SUGGESTED ESA TEMPLATE: NON-DISCLOSURE AGREEMENT (NDA)

UNDERTAKING

**DATE**: [……………………………..]20[xx]

**BY:**

*[Insert candidate name]* whose address is at *[insert address of candidate]* **(the** **“Candidate”**); and

In consideration of the disclosure to the Candidate by or on behalf of *(insert name and address of the company*) **(“the Company”)** whose registered office is at (*Insert the company’s registered address*) and/or any of its Associated Companies, of certain confidential proprietary and technical information in connection with the ESA Work Experience Certificate (**“the Certificate”)** being undertaken by the Candidate (as defined in paragraph 1 below) **THE RECIPIENT HEREBY UNDERTAKES AND AGREES AS FOLLOWS:**

**1. Interpretation**

For the purposes of this Undertaking the following phrases shall have the following meanings:

1.1 **"Associated Company"** means in relation to a company, any subsidiary, subsidiary undertaking and holding company of it (as those terms are defined in sections 258, 736 and 736A of the Companies Act 1985) and any subsidiary and subsidiary undertaking of such holding company, whether registered in the UK or elsewhere;

1.2 **"Authorised Use"** means the use of the Company’s Confidential Information to the extent necessary to enable the Candidate to participate in the Work Experience period;

* 1. **"Confidential Information"** means any and all information which is disclosed in writing, orally or by any other means by or on behalf of the Company or its Associated Companies to the Candidate in connection with the Work Experience period whether before or after the date of this Undertaking, including without limitation:

1.3.1 financial records, sales targets, sales statistics, market share statistics, prices of goods and services, research reports, surveys, intellectual property, advertising and promotional material;

* + 1. dealings and relationships with third parties, including but not limited to customers and suppliers;
		2. current and future projects, business developments, planning, business ideas and concepts; and
		3. data, know‑how, formulae, processes, designs, plans, photographs, drawings, specifications, programs, models, presentations whether produced by computer or otherwise,

and any such information relating to an Associated Company of the Company shall be deemed Confidential Information of the Company.

* 1. **“The Certificate”** means the ESA Work Experience Certificate (whether at the gold, silver or bronze level) being undertaken by the Candidate;
	2. **“The Work Experience period”** means the period being undertaken by the Candidate in order to achieve the Certificate (whether at the gold, silver or bronze level).

**2. Confidentiality Undertaking**

2.1 The Candidate undertakes to the Company (each paragraph to be deemed to be given as a separate undertaking):

2.1.1 to use all Confidential Information exclusively for the Authorised Use;

2.1.2 to maintain confidential all Confidential Information that it may acquire in any manner;

2.1.3 except as specifically authorised in writing by the Company, not to directly or indirectly use or disclose any of the Confidential Information in whole or in part save for the purposes of and in accordance with this Undertaking;

2.1.4 not to make any announcement or disclosure in connection with the Work Experience period and not to instruct any other person to do so without the prior written consent of the Company;

* + 1. not to contact or communicate with the Company other than through the authorised persons nominated by the Company from time to time with regard to the Work Experience period; and
		2. not to make contact with the Associated Companies of the Company in relation to the Work Experience period without written consent from the Company.

**3. Exceptions**

The undertakings set out herein shall not apply to any Confidential Information which:

3.1 the Candidate can show was already in his/her possession and at his/her free disposal before disclosure by the Company or its Associated Companies; or

3.2 is disclosed to the Candidate without any obligations of confidence by a third party who has not derived it directly or indirectly from the Company or its Associated Companies; or

3.3 is disclosed by the Candidate with the prior written approval of the Company; or

3.4 is or becomes generally available to the public through no act or default on the part of the Candidate; or

* 1. is required to be disclosed by law or the rules of any governmental or applicable regulatory authority or under the rules of any recognised stock exchange, provided that the Candidate (where lawful) consults first with the Company on the proposed form, nature, timing and purpose of such disclosure.

**4. Confidentiality Measures**

4.1 To secure the confidentiality attaching to the Confidential Information, the Candidate undertakes to the Company (each paragraph to be deemed to be given as a separate undertaking):

4.1.1 to keep all documents and any other material bearing or incorporating any of the Confidential Information at the Company’s usual place of business in the United Kingdom;

4.1.2 to ensure proper and secure storage of all Confidential Information. As a minimum requirement of this paragraph 4.1.2 the Candidate shall protect the Confidential Information using no less than the same standard of care that the Candidate applies to his/her own Confidential Information; and

4.1.3 not to make any copies in any form of any documents containing Confidential Information unless essential to the Work Experience Certificate.

4.2 The Candidate further undertakes to the Company that he/she shall at the request of the Company at any time deliver up to the Company all Confidential Information provided to the Candidate and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made by the Candidate and use all reasonable endeavours to ensure that anyone to whom the Candidate has supplied any Confidential Information destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them.

**5. Term**

This Undertaking shall remain in full force and effect for 3 years unless and until it is expressly terminated earlier by the Company in writing.

 **6. Miscellaneous**

6.1 The Candidate acknowledges and agrees that:

6.1.1 The failure by the Company to enforce at any time any one or more of the terms or conditions of this Undertaking shall not be a waiver of such terms or of the right at any time subsequently to enforce all terms and conditions of this Undertaking.

6.1.2 All rights in the Confidential Information are reserved by the Company and no rights or obligations are granted or to be implied from the provision by the Company of the Confidential Information pursuant to this Undertaking.

6.1.3 If any provision of this Undertaking shall be held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, such provision shall be divisible from this Undertaking and shall be deemed to be deleted from this Undertaking and the validity of the remaining provisions shall not be affected.

**7. Governing Law**

This Undertaking and all matters arising from it shall be governed by and construed in accordance with English law and the Recipient irrevocably submits to the exclusive jurisdiction of the English courts.

**The Candidate has executed this Undertaking by its duly authorised representative(s) on the date set out above.**

**SIGNED** for and on behalf of ***[name of candidate]***

Signed………………………………………………………….….

Name…….............................................................

Title.......………......................................................

Date………………………………………………………………….

**SIGNED** for and on behalf of ***[name of the Company]***

Signed……………………………………………………………....

Name……...............................................................

Title.......………........................................................

Date………………………………………………………………...…