

Exclusivity Clause (Pre-Contract)

Commercial Transactions

Notes:

- (1) This template is designed to provide the parties to those also included in this subfolder. It is intended for a period of time during which the parties are negotiating the "lockout" third party competitor.
- (2) That pre-contract document is a Memorandum of Understanding, arrangement or transaction or other agreement on all terms and conditions of the proposed transaction (contract) referred to in this subfolder. It is intended for use below could be, for example, a Memorandum of Understanding or Terms Sheet. Please see the template provisions about use of such pre-contract documents.
- (3) Such a MOU, LOI, HOT or other preliminary pre-contract document except for certain provisions (including the provisions overleaf). The provisions in the pre-contract document should state that they are also legally binding.
- (4) A description of the Proposed Transaction in sufficient detail to identify the general nature of the Proposed Transaction might be, for example, for the supply of goods or ongoing supply of goods or services, for provision of services, for other financial facility, for the sale of a trade mark or copyright, for the sale of a business or shares.
- (5) The words in square brackets in the template overleaf may be omitted if desired.
- (6) The template provisions overleaf are intended to give the parties time to negotiate the Proposed Transaction on an exclusive basis. For that purpose we have also included an Exclusivity Clause (Pre-Contract) in this subfolder.)
- (7) These Notes do not form part of the proposed transaction overleaf.

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1. In consideration of each Party's obligations under the above date of this <<insert full title of this document>> Memorandum Of Understanding [and any other documents] Proposed Transaction [and any other documents] in connection with such further

negotiations with the other Party after the above date in which this template is included, e.g. Memorandum Of Understanding >> regarding the Proposed Transaction [and any other documents] in connection with such further information in connection with such further information undertaken to the other Party that:

1.1 if, at the above date, it is not a Party to any such Third Party Negotiations;

1.1 if, at the above date, it is not a Party to any such Third Party Negotiations, it will ensure that such Third Party Negotiations are terminated;

1.2 it will not within the Exclusivity Period:

indirectly:

1.2.1 encourage or engage in any such Third Party Negotiations;

negotiations;

1.2.2 enter into any agreement or arrangement pursuant to any Third Party Negotiations;

1.2.2 enter into any agreement or arrangement (whether or not legally binding) pursuant to any Third Party Negotiations;

1.2.3 make available any information in connection with any Third Party Negotiations;

1.2.3 make available any information in connection with any Third Party Negotiations which might enter into any Third Party Negotiations (whether or not such information is publicly available); and

1.3 it will notify the other Party if it indicates that it wishes to enter into any Third Party Negotiations.

1.3 during the Exclusivity Period, any third party which has entered into any Third Party Negotiations with either Party previous Third Party Negotiations.

2. The Parties will not have any Third Party Negotiations:

any of the following:

2.1 conduct or continue the Proposed Transaction;

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2.2 agree or enter into any agreement or arrangement in connection with the Proposed Transaction;

2.2 agree or enter into any agreement or arrangement with each other in relation to the Proposed Transaction;

2.3 agree or enter into any agreement or arrangement in connection with any other matter.

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3. Either Party may at any time terminate this Memorandum Of Understanding without liability to the other, for any reason, in connection with the Proposed Transaction.

3. Either Party may at any time terminate this Memorandum Of Understanding without liability to the other, and without incurring any liability, in connection with the Proposed Transaction.

4. Each Party will ensure that it complies with its obligations under this Memorandum Of Understanding to Third Party Negotiations.

4. Each Party will ensure that it complies with its above undertakings in relation to Third Party Negotiations.

5. These Clauses numbered [1 to 6] are intended to be legally binding as a contract.

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6. The following expressions have the same meaning as in the title of this document>>:

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6.1 "Exclusivity Period" means the period from the date of this <<insert full title of this document>>

6.1 "Exclusivity Period" means the period, e.g. 28 days, 56 days etc.>> from the date of this <<insert full title of this document>>;

6.2 "Party" means either Party to this Memorandum Of Understanding;

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6.3 "Proposed Transaction" means the transaction or arrangement described in the title of this document which is legally binding agreement;

6.3 "Proposed Transaction" means the description of the proposed commercial transaction or arrangement described in the title of this document which is fully documented by a detailed written agreement in the title of this document>>; and

6.4 "Third Party Negotiations" means any negotiations with any third party with a view to making arrangements which are similar to or likely to be in competition with the Proposed Transaction or conflict with the Proposed Transaction.

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