties confidential and shall not use the Confidential Data other than in connection with the Authorised Purpose, provided, however, that any such Confidential Data may be disclosed to such persons who need to know such Confidential Data with regard to the Authorised Purpose and who are bound to similar confidentiality obligations, all of whom will be informed in advance by the Receiving Party of the confidential nature of such Confidential Data and will be instructed by the Receiving Party to treat such Confidential Data confidentially.
3. The restrictions on the use or disclosure of Confidential Data and the confidentiality obligation of the preceding article 2 shall not apply to information or data:
 - a) lawfully received free of restriction from another source without restriction or confidentiality obligations;
 - b) that is or has become generally available to the public without breach of this Agreement;
 - c) which at the time of disclosure was known to the Receiving Party to be free of restriction or confidentiality obligations as evidenced by documentation in its possession;
 - d) with regard to which Schiphol notifies the Receiving Party in writing that such information or data is free of such restrictions and confidentiality obligations.

Agreement

4. The Receiving Party shall protect the Confidential Data disclosed to it and/or its Affiliated Parties and/or its Representatives by Schiphol or its Affiliated Parties, as required by law and by this Agreement, with at least the same degree of care as it normally exercises to protect its own Confidential Data of a similar nature.
5. If a Receiving Party and/or its Affiliated Parties and/or its Representatives are requested or required by law or by any court order or regulatory authority of a competent jurisdiction, (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose Confidential Data, the Receiving Party will promptly notify Schiphol of such request or requirement to the fullest extent as permitted under the applicable laws, so that Schiphol can seek an appropriate protective order or waive the Receiving Party's obligations under this Agreement with respect to that part of the Confidential Data it needs to disclose. If, in the absence of a protective order or the receipt of a waiver hereunder, the Receiving Party and/or its Affiliated Parties and/or its Representatives are compelled to disclose Confidential Data, they may disclose such Confidential Data to the entity compelling such disclosure without liability hereunder, as long as the Receiving Party shall, at its own expense, use its efforts to ensure that the person to whom the Confidential Data must be disclosed, uses or discloses that information to the least extent possible.
6. The Receiving Party shall not make an announcement, public statement or comment of any kind relating to Schiphol's interest regarding the Authorised Purpose or the existence or content of any discussions relating thereto, without Schiphol's prior written consent.
7. No license, under any trademark, patent, copyright or any other intellectual property right, is either granted or implied by the conveying of Confidential Data to the Receiving Party and/or its Affiliated Parties and/or its Representatives.
8. Nothing in this Agreement constitutes a commitment by either Party to accept any proposals made by the other in connection with the Authorised Purpose.
9. This Agreement comes into effect on [date] ("Effective Date") and expires automatically after the longer term of either:
 - a) 3 years as of the Effective Date; or
 - b) 3 years as of the termination of the last signed agreement between the Parties regarding the Authorised Purpose, unless otherwise provided for therein.

All Confidential Data exchanged by the Parties as of the Effective Date is to be considered Confidential Data under this Agreement.

Agreement

10. During the term of the Agreement as provided in article 9, Schiphol may at any time terminate the discussions with the Receiving Party concerning the Authorised Purpose or any subsequent negotiations by notifying the Receiving Party thereof, and in that event Schiphol shall be under no obligation to pay the Receiving Party any damages or costs. If the discussions or negotiations concerning the Authorised Purpose terminate, for whatever reason, any right which the Receiving Party, its Affiliated Parties and/or Representatives have to use, copy or disclose Confidential Data shall terminate.
11. All of the confidentiality obligations under this Agreement for the Receiving Party, its Affiliated Parties and/or Representatives shall survive and continue after termination of discussions between Parties concerning the Authorised Purpose pursuant to article 10 for the term provided in article 9.
12. If Parties' discussions or negotiations concerning the Authorised Purpose end, and at expiration of this Agreement, a Receiving Party shall on its own initiative and without delay:
 - a) supply or return to Schiphol all documents, computer discs and other data carriers, including copies thereof, which contain Confidential Data, irrespective of whether the contents of those data carriers have been produced by the Receiving Party, any of its Affiliated Parties, any of its Representatives or any third party and irrespective of whether such data carriers are in the possession of the Receiving Party or in the possession of any of its Affiliated Parties, any of its Representatives or any third party;
 - b) to the extent that Confidential Data has been stored in the Receiving Party's computer system or the computer system of any of its Affiliated Parties or any of its Representatives, or has been recorded in another form which cannot reasonably be supplied to Schiphol, provide Schiphol with a copy of the Confidential Data thus recorded and subsequently destroy the Confidential Data;
 - c) provide Schiphol with a statement to the effect that the Receiving Party has fully met its obligations under sub-paragraphs a and b, such statement to be validly signed by the Receiving Party.
13. If the Receiving Party and/or an Affiliated Party of the Receiving Party and/or a Representative of the Receiving Party has failed to comply with the provisions of this Agreement, the Receiving Party shall, without any demand or other prior notice, owe to Schiphol a penalty of euro 25,000 (twenty five thousand euro), to be increased by a penalty of euro 5,000 (five thousand euro) a day. The daily penalty shall become payable in the event the breach can be remedied in which case the daily penalty is with effect from the day following commencement of the failure to comply, up to and including the day on which it has been remedied. Schiphol shall be entitled to the penalty without prejudice to all other rights or claims, including any claim for performance of this Agreement and any right to payment of damages to the extent that the damage exceeds the amount of the penalty.

Agreement

14. The Receiving Party guarantees its Affiliated Parties and Representatives shall comply with the provisions of this Agreement.
15. No amendment or modification of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective duly authorised officers or Representatives.
16. This Agreement contains the entire agreement of the parties in relation to its subject matter. From the moment that this Agreement is signed, all previous agreements and arrangements made by the parties in relation to its subject matter shall be superseded by this Agreement.
17. This Agreement shall be governed exclusively by and is construed in accordance with Dutch law. Disputes arising in connection with this Agreement, including disputes concerning the existence and validity thereof, shall be resolved exclusively by the competent courts in Amsterdam, The Netherlands.

IN WITNESS WHEREOF:

this Agreement was signed in duplicate in the name of the parties in the manner set out below.

1. Schiphol Nederland B.V.

By: _____
Title: _____
Place: _____
Date: _____

And

2. Name: _____
Title: _____
Place: _____
Date: _____