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The AutomateNow Confidentiality Agreement

Background

The parties wish to hold discussions regarding the possibility of entering into a contractual relationship relating to HubSpot Consultancy Session (the 'Proposed Project'). In order to assess the viability of the Proposed Project each party wishes to disclose and to receive confidential information regarding the other party. It is intended that this will be solely for the purpose of considering whether to enter into a contractual relationship relating to the Proposed Project (the 'Permitted Purpose').

IT IS AGREED AS FOLLOWS:

1. Confidentiality obligations

1.1 in consideration of the Disclosing Party providing Confidential Information, at its discretion, to the Receiving Party, the Receiving Party shall:

1.1.1 keep the Confidential Information secret and confidential;

1.1.2 neither disclose nor permit the disclosure of any Confidential Information to any person, except for disclosure to Authorised Persons in accordance with clause 2, or to a court or other public body in accordance with clause 3;

1.1.3 not use the Confidential Information for any purpose, whether commercial or non-commercial, other than the Permitted Purpose;

1.1.4 make only such limited number of copies of the Confidential Information as are required for the Permitted Purpose, and provide those copies only to Authorised Persons; and

1.1.5 take proper and all reasonable measures to ensure the confidentiality of the Confidential Information.

1.2 for the purposes of this Agreement, the following words shall have the following meanings: 1.2.1 'Information' shall include information whether of a technical, commercial or any other nature whatsoever provided directly or indirectly by the Disclosing Party to the Receiving Party in [oral or documentary form or by way of models, tapes, compact discs, pictures, photographs, materials or other tangible form and whether before, on or after the date of this Agreement.] 1.2.2 'Confidential Information' shall mean:



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1.2.2.1 in respect of Information provided in documentary form or by way of a model or in other tangible form, information which at the time of provision is marked or otherwise designated to show expressly or by necessary implication that it is imparted in confidence or by its nature would be regarded as confidential by a reasonable business person; and

1.2.2.2 in respect of Information that is imparted orally, any information that the Disclosing Party, or its representatives, informed the Receiving Party at the time of disclosure was imparted in confidence or by its nature would be regarded as confidential by a reasonable business person; and

1.2.2.3 in respect of Confidential Information imparted orally, any note or record of the disclosure and any evaluation analysis or report prepared by the Receiving Party that incorporate any Confidential Information; and

1.2.2.4 any copy of any of the foregoing; and

1.2.2.5 the fact that discussions are taking place between the Receiving Party and the Disclosing Party.

1.2.3 'Disclosing Party' shall mean the party to this Agreement that discloses Confidential Information, directly or indirectly to the Receiving Party under or in anticipation of this Agreement.

1.2.4 'Receiving Party' shall mean the party to this Agreement that receives Confidential Information, directly or indirectly from the Disclosing Party.

2. Disclosure to Authorised Persons

2.1 The Receiving Party may disclose the Confidential Information to those of its officers, employees and [professional adviser] (together, 'Authorised Persons') who:

2.1.1 reasonably need to receive the Confidential Information to enable the Receiving Party to achieve the Permitted Purpose;

2.1.2 have been informed by the Receiving Party (a) of the confidential nature of the Confidential Information and (b) that the Disclosing Party provided the Confidential Information to the Receiving Party subject to the provisions of a written confidentiality agreement;

2.1.3 in the case of the Receiving Party's officers and employees, have given written confidentiality obligations to the Receiving Party that (a) are no less onerous than the provisions of this Agreement and (b) apply to the Confidential Information, and who have been instructed to treat the Confidential Information as confidential;



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2.1.4 in the case of the Receiving Party's professional advisers, have been provided with a copy of this Agreement and have agreed with the Receiving Party in writing to comply with the obligations of the Receiving Party under this Agreement, [and that agreement provides that the Disclosing Party will be entitled to enforce the agreement as a third-party beneficiary]; and

2.2 The Receiving Party shall be responsible for taking reasonable action to ensure that its Authorised Persons comply with the Receiving Party's obligations under this Agreement and shall be liable to the Disclosing Party for any breach of this Agreement by such Authorised Persons.

3. Disclosure to Court

To the extent that the Receiving Party is required to disclose Confidential Information by order of a court or other public body that has jurisdiction over the Receiving Party, it may do so. Before making such a disclosure the Receiving Party shall, if the circumstances permit:

3.1 Inform the Disclosing Party of the proposed disclosure as soon as possible (and if possible before the court or other public body orders the disclosure of the Confidential Information);

3.2 Ask the court or other public body to treat the Confidential Information as confidential; and 3.3 Permit the Disclosing Party to make representations to the court or other public body in respect of the disclosure and/or confidential treatment of the Confidential Information.

4. Exceptions to confidentiality obligations

The Receiving Party's obligations under clause 2 shall not apply to Confidential Information that: 4.1 The Receiving Party possessed before the Disclosing Party disclosed it to the Receiving Party; or

4.2 is or becomes publicly known, other than as a result of breach of the terms of this Agreement by the Receiving Party or by anyone to whom the Receiving Party disclosed it; or

4.3 the Receiving Party obtains from a third-party, and the third-party was not under any obligation of confidentiality with respect to the Confidential Information.

5. Return of information and surviving obligations

5.1 [Subject to clause 5.2,] the Receiving Party shall (a) at the Disclosing Party's request, and also (b) upon any termination of this Agreement:

5.1.1 immediately return and provide to the Disclosing Party all documents and other materials that contain any of the Confidential Information, including all copies made by the Receiving Party; 5.1.2 permanently delete all electronic copies of Confidential Information from the Receiving Party's computer systems; and



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5.1.3 provide to the Disclosing Party a certificate, signed by an officer of the Receiving Party, confirming that the obligations referred to in clauses 5.1.1 and 5.1.2 have been met.

5.2 [As an exception to its obligations under clause 5.1, the Receiving Party may retain one copy of the Confidential Information, in paper form, in the Receiving Party's legal files for the purpose of ensuring compliance with the Receiving Party's obligations under this Agreement.]

5.3 Following the date of any termination of this Agreement, or any return of Confidential Information to the Disclosing Party ('Final Date'), (a) the Receiving Party shall make no further use of the Confidential Information, and (b) the Receiving Party's obligations under this Agreement shall otherwise continue in force, in respect of Confidential Information disclosed prior to the Final Date, in each case for a period of [1] year from the Final Date.

6. Reliance on Information and Confidential Information

6.1 The Receiving Party acknowledges and agrees that all property, including intellectual property, in any Information or Confidential Information disclosed to it by the Disclosing Party shall remain with and be vested in the Disclosing Party.

6.2 This Agreement does not include, expressly or by implication, any representations, warranties or other obligations:

6.2.1 to grant the Receiving Party any licence or rights other than as may be expressly stated in this Agreement;

6.2.2 to require the Disclosing Party to disclose, continue disclosing or update any Information or Confidential Information;

6.2.3 to require the Disclosing Party to negotiate or continue negotiating with the Receiving Party with respect to any further agreement, and either party may withdraw from such negotiations at any time without liability; nor

6.2.4 as to the accuracy, efficacy, completeness, capabilities, safety or any other qualities whatsoever of any Information, Confidential Information or materials provided under this Agreement and neither party (nor its officers or employees) shall be liable for any loss or damage suffered by the other as a result of any reliance placed on any Information or any Confidential Information.

6.3 Each party acknowledges that it must rely on its own investigation and judgement in considering the Information and Confidential Information for the purpose of assessing the viability of the Proposed Project.



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7. General

7.1 This Agreement shall automatically terminate if the parties enter into a formal agreement relating to the Proposed Project and termination shall be effective from the date of such agreement. This Agreement may also be terminated with immediate effect by either party serving notice in writing (including facsimile and electronic mail with proof of transmission).

7.2 This Agreement represents the whole agreement between the parties and supersedes any arrangement or agreement between them relating to its subject matter.

7.3 The validity, construction and performance of this Agreement shall be governed by English law and shall be subject to the [non-]exclusive jurisdiction of the courts of England and Wales, to which the parties to this Agreement submit.



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