Marine Stewardship Council

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18 October 2023

[CAB]

[Client name]

MSC and/or ASC Chain of Custody
Certificate Transfer
Non-Disclosure Agreement Template

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| **1 Introduction** This Non-Disclosure Agreement (hereinafter ‘NDA Template) is to be used as part of a Chain of Custody (CoC) Certificate Transfer review ([GCR 4.11](https://www.msc.org/docs/default-source/default-document-library/for-business/program-documents/general-certification-requirements/msc-general-certification-requirements-2.6.pdf)), in addition to existing ISO 17065 confidentiality requirements. The NDA Template details the requirements with respect to the automated transfer of data between the new (or succeeding) Conformity Assessment Body (CAB) and their potential client (applicant or existing CoC certificate holder), to permit read-only access to CoC certificate holder data as part of a CoC Certificate Transfer review via the MSC scheme database. You (CAB) must offer the client the option to sign an NDA to provide confidence that the disclosure, transfer, and use of their data to or by you complies with specific confidentiality and data protection obligations (as set out in this NDA Template) during the review and preceding your contractual agreements. In all instances, you (CAB) must meet the MSC requirements. Please complete all [shaded fields], and where instructions are included in *italics*, please delete and replace with your specific information. All grey boxes containing instructions, the instruction text may be deleted, e.g. this ‘Introduction’ section. Please note that this NDA Template has been drafted from an English law perspective and focuses on the key confidentiality and data protection provisions that the MSC would expect an NDA to contain. The CAB should seek its own legal advice if it wishes to add additional contractual standard provisions, customary in its jurisdiction (such as provisions dealing with force majeure, entire agreement, no reliance/representation, no waiver, severance, assignment and subcontracting variation and third-party rights) [to further clarify the relationship between the parties and provide greater legal certainty in the event of a dispute.] The MSC is not responsible for any issues arising for any parties as a result of the parties adding such additional contractual provisions.Please note that the English language version of the NDA Template should always be signed and uploaded on the MSC scheme database regardless of any existing agreement in place between the CAB and client on organisational/ personal data disclosure; unless there is a written waiver from the client (i.e. the client has written to confirm an NDA is not required), in which case the written waiver must be uploaded on the MSC scheme database. The signed NDA, or a waiver must be uploaded onto the MSC scheme database on the agreed certificate transfer date. The client and/or CAB shall seek their own legal advice if language translation of the NDA Template is desired by either the client or the CAB. The MSC is not responsible for any issues arising for any parties as a result of the translation of the NDA Template. **Corporate Branding:**This NDA Template may be formatted to comply with the CAB’s corporate identity.  |

1. Chain of Custody certificate transfer Non-Disclosure Agreement (NDA)

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| --- | --- |
|  | DATE |
|  | BETWEEN | **Party A**[NEW OR SUCCEEDING CAB NAME] *(*the *“***New CAB***”)* | *Please insert CAB full company name | Registered office address | Contact name and title | Contact email address | Contact phone number*  |
|  | **Party B** [CLIENT NAME](the “**Applicant/ Certificate Holder**”) | Full company name |   |
| Registered office address |  |
| Contact name and title |  |
| Address for Notices (if different from registered office) |  |
| Phone number |  |
| Email address |  |
| **BACKGROUND**  |
|  | 1.Any company trading or handling products from a certified MSC fishery and/or Aquaculture Stewardship Council (ASC) farm is eligible to have a Chain of Custody (CoC) certification but the MSC and ASC will only recognise one (1) CoC certificate and its status (i.e. valid, applicant, cancelled, suspended, or withdrawn) for the stated scope activity for the company at any one time, as stated in the MSC scheme database. However, the CoC applicant and/or certificate holder can request a transfer of their CoC certificate to a new Conformity Assessment Body (CAB).2. The Applicant/Certificate Holder wishes to request a transfer of their CoC certification from their current CAB, [ADD NAME] (“**Current CAB**”) to the New CAB. As part of the CoC certificate transfer review process, the New CAB requires access to and use of the Applicant/Certificate Holder’s data including Confidential Information (as defined below at 1.2 of the Terms and Conditions) held by or on behalf of the Current CAB on the MSC scheme database.3. The Applicant/Certificate Holder wishes to ensure that the New CAB maintains the confidentiality of the Confidential Information.4. In return for the mutual benefits of disclosing and receiving the Confidential Information in connection with the CoC certificate transfer review process (the “**Permitted Purpose**”), the parties have agreed to comply with the terms of this NDA. |
| By signing below, the Applicant/Certificate Holder and New CAB confirm that they have read and agreed to the terms and conditions of this NDA in connection with the Permitted Purpose.  |
| **Signed for and on behalf of the [new/ succeeding CAB Name] by:** Signed: ..................................................... Name: ......................................................  Position: ...................................................  Date: ........................................................   | **Signed for and on behalf of the [Client Name] by:** Signed: ..................................................... Name: ......................................................  Position: ...................................................  Date: ........................................................   |

Terms and conditions

The parties hereby agree as follows:

1. **DEFINITIONS**
	1. **“Agreement”** means the cover sheet of this Non-Disclosure Agreement (NDA) and all the terms and conditions (clause 1 to 5 inclusive) of this agreement.
	2. **“Confidential Information”** means all information in any medium or format (including written, oral, visual or electronic, and whether or not marked or described as "confidential") including personal data, together with any copies, which relates the Applicant/Certificate Holder, or to its employees, officers, customers, suppliers or other third parties, and which is directly or indirectly disclosed by or on behalf of the Applicant/Certificate holder to New CAB in connection with the Permitted Purpose, whether before or after the date of this NDA, and which would reasonably be regarded as confidential, BUT shall not include:
	(i) information which is in the public domain other than as a result of a breach of this NDA or any separate confidentiality undertaking between the parties;
	(ii) information which the New CAB received, free of any obligation of confidence, from a third party which was not itself under any obligation of confidence in relation to that information, whether before the date of its disclosure by Applicant/Certificate Holder or otherwise; or
	(iii) information which the New CAB can show by its written or other records was developed or created independently by the New CAB.
	3. **“Data Protection Legislation”** all applicable laws relating to processing of personal data and privacy that may exist in any relevant jurisdiction, including, where applicable, the guidance and codes of practice issued by supervisory authorities.
	4. **“Law”** means all applicable laws, regulations, and regulatory constraints.
	5. **“Process”** meansany operation or set of operations performed on personal data, whether or not performed by automated means, including without limitation access, use, disclosure and storage.
	6. **“Representatives”** means in relation to New CAB, its employees, consultants, agents and advisors.
2. **CONFIDENTIALITY AND DATA PROTECTION OBLIGATIONS**
	1. In return for the Applicant/Certificate Holder making Confidential Information available to New CAB, New CAB confirms to the Applicant/Certificate Holder that it shall:
	(i) keep the Confidential Information secret and confidential;
	(ii) not use or exploit the Confidential Information in any way, except in connection with the Permitted Purpose; and
	(iii) only make disclosures of the Confidential Information in accordance with Clause 4. Any other disclosure can only be made with the Applicant/Certificate Holder’s prior written consent.
	2. All Confidential Information shall remain the property of the Applicant/Certificate Holder and the Applicant/Certificate Holder reserves all rights in its Confidential Information. Nothing in this NDA or the disclosures envisaged by this NDA shall (except as expressly agreed otherwise in this NDA) operate to transfer, or operate as a grant of any licences or right to use, to any intellectual property rights in the Confidential Information.
	3. New CAB shall use all reasonable endeavours to ensure that Confidential Information within its control is kept securely protected against theft or unauthorised access, and in any event shall maintain its security, integrity and confidentiality to at least the same standard as it applies to its own confidential information and shall promptly notify the Applicant/Certificate Holder in the event that there is a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to any Confidential Information.
	4. To the extent that the Confidential Information contains any personal data, New CAB agrees to:
	(i) comply with its obligations under applicable Data Protection Legislation when Processing such personal data (including in respect of any onward transfers of such data to its Representatives); and
	(ii) only Process such personal data for the Permitted Purpose. If the Applicant/Certificate Holder is required to transfer personal data to a New CAB in a country that is restricted under applicable Data Protection Legislation, the parties shall take steps to ensure that any appropriate safeguards are put in place to ensure such transfers can take place lawfully and in accordance with such Data Protection Legislation.
3. **TERM AND TERMINATION**
	1. This NDA shall commence on [the date of signature of the Agreement] and shall continue until the completion of the Permitted Purpose unless terminated earlier in accordance with its terms.
	2. Either party may terminate this NDA without cause by giving the other party not less than 30 calendar days’ prior written notice to terminate.
	3. New CAB’s obligations under this NDA shall not be affected by any termination of this NDA.
	4. Termination of this NDA shall not affect the parties' entitlement to any accrued rights or remedies.
	5. On termination or expiry of this NDA (i.e. completion of the certificate transfer or declined transfer), the New CAB shall, subject to 3.6, return or destroy all the Applicant/Certificate Holder’s Confidential Information and certify in writing to the Applicant/Certificate Holder that it has complied with this clause.
	6. New CAB may retain documents and materials containing, reflecting, incorporating, or based on the Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this NDA shall continue to apply to any such retained documents and materials.
4. **PERMITTED DISCLOSURES**
	1. New CAB may disclose the Confidential Information to its Representatives that need to know the relevant Confidential Information for the Permitted Purposes only, provided that New CAB:
	(i) informs the Representatives of the confidential nature of the Confidential Information;
	(ii) procures that each person to whom the Confidential Information is disclosed is subject to written contractual confidentiality obligations which are no less onerous than those set out in this NDA; and
	(iii) shall be responsible for all acts and omissions of Representatives as though they were its own acts or omissions under this NDA.
	2. New CAB may disclose the Confidential Information to the minimum extent required to any regulator, law enforcement agency or other third party if it is required to do so by law, regulation, or similar authority. In those circumstances the New CAB shall (to the extent practical and lawful to do so):
	(i) notify the Applicant/Certificate Holder in writing as soon as practicable before the disclosure;
	(ii) use all reasonable endeavours to consult with the Applicant/Certificate Holder with a view to agreeing the timing, manner and extent of the disclosure; and
	(iii) use all reasonable endeavours to obtain written confidentiality undertakings in its favour from the third party.

1. **GENERAL**
	1. The Applicant/Certificate Holder warrants that it has the right to disclose (whether directly or indirectly) the Confidential Information and to authorise New CAB to use the Confidential Information in connection with the Permitted Purpose.
	2. The Applicant/Certificate Holder gives no warranties or representations (express or implied) (either on its own behalf or that of its directors, officers, employees, agent, advisers or other third parties) with regard to the accuracy, quality, timeliness, reliability or completeness of any Confidential Information disclosed under or in connection with this NDA, or otherwise in relation to such Confidential Information except as expressly stated above. All Confidential Information is supplied on an “as is” basis, and New CAB is responsible for making its own evaluation of the Confidential Information.
	3. New CAB acknowledges that damages alone would not be an adequate remedy for its breach of this NDA Accordingly, without prejudice to any other rights or remedies it may have, the Applicant/Certificate Holder shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this NDA.
	4. This NDA and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of [England and Wales].
	5. Each party irrevocably agrees that the courts of [England and Wales] shall have [exclusive OR non-exclusive] jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this NDA or its subject matter or formation.
2. Template information and copyright

The Marine Stewardship Council’s ‘MSC Chain of Custody Certificate Transfer Non-Disclosure Agreement Template v1.0’ and its content is copyright of “Marine Stewardship Council” - © “Marine Stewardship Council” 2023. All rights reserved.

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| **Template version control** |  |
| Version | Date of publication | Description of amendment |
| 1.0 | 18 October 2023 | N/A – First version |

A controlled document list of MSC program documents is available on the MSC website (msc.org).

Marine Stewardship Council

Marine House

1 Snow Hill

London EC1A 2DH

United Kingdom

Phone: + 44 (0) 20 7246 8900

Fax: + 44 (0) 20 7246 8901

Email: standards@msc.org