
SAMUEL LEVY

**GENERAL TERMS AND CONDITIONS OF
SERVICE**

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INTRODUCTION:

The web and IT industries are still relatively young and changing rapidly. Terms and definitions are still not consistent and the final solutions are often intangible and hard to define. Care must be taken to ensure that all parties in a project are working towards the same goals, and that all parties are considered when planning and executing a project.

I, **Samuel Levy**, strive to ensure that Your (**the Customer's**) requirements are clearly defined before commencement of a project, so that unexpected situations don't lead to incorrect and unrealistic expectations and eventually to disagreements or disputes.

I also undertake some projects as a subcontractor to a primary contractor providing Web or IT services to a customer. This situation can cause misunderstandings in relation to roles and responsibilities for all areas of a project.

At all times I endeavour to be understanding of Your situation and often extend generous terms in the form of undertaking additional tasks and providing further help, flexible payment terms and additional support and advice. However, in order to maintain a profitable business so that I may be here to support You long into the future, I must ensure that there is a general understanding of fair practice and the risks and requirements for an IT project.

The following information is provided in a "plain English" format as a guide to You. Unless otherwise noted, these General Terms and Conditions of Trade (**the Terms**) form the basis of any agreement between You and Me.

Please ensure that You are familiar with these terms and conditions and ask for clarification if necessary.

This document defines terms and conditions under which I provide all development, consulting and support services. You agree to these terms when you engage me to provide any services or accept my Service Agreement.



AGREED TERMS:

1 QUOTATIONS AND VARIATIONS

1.1 Quotes

Quoting fixed fees on IT projects is often difficult and sometimes impossible.

I can only provide fixed fee estimates if You can provide a completely detailed unambiguous project specification of all work required (analogous to architectural plans for a building project). This includes mock-ups of all web pages, a full site map of all content, schemas of all databases, a clear narrative of how the system will function and all possible feature requirements including load capacity, accessibility, numbers of visits, colours and branding, hosting and support.

1.2 Architecture

I can assist with "architecture" consultancy to help You develop an adequately detailed specification. I recommend this service to all customers embarking on projects valued over \$10,000. This consultancy will be billed at standard hourly rates.

Where You are unable to provide a full project specification, the fees will be provided as estimation **only** based on specified estimations of hours and **will** vary if the work hours vary more than 10% from those estimated.

I **require** a full project specification for all projects valued over \$20,000 and will not commence project development until the full project specification has been finalised and agreed upon, and associated proposals and contracts are accepted.

1.3 Time

Fee estimates and quotations are only valid for 30 days and if not accepted by You in writing may be varied after that time.

2 ACCEPTANCE OF CONTRACT

I will not commence any project of over \$2000 in value without an executed service agreement stating the scope of work, acceptance of the fees and these terms and conditions, and payment of any deposit outlined in the contract or these terms and conditions.

3 LEAD TIME TO COMMENCE PROJECTS

My current workload varies considerably from month to month. Under normal circumstances it may take more than 14 days from when a service agreement is executed and deposit paid for me to commence the work specified.

At the time of quoting the project, I may specify a commencement time. However, since the time between providing a quote and written acceptance may be many weeks, I am unable to guarantee these times. Please feel free to re-confirm the working timeframes when accepting my quote.

4 SUPPORT AND RESPONSE TIMES

4.1 General Support

This document provides only general guidelines for support and is intended only to cover support during project development.

I do not guarantee that emergency support will be available at all times. Support response is provided on a "best effort" basis. I do not manage additional resources unless specifically agreed, so I am unable to provide an instant response to all issues that may arise.

I generally set aside a percentage of my resources at any time to deal with ongoing maintenance and emergency issues and will respond as best I can at any time.



Generally this means that I strive to respond to:

1. Urgent and critical issues within 8 *working* hours
2. Less critical tasks within 24 *working* hours

4.2 Support Hours

I work normal business hours, Monday to Friday, Brisbane time. Support outside these hours must be arranged in advance.

4.3 Formal Support Agreement

If You are likely to be running web and software systems that are critical to the operations of Your business then You should consider if these responses are adequate. If they are not, please contact me to arrange a formal support agreement that meets Your needs.

Note: Support charges will depend on whether your project is currently in a *warranty period* or not – see 9. and 10. below for more details.

5 TIME TRACKING AND REPORTS

5.1 General Time Tracking

I use time tracking software to record and report all hours on all projects. These reports are generally only for internal accounting purposes, but may under some circumstances be provided to Customers upon request.

5.2 Request for Detailed Tracking

If You requires detailed time tracking for a project, then this must be specified prior to quotation and commencement of the project.

5.3 Review of Time Tracking

Where time sheets are provided, You have seven (7) days to review the times and lodge any query or complaint. After 7 days the times will be deemed accepted and subject to billing.

6 DEVELOPMENT

6.1 Hosting

I do not provide hosting, but am willing to suggest companies which may provide affordable and reliable hosting services to meet the needs of your project. I am capable of working with existing hosting environments and infrastructure, so long as access and information is provided to me.

6.2 Development, Testing and Staging Environments

I will usually develop and test all software locally, before putting it in a production environment and re-testing. If You have an existing system which may be affected by this, I may suggest setting up a staging environment to test changes before releasing them onto your production system. If You cannot provide a staging environment, or does not wish to, I cannot accept liability for any accidental downtime, bugs, or problems affecting You business which may have otherwise been avoided by using a staging environment. I will always strive to ensure that all code is safe, reliable, and bug free before releasing it, but use of a proper staging environment can greatly reduce the risk of any accidental damage.

6.3 Backup of software

In my role as a software development provider I do not automatically keep an ongoing backup of your software beyond the end of the *warranty period*.



If you want me to keep ongoing backup of your software then this must be specified in a separate support agreement.

6.4 Source Code Management

I will use a Source Code Management (SCM) tool locally in most projects, to ensure that changes I make can be tracked, rolled back, and stored. This archive of code will not be included or provided to You unless specifically requested.

My preferred choice of SCM is Git or Subversion (SVN) software, however the choice of SCM software used in any project will be at My discretion.

I suggest that all customers should have and maintain their own SCM tool for their code, as it will hold important historical information for future development. If You provide access details for their own SCM tool, I will use this instead of my own.

7 FEES

7.1 Standard Consulting Rates

Due to the nature of Web and IT design I generally review my rates on a project-by-project basis. My Standard Consultation Rate is \$90/hour. My Emergency Consultation Rate is \$120/hour.

7.2 Specific Skills

Fees will depend on the specific skills required at the time of a project and will vary if additional resources are required at short notice or with specialised skills. The following table outlines fees charged in respect of certain skills, but is in no way exhaustive.

Specialised Skill Utilised	Rate (\$ per hour)
Software Architecture and Requirements Analysis	140
Project Management	110

7.3 Calculation of Time

All time is calculated in minimum 30 minute increments. Visits to your site/meetings are charged including travel time with a minimum of 2 hours. If You fail to attend a meeting without sufficient prior notice, the meeting will be charged as if it occurred for a minimum period of 30 minutes.

7.4 Work Outside Business Hours

Work specifically requested to be done outside normal business hours may incur a 20% surcharge on normal rates and will be billed at a minimum of 2 hours, unless otherwise negotiated.

7.5 Work at Short Notice

Work required at very short notice may be charged at an *emergency* rate, which is significantly higher than my standard consulting rate. This is to offset the fact that I may have to set aside other planned work, in order to complete the emergency task. I cannot accept the risk of losing progress on another planned project and potentially incurring outside costs in resourcing that project without being properly compensated. Emergency work will be billed at a minimum of 2 hours.

7.6 All Work is Billable

It is a commercial reality that my business is based on the provision of advice and services. It is therefore imperative that I have the right to charge for those services on a fair hourly rate basis. This includes, but is not limited to, phone calls, emails, all



administrative tasks, general advice or support, estimating and all other software and design services.

Often tasks requested are small, or requested on an ad-hoc basis. Sometimes tasks are requested with an urgency that does not allow for formal agreements. And it is economically impractical to impose the administrative overhead of a formal contract or agreement on very small tasks.

If a formal support agreement or consulting contract is not already in place, when you request that I carry out work, however informally, I may either choose not to carry out the work until a formal agreement is signed, or if I do carry out the work you should expect to be billed on an hourly basis at My standard current rates. If you need clarification on billing then you must request this in advance. While I do not wish to turn away work please understand that there are times when this is unavoidable so that I can meet my current work commitments.

I strive to be reasonable and from time to time I offer free consultations or don't charge for minor tasks, but this should not be seen as a change of policy or precedence - you must expect at all times that you will be billed for my services.

8 PAYMENT TERMS

8.1 Payment Terms

If not otherwise specified, payment terms will be as follows:

- (a) Projects up to \$4,000 - billed upon completion, payable in net within 10 days.
- (b) Projects from \$4,000 to \$10,000 - require a 20% deposit. Final amount will be billed upon completion and payable in net within 10 days.
- (c) Projects over \$10,000 - Specific terms may be negotiated: generally require 15%-20% deposit and all work will be billed after every 80 hours work, payable in net within 10 days from invoice date.
- (d) Casual work will be billed every 40 hours or less if the task is smaller.

8.2 Payment not Conditional

These payment terms are not conditional upon terms of any other contract You may have entered into. In particular, if You are the primary contractor on a project and I provide services as a subcontractor to You, the terms of payment to me will not depend on any arrangements You may have with your customer.

8.3 Payment Condition Precedent

Any transfer of ownership, copyright or right to use software, materials or systems developed by myself (see 12. below) is conditional on full and final payment of all charges associated with the work. If the agreed payment terms are not met I reserve the right to remove, confiscate, suspend any software, applications and content associated with the charges.

8.4 Penalty for Late Payment

Failure to pay by the due date of an invoice may result in default interest being charged. Default Interest is charged at 20% per annum starting with the first day that the invoice is overdue. Interest is charged and compounded on a daily basis. Default Interest may be charged entirely discretionarily and failure to charge the fee should not be seen as a change of policy or precedence.

Once the fee has been outstanding for 21 days, the debt may be handed on to a collection agency, and I will reserve the right to perform no more work for You.

If You have reason to believe that You cannot reasonably pay the full invoice by the due date, You should contact me to organise more acceptable payment terms.



9 TESTING AND ACCEPTANCE OF PRODUCT

9.1 Software Testing

Unless specified otherwise, I will conduct functionality testing against specified requirements on all software before delivery to You. This work will be a paid part of the contract.

If you do not require such testing then this should be specified before the project is quoted. If you do require such testing then you must provide clearly specified requirements for testing. Note also, that if such testing is not carried out, then I am unable to provide any warranty (see 10. below): in particular, on hourly rated arrangements I must be given the opportunity to carry out a reasonable round of testing and defect fixing as part of my contract before delivery.

If metrics in production such as user visits, numbers of records, amount of data, type of data etc. vary from that specified, then I can not guarantee the performance of the software under the varied conditions.

Of course, if these metrics are not specified at all, then naturally I can take no responsibility for how the software performs under specific conditions. Thus it is extremely important for You to provide detailed specifications of all possible scenarios *prior to project quotation*, and a detailed list of any specific testing that may be required prior to software going live.

9.2 User Acceptance

It is Your responsibility to do prompt, thorough User Acceptance testing to ensure that the software meets the agreed specifications and to notify me within 60 days of the delivery date if a fault is found. Defects reported outside this period will be fixed at regular contracting hourly rates.

9.3 Web Browser Testing

Websites are viewed using a Web Browser Software. There are many different web browsers in use at any time and the developers are constantly changing how the browsers perform. In addition, browser plug-ins such as Flash, JavaScript, Java, PDFs, Video, Audio are constantly changing and may or may not be installed on a viewer's machine.

Due to the fact that different browsers interpret HTML code differently it is not possible to ensure that a website looks the same in all browsers. Common variations may include:

- (a) different screen resolution
- (b) different fonts and font sizes
- (c) different colours
- (d) different positioning and padding between elements

I have decided to follow Google's lead and only support the two latest versions of the following browsers:

- (a) Internet Explorer
- (b) Firefox
- (c) Safari (not including mobile/iOS devices)
- (d) Google Chrome

Note: Other browsers might work. However, I can not guarantee that features will work as expected.

I can only be expected to design websites to work with current browser technology, and can not guarantee that the site will function properly in future web browsers.



If you have specific functionality requirements that must be available on specific browsers then this must be specified at the time of scoping the project.

10 WARRANTY AND LIABILITY

10.1 Statutory Warranty

Where an issue arises that is caused by:

- (a) the incomplete delivery or lack of adequate care and skill in my Services; or
 - (b) the final product does not fit the purpose or give the results intended by You
- and I assisted with the “architecture” process pursuant to clause 1.2 or full specification of the project was provided by You, I will work with You to repair the issue at my own cost subject to clause 10.2.

10.2 Limitation on Warranty

You accept that:

- (a) work to be performed at My own cost pursuant to clause 10.1 is performed on a reasonable basis and only to correct issues which breach the Warranty. To avoid ambiguity, where full specification of the project was not provided by You, I will only cover My costs for work to resolve issues that clearly do not fit a specific purpose specified by You. I will not be responsible for matters that were not adequately specified by You.
- (b) the services provided under this agreement are not warranted to be uninterrupted or error free. By nature, software or code may contain or develop errors which are not caused due to a lack of adequate care and skill by Me. It is imperative that You enter into a Service Agreement for ongoing support in matters not covered by this Warranty.
- (c) the services may not meet Your goals and objectives, except for where they are expressly communicated by you during specification of the Project.
- (d) All warranties not included in clause 10.1, whether express, implied, statutory or otherwise, relating in any way to the subject matter of these Terms, are excluded to the greatest extent allowable under any relevant law. Where any statute implies any term into this Agreement and that statute avoids or prohibits provisions in a contract excluding or modifying the application of or liability under such a term, then the term will be taken to be included in this agreement. However, My liability for any breach of the term will, if permitted by that statute, be limited, at My option, to the resupply of the services again, or payment of the cost of having the services supplied again.

10.3 Limitation on Liability

I will not be liable to You or any other party for:

- (a) any cost, loss or liability (including loss of profit or other consequential damage) arising from My supply or failure or delay in supplying the Service;
- (b) the content, context or confidentiality of any communications made using the Service;
- (c) loss or damage caused by third party software applications forming part of the Service.
- (d) any costs, claims, loss or damage of any kind resulting from the fraudulent, negligent or otherwise unlawful behavior of You;
- (e) any costs, claims loss or damage arising from any information, data or other material provided to Me by or on behalf of You.



10.4 Customer Responsibility

You accept responsibility for all information and material You provide as part of the Service, and indemnify Me and hold Me harmless against any liability in relation thereto. In particular You undertake that You shall not publish or issue any information which is illegal or defamatory. You also acknowledge that I do not vet or approve any information or material available through the Service and that I do not accept any liability. To the full extent permitted by law, You access and use such information and material at Your own risk.

You indemnify me against all costs, expenses, loss or liability that I may suffer (directly or indirectly) resulting from:

- (a) Your breach of these terms;
- (b) Your use or misuse of the Service;
- (c) the use or misuse of the Service by any person using Your account; and
- (d) publication of defamatory, offensive or otherwise unlawful material on any website forming part of Your Service.

10.5 Warranty Period

Notwithstanding clauses 10.1 and 10.2, I provide a 'Warranty Period' for all software I *develop*, during which time I will provide support services relating specifically to the development and delivery of the software.

Provided I have carried out functional software testing pursuant to clause 9 before delivery, then I will endeavor to ensure the software provided retains all its functionality and conforms to the specifications during a *warranty period* of 60 days from the *delivery date*.

Note, if not otherwise specified, the *delivery date* will be defined as the date that the software is first used by You or placed into public view, which ever is the earliest.

I also agree to provide, at no additional cost to You, reasonable technical support during the 60 day *warranty period* to maintain the software and correct any reported defects. Such maintenance and updates may include correcting any remaining errors or any failure of the software to conform to the specifications, but support and assistance shall not be provided for the development of enhancements or variations to the originally contracted project.

It should also be noted that **no warranty** is offered on third party software and components that may make up part of the solution provided. These components may have separate warranties and you should make sure you are familiar with them. See clause 11 in this regard.

During production and the *warranty period* I require full and exclusive access to the hosting/production environments and source code. I may provide 'read only' access to source code during development, but all warranties will be void if there is any unapproved 'write' access to the source code or hosting/production environments.

10.6 Technical Support After Warranty Period

After the 60 day *warranty period* I may provide ongoing support at my discretion. All ongoing support will be charged at regular contracting hourly rates.

11 THIRD PARTY SOFTWARE AND COMPONENTS



11.1 Use of Third Party Software

When developing solutions for customers I will often consider the use/inclusion of third party software and components. This is most often done to reduce development time and costs. In some cases this will involve third party commercial software for elements such as shopping carts, menus, payment gateways etc. In many cases this will include open-source and free components. In all cases these components come with their own licenses and warranty arrangements.

Subject to clause 11.2, where I utilize third party software or components I warrant that:

- (a) The relevant software has a suitable licence based upon your project specification; and
- (b) You will be provided with the necessary licence for its use.

11.2 Licensing Considerations

If you have specific licensing requirements then you must make me aware of them prior to project quotation as this may impact on the choice of these components. For example, some open-source software comes with a GPL license which requires that all software that is linked to it must also carry the GPL license. This may not be acceptable to You and would preclude the use of those components. I must know this prior to quoting and designing a solution as this will impact on any quoted fees.

11.3 Warranty Considerations

Naturally I am unable to provide any warranty on third party components. In the case of commercial software a warranty is usually provided with the software. However, in the case of open-source software it is usual that no warranty is provided at all. Thus, faults in open-source components must be fixed at Your cost regardless of whether the project is in a warranty period or not. If you are not willing to accept this arrangement then you must advise me prior to quoting as this will impact on any quoted fees.

12 OWNERSHIP OF SOFTWARE AND MATERIALS

12.1 Ownership

Unless otherwise specified I retain ownership of all original artwork, software and HTML code, in any media, including digital files, whether preliminary or final. If You require ownership/copyright of any materials then this must be nominated in the Schedule of Work prior to quotation and will become part of the quotation and final contract.

12.2 Your Licence

Upon full payment of My fees, You will be granted an exclusive licence to allow Your commercialisation, use and exploitation of the Product.

13 CUSTOMER PROVIDED MATERIALS

13.1 Your Obligations

In most projects, it is necessary for You to provide materials such as logos, images, text, site content and data to Me. Where You provide such materials, it is Your responsibility to ensure:

- (a) the accuracy of the content; and
- (b) that You have full rights to use the content for its intended purpose; and
- (c) that it does not violate any licenses or copyright.

If You change content or images after it has been provided to me then additional fees will be charged for work hours involved.



13.2 Format

Generally all materials must be provided in digital format. Documents should be provided in plain text or OpenOffice or Microsoft Word format. Images should be provided in .jpg format. Logos should be provided in .png, or .gif format. Data should be provided in .csv format. Any specific colours should be provided in RGB (Pantone is not acceptable as it can not be converted to web colours accurately).

13.3 Rights

Unless otherwise agreed, all materials You provide to Me will remain Your property or the property of the respective owner.

13.4 Proofed Website Copy

I do not provide copy writing or proofing services. In general I do not develop website content unless specifically scoped in a project. All copy must be provided by You in a final proofed digital format. I will simply copy-paste content directly into the final site designs and will not check content for errors. Any copy corrections will be charged to You.

In the case of a Content Management System (CMS) based website, it is generally accepted that You are responsible for entering and publishing all site content. I will hand over site editing tools and provide documentation (and training if scoped). It is Your responsibility to become familiar with the site editing tools and enter all necessary content prior to the site launch.

The delivery date of a completed CMS based website is not dependant on completion or testing of customer copy. Any delay in the creation of content by You will not delay the final delivery and associated invoicing deadlines.

14 NON-SOLICITATION

Neither party may, without the prior express written consent of the other party, employ or engage the services of the other party's representatives (including any individual or company or independent contractor) during their participation in the engagement or during the twelve (12) months thereafter.

15 ATTRIBUTION AND PROMOTION

I reserve the right to place a link to my website on any website or software I develop. I may also use Your name and website URL and images of the website/software in any promotional materials about myself with your written consent.

16 DESIGNATED CONTACTS

In order to minimise confusion and reduce the possibility of misunderstandings, You must nominate designated persons who will send and accept all deliverables and receive and make all communications between myself and You. Neither party shall have any obligation to consider for approval or respond to materials submitted other than through the designated persons listed above. Each party has the right to change its designated person upon 7 day(s) notice to the other.

During the course of any project, I accept requests for additional work only from the designated contacts.

17 TERM

Unless otherwise agreed in writing, these Terms will remain in place until 1 year after the *delivery date* or *end date of any written agreement* (which ever is the latest).

18 FORCE MAJEURE

18.1 Excuse from performance of Obligation

If any party is prevented, hindered or delayed from performing any of its Obligations under these Terms (other than an obligation to pay money) by an event of Force



Majeure, then as long as that situation continues, that party shall be excused from performance of such obligations to the extent it is so prevented, hindered or delayed, and the time for performance of such obligation shall be extended accordingly.

18.2 Notification

A party affected by an event of Force Majeure shall immediately notify the other parties of its occurrence and its effect or likely effect, and (subject to **clause 18.3**) use all reasonable endeavours to minimise the effect of the event of Force Majeure and to bring it to an end.

18.3 Industrial Action

No party shall be obliged to settle any strike or other industrial action, dispute or disturbance of any kind except on terms wholly satisfactory to it.

19 PROPER LAW - JURISDICTION

19.1 Choice of Law

These Terms shall be governed by and construed in accordance with the laws of Queensland.

19.2 Jurisdiction

- (a) (Queensland Courts): Any action, suit or proceeding relating in any way to these Terms may be instituted, heard and determined in a court of competent jurisdiction in Queensland.
- (b) (Submission to jurisdiction): Each party irrevocably submits to the non-exclusive jurisdiction of such court for the purpose of any such action, suit or proceeding.
- (c) (Waiver of objection): Each party irrevocably waives any objection which it may now or in the future have to the laying of venue of any action, suit or proceeding relating in any way to these Terms brought in such court.
- (d) (Waiver of inconvenient forum claim): Each party irrevocably waives any claim that any such action, suit or proceeding brought in any such court is brought in an inconvenient forum.

20 GENERAL PROVISIONS

20.1 Variations and waivers to be in writing

No variation, modification or waiver of any provision in these Terms, nor consent to any departure by any party from any such provision, shall be of any effect unless it is in writing, signed by the parties or (in the case of a waiver) by the party giving it. Any such variation, modification, waiver or consent shall be effective only to the extent to or for which it may be made or given.

20.2 Waiver

None of the following constitute a waiver or variation of a party's right to demand exact compliance by the other party with that party's obligations under these Terms:

- (i) failure or delay by a party to exercise any of that party's rights under this Deed;
- (ii) failure or delay by a party to insist on exact compliance by the other party with that other party's obligations under this Deed;
- (iii) any practice of the parties at variance with this Deed,

and a waiver by a party of a particular breach does not affect that party's rights in respect of any preceding, subsequent or other breach.



20.3 Survival of Representations and Warranties

All representations and warranties in these Terms or made in writing by the parties in connection with it shall survive Completion.

20.4 Joint and Several Obligations

If any party consists of more than one person, then the liability of those persons in all respects under these Terms shall be a joint liability of each two or more of those persons and a liability of each of those persons severally.

20.5 Liabilities to More than One Party

Any agreement, representation or warranty in favour of more than one party is for the benefit of each two or more of those parties jointly and each of them severally.

20.6 Severability

Any provision of these Terms which is illegal, void or unenforceable in a jurisdiction will, as to that jurisdiction, be ineffective to the extent of the illegality, voidability or unenforceability, but without invalidating the remaining provisions of these Terms or affecting the validity or enforceability of that provision in another jurisdiction.

21 CONFIDENTIALITY

21.1 Keep Confidential

Subject to clause 21.2 each party shall keep the contents of these Terms (and all books, documents and information made available to that party for the purposes of entering into these Terms or in the course of the performance of these Terms) confidential, and shall not disclose the same to any other person without the written consent of the other parties.

21.2 Exceptions to Confidentiality

Clause 21.1 shall not apply in the following circumstances:

- (a) any disclosure required by law;
- (b) any disclosure required by any applicable stock-exchange listing rules;
- (c) disclosure to solicitors, barristers or other professional advisors under a duty of confidentiality;
- (d) disclosure to a banker or other financial institution of the party, to the extent required for the purpose of raising funds or maintaining compliance with credit agreements, if such banker or financial institution first gives a binding covenant to the other parties to maintain confidentiality, in form and substance satisfactory to the other parties; or
- (e) disclosure to a related corporation of the party where such disclosure is required to enable a party to make proper performance of its obligations under these Terms, if such related body corporate first gives a binding covenant to the other parties to maintain confidentiality, in form and substance satisfactory to the other parties.