

Non-Disclosure Agreement - **POST*CODE**[®] User

THIS AGREEMENT is entered into as of the day of 201X between the **Universal Postal Union**, a specialised agency of the United Nations, represented by its International Bureau, having its headquarters at Weltpoststrasse 4, 3000 Bern 15, Switzerland, (hereinafter referred to as "UPU")

and

(name of company) with its principal place of business at, represented by, function..... (hereinafter referred to as "Company").

UPU and Company are considering entering into a licence contract on the **Universal POST*CODE**[®] **DataBase** of the UPU.

In order to evaluate the possibility of entering into such a transaction, the parties acknowledge and agree that it will be necessary for each of them to disclose or make available to each other information and materials that are confidential and proprietary and contain valuable trade secrets relating to their respective businesses.

The parties further acknowledge and agree that some such information may already have been disclosed or made available during the course of discussions prior to the date of this Agreement.

For and in consideration of the mutual exchange of information, the anticipated business transactions between the parties, and other good and valuable consideration, the receipt, sufficiency and adequacy of which is hereby acknowledged, and for the time after conclusion of the Licence Agreement, the parties agree as follows:

1. Definition of Confidential Information

UPU and Company intend to disclose to each other information, which may include confidential information, for the purposes described above. "Confidential Information" means any information or data disclosed by or on behalf of a party (the "Disclosing Party") to the other party (the "Recipient") under or in contemplation of this Agreement and that:

- (a) if in tangible form or other media that can be converted to readable form, is clearly marked as proprietary, confidential, or private when disclosed, or
- (b) if oral or visual, is identified as proprietary, confidential, or private on disclosure and is summarised in a writing so marked and delivered within ten (10) days following such oral or visual disclosure;

provided, however, that notwithstanding the foregoing, Confidential Information shall be deemed to include (without demarcation), financial information, marketing plans, business strategies, plans, proposals, and prospect and customer lists, research, development, know-how, computer software, models, designs, source code, techniques, systems, processes, works of authorship, projects, plans, proposals and flow charts, and any other business, marketing, technical, scientific, or other information of the Disclosing Party which, at the time of disclosure is disclosed in circumstances of confidence, or would be understood by the parties, exercising reasonable business judgement, to be confidential.

2. Affiliates

The terms "Disclosing Party" and "Recipient" include each party's affiliates, including agents such as brokers, that disclose or receive Confidential Information. The rights and obligations of the parties hereto shall therefore also inure to such affiliates and may be directly enforced by or against such affiliates.

3. Non-Disclosure and Authorised Use

The Recipient acknowledges that its relationship is one of trust and confidence with respect to any Confidential Information disclosed and that the Disclosing Party's Confidential Information is of economic value. The Recipient shall:

- (a) use the Confidential Information only for the purposes set forth in this Agreement;
- (b) prevent the disclosure or dissemination of Confidential Information to any other person or entity without the prior written consent of the Disclosing Party, except that the Recipient may disclose Confidential Information to employees of the Recipient and its affiliates with a "need to know" and with respect to such employees, who are bound by written confidentiality agreements that protect third party confidential information;
- (c) advise those employees who access the Confidential Information of their obligations with respect thereto; and
- (d) copy the Confidential Information only as necessary for those employees who are entitled to receive it, and ensure that all confidentiality notices are reproduced in full on such copies.

For the purposes of this Agreement only, "employees" includes third parties retained by the parties hereto for temporary administrative, clerical or programming support, or as independent contractors. A "need to know" means that the employee requires the Confidential Information to perform their responsibilities and for the purposes contemplated by this Agreement.

4. Exceptions

The obligations of Paragraph 3 shall not apply to any Confidential Information that the Recipient can demonstrate:

- (a) is or becomes available to the public through no breach of this Agreement;
- (b) was previously known by the Recipient without any obligation to the Disclosing Party to hold it in confidence;
- (c) is received from a third party free to disclose such information without restriction;
- (d) is independently developed by the Recipient without the use of Confidential Information of the Disclosing Party;
- (e) is approved for release by written authorisation of the Disclosing Party, but only to the extent of such authorisation;
- (f) is required by law or regulation to be disclosed, but only to the extent and for the purposes of such required disclosure; or
- (g) is disclosed in response to a valid order of a court or other governmental body of the country of the parties participating in this agreement or any political subdivisions thereof, but only to the extent of and for the purposes of such order, and only if the Recipient takes reasonable steps to first notify the Disclosing Party of the order in order to permit the Disclosing Party to seek an appropriate protective order.

5. Failure to Mark Confidential Information

If the Disclosing Party inadvertently fails to mark as proprietary, confidential, or private information for which it desires confidential treatment, it shall so inform the Recipient. The Recipient thereupon shall return the unmarked information to the Disclosing Party and the Disclosing Party shall substitute properly marked information.

In addition, if the Disclosing Party, at the time of disclosure, inadvertently fails to identify as proprietary, confidential, or private oral or visual information for which it desires confidential treatment, it shall so inform the Recipient, provided that the Disclosing Party shall summarise the information in writing within ten (10) days thereafter.

The Recipient's obligations under Paragraph 3 in connection with information encompassed by this paragraph shall commence upon notice from the Disclosing Party of the failure to properly mark or identify the information.

6. Export Laws

Each party shall comply with applicable export laws and regulations with respect to any technical data received under this Agreement.

7. Return of Confidential Information

Confidential Information, including permitted copies, shall be deemed the property of the Disclosing Party. The Recipient shall, within twenty (20) days of a written request by the Disclosing Party, return all Confidential Information (or any designated portion thereof), including all copies thereof, to the Disclosing Party or, if so directed by the Disclosing Party, destroy such Confidential Information. The Recipient shall also, within ten (10) days of a written request by the Disclosing Party, certify in writing that it has satisfied its obligations under this Paragraph.

8. Injunctive Relief

The parties agree that an impending or existing breach of any provision of this Agreement would cause the Disclosing Party irreparable injury the monetary value of which would be difficult if not impossible to ascertain and for which it would have no adequate remedy at law, and agree that the Disclosing Party shall be entitled to obtain immediate temporary and permanent injunctive relief prohibiting such violation, without the necessity of proving actual damages by reason of such impending or existing breach, in addition to any other rights and remedies available to it.

9. Relationship of Parties

Neither this Agreement nor any discussions or disclosures hereunder shall:

- (a) be deemed a commitment to any business relationship, contract, or future dealing with the other party, or
- (b) prevent either party from conducting similar discussions or performing similar work to that hereunder, so long as such discussions or work do not violate this Agreement.

This Agreement does not represent, and in no way implies, a partnership, joint venture, employment, or other commercial relationship between the parties, an authorisation for either party to act as the agent or representative of the other, or an encouragement to either party to expend funds or other resources in the development of products or services.

10. Ownership of Confidential Information

No patent, copyright, trademark, or other proprietary right is licensed, granted, or otherwise transferred by this Agreement or any disclosure hereunder, except for the right to use such information in accordance with this Agreement.

No warranties of any kind are given with respect to the Confidential Information disclosed under this Agreement or any use thereof, except that the Disclosing Party warrants that it has the authority to make the disclosures contemplated hereunder.

11. Term

This Agreement shall apply in respect of Confidential Information disclosed during the period ending on the earlier of:

- (a) two years from the later of the execution dates of the parties indicated on the signature page hereto, or
- (b) until terminated by either party upon thirty (30) days prior written notice, or automatically in case of termination of the Licence contract.

All obligations undertaken respecting Confidential Information disclosed hereunder shall survive termination of this Agreement, until the later of: (i) five years from the date of disclosure, or (ii) the longest time permissible under applicable law.

12. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns. This Agreement may be assigned by either party upon not less than thirty (30) days prior written notice to the other. No assignment shall relieve the Recipient of its obligations hereunder with respect to Confidential Information disclosed to it prior to the assignment. Any assignment in violation of this Paragraph shall be void.

13. Enforceability

If any provision of this Agreement shall be held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision which so far possible achieves the parties' intent in agreeing to the original provision. The remaining provisions of this Agreement shall continue in full force and effect.

14. Authority

Each party warrants that it has the authority to enter into this Agreement for itself and its affiliates.

15. Entire Agreement

This Agreement represents the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto. The provisions of this Agreement may not be modified, amended, or waived, except by a written instrument duly executed by both parties.

16. Settlement of disputes, Arbitration, Place of jurisdiction and applicable law

Settlement of disputes

Amicable settlement

The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Agreement or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ("UNCITRAL"), or according to such other procedure as may be agreed between the Parties in writing.

Arbitration

Any dispute, controversy, or claim between the Parties arising out of the Agreement or the breach, termination, or invalidity thereof, unless settled amicably under Article above, within 60 (sixty) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining.

The number of arbitrators shall be 1 (one). If the Parties are unable to designate an arbitrator within 30 (thirty) days of receipt of the notification of a request for arbitration, the arbitrator shall, at the request of one of the Parties, be appointed by the President of the Permanent Court of Arbitration in the Hague, the Netherlands. The substantive law applicable shall be Swiss law. The arbitrator's ruling shall be final and binding.

No appeal to a court or other jurisdiction shall be permitted.

The place of arbitration shall be Berne and the language French or English.

Universal Postal Union

Name: Luc Hauss

Title: Manager Addressing Unit

Date: _____

Signature: _____

Company.....

Name: _____

Title: _____

Date: _____

Signature: _____