

SPEA America

Confidentiality Terms & Conditions

These confidentiality terms & conditions ("**Conditions**") govern the disclosure of Confidential Information between SPEA S.p.A. and any of its Affiliates ("**SPEA**") and any entity, company or person receiving Confidential Information from SPEA or any of its Affiliates ("**Company**").

1. DEFINITIONS.

- a) "**Project**": any collaboration between SPEA and Company
- b) "**Confidential Information**": any nonpublic information or material disclosed by one party or any of its Affiliates (the "**Discloser**") to the other party or any of its Affiliates (the "**Recipient**") in connection with the Project, including information Recipient learns from Discloser's employees or Consultants or through inspection of Discloser's property, provided that such information or material is clearly designated "Confidential": (i) in writing, if disclosed in writing, or (ii) verbally if disclosed in any other manner or (iii) would reasonably, under the circumstances, be understood to be Confidential Information. For clarity, the following will be deemed Confidential Information even if not so designated: SPEA's nonpublic product plans, know how, specifications, designs, photographs, business opportunities, costs, prices, projects, marketing plans, forecasts, orders, materials, components, prototypes, and pre-release products. The fact that the parties have or will discuss the project and the substance of their discussions is also Confidential Information.
- c) "**Affiliate**": any entity that controls, is controlled by, or is under common control with a party.
- d) "**Control**" and its derivatives means the legal, beneficial, or equitable ownership, directly or indirectly, of more than 50% of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights.
- e) "**Consultants**": the party's bankers, accountants, auditors, attorneys, financial advisors, and independent contractors.

2. DISCLOSURE AND USE RESTRICTIONS.

Recipient shall maintain the confidentiality of Discloser's Confidential Information using at least the same degree of care Recipient uses to protect its own confidential information of similar importance, but no less than a reasonable degree of care. Recipient may disclose Discloser's Confidential Information only to those of Recipient's employees, Consultants, and Affiliates who (i) have a need to know such Confidential Information in order to accomplish the project on Recipient's behalf, and (ii) are bound by a written agreement with Recipient that is at least as protective of Discloser's Confidential Information as these Conditions: Recipient shall not disclose, and shall cause its Consultants and Affiliates not to disclose, Confidential Information to any other person or entity without the Discloser's prior written consent in each instance. Company and its Affiliates shall not disclose SPEA Confidential Information to any of SPEA competitors, including, without limitation, any business unit or division of Company or any of its Affiliates that competes with SPEA, without SPEA's prior written consent.

Recipient may use Discloser's Confidential Information only for the project: Recipient shall not use, and shall cause its Consultants and Affiliates not to use, Confidential Information for any other purpose without the Discloser's prior written consent in each instance. Recipient shall promptly notify Discloser upon discovery of any unauthorized use or disclosure of Discloser's Confidential Information by Recipient or any of its Consultants or Affiliates. Company shall be directly liable for and shall indemnify and hold SPEA and its Affiliates harmless from and against any liabilities, losses, damages, costs and expenses, including reasonable attorney's fees, as incurred by any of them, resulting from or arising out of or in connection with any unauthorized disclosure or use of SPEA's Confidential Information by Company or any of its Consultants, or Affiliates.

These disclosure and use restrictions do not apply to information that Recipient can demonstrate with competent evidence: (i) was already known to the general public at the time of disclosure; (ii) became generally available to the public after the disclosure through no fault or breach by Recipient, Consultants, or Affiliates (in which case, these disclosure and use restrictions will be lifted only after the date it became generally available to the public); (iii) was rightfully in Recipient's possession on a non-confidential basis before Discloser disclosed it to Recipient; (iv) was rightfully obtained from a third party, who had the lawful right to transfer or disclose it to Recipient without limitation; or (v) Recipient independently developed without the use of any of Discloser's Confidential Information. Recipient may disclose Confidential Information to the extent required by law, provided Recipient makes reasonable efforts to give Discloser written notice of such requirement before disclosure and takes reasonable steps to obtain protective treatment of the Confidential Information. The fact that a disclosure was legally required will not alter the nature of the Confidential Information as between Recipient and Discloser.

3. INTELLECTUAL PROPERTY.

Discloser retains all of its rights in its Confidential Information (including any copies and extracts) and grants no licenses or rights to any Confidential Information. The disclosure of Confidential Information is not intended to grant a license to or waive any rights in either party's patents, copyrights or trademarks or mask works.

4. WARRANTY.

Each party warrants, on behalf of itself and its Affiliates, that it has the right to disclose any Confidential Information it discloses to Recipient. All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding its accuracy or performance.

5. NO PRESS RELEASE OR PUBLICITY.

Neither Party shall issue press releases or other publicity regarding the project without the other party's prior written approval. Company shall not disclose the nature of the parties' business relationship, including, if applicable, the fact that one party provides or may provide goods or services to the other, without SPEA's prior written consent in each instance.

6. NON SOLICITATION AND NON CIRCUMVENTION.

Both parties and their Affiliates will not directly or indirectly recruit or offer employment to, and will not otherwise use the services of each other's human resources, notwithstanding a contractual agreement for such services between the two parties. This extends to any human resource for either party who has been assigned to the fulfillment of a contract at any level of responsibility, for a period of one year after the termination of the contract in question. This also applies to any human resource for either party who has been introduced to, recommended to or interviewed by the other during the fulfillment of a contract or during the course of the business relationship between the parties and will remain in effect for one year after such introduction, recommendation or interview.

Recipient further agrees not to contact persons or entities disclosed by the Discloser to the Recipient without the express prior written consent of the Discloser. The Recipient shall not enter into any transactions, with any person or entity (including such entity's affiliates and related entities) with regard to Discloser's Confidential Information without receiving express prior written consent from the Discloser. Nor will the Recipient enter into any transaction, or transactions, with a party so as to prevent the Discloser from receiving any fees, profits, commissions, remuneration or other material benefits which they may otherwise be due. The spirit of mutual trust and confidence shall be the underlying principle of this undertaking and the parties agree to adhere thereto.

7. NO ASSIGNMENT.

Neither party shall assign, delegate, or otherwise transfer any right or obligation under these Conditions, whether in conjunction with a change in ownership, merger, acquisition, or the sale or transfer of all, or substantially all of, its business or assets, voluntarily, by operation of law, reverse triangular merger, or otherwise, without the other party's prior written consent. A change of control will be considered an assignment. Any supposed or attempted assignment, delegation, or other transfer without such consent will be null and void and will constitute a breach of these Conditions. If assigned, delegated, or transferred with proper written consent, these Conditions will be binding upon and inure to the benefit of each parties' successors, assigns, representatives, and administrators and any successors in interest to intellectual property disclosed pursuant to these conditions.

8. RETURN OF DOCUMENTS.

Discloser may require that Recipient return or destroy Discloser's Confidential Information by providing Recipient written notice. Within 10 days after receipt of such notice, Recipient shall (i) return all tangible Confidential Information then in its possession or in the possession of any of its Consultants or Affiliates or, at Discloser's option, provide Discloser written certification that all such tangible Confidential Information has been destroyed, and (ii) use reasonable efforts to destroy all other Confidential Information then in its possession or in the possession of any of its Consultants or Affiliates, including any emails and other electronic documents containing Confidential Information. Notwithstanding the requirements of this paragraph, Recipient may retain any Confidential Information that is legally obligated to retain, for example, in connection with a legal proceeding seeking disclosure of such Confidential Information, until no such legal obligations exist.

9. TERM AND TERMINATION.

Restrictions on the disclosure and use of Confidential Information will remain in effect for 10 years from the date such Confidential Information was disclosed to Recipient.

10. GOVERNING LAW – JURISDICTION.

These conditions may not be amended, except by written agreement signed by authorized representatives of both parties. Neither party's failure or delay in exercising any of its rights under these conditions will constitute a waiver unless expressly waived in writing. The parties agree that disputes arising out of or in connection with these terms and conditions shall be governed by the laws of the State of Texas in the United States of America. The parties further agree that the state district courts or federal courts for the Eastern District of Texas, Tyler Division, shall have exclusive jurisdiction over any legal disputes arising out of or in connection with these terms and conditions. To the extent any of the foregoing provisions of this paragraph are determined to be unenforceable, the parties agree that with respect to any "major transaction" as that term is defined under the venue provisions of the Texas Civil Practice and Remedies Code.