# MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (this “**Agreement**”) is entered into as of the date of full execution hereof by and between Select Carnival North American Operating Company (“**Company**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Vendor**”), a \_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with its principal place of business located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

WHEREAS, Company and Vendor have entered into or will enter into discussions with each other in connection with developing a business relationship with Company, and the possibility of engaging in one or more business transactions (the “**Purpose**”); and

WHEREAS, in their discussions, each party hereto contemplates furnishing to the other information which is non-public, confidential or proprietary in nature, the confidential nature of which each party desires to maintain.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Company and Vendor hereby agree as follows:

1. In connection with the Purpose, each of the parties may receive information concerning the other (and with respect to Company, information of Carnival Corporation, Carnival plc and/or subsidiaries or brands of such entities (collectively with Company, “**Carnival Corporation & plc**”)) which is non-public, confidential or proprietary in nature (“**Confidential Information**”). For purposes of this Agreement, a party disclosing Confidential Information shall be hereinafter referred to as the “**Disclosing Party**” and a party receiving Confidential Information shall be hereinafter referred to as the “**Receiving Party**”. Each of Company and Vendor may be considered a Disclosing Party or a Receiving Party, as the case may be. This Agreement shall apply to all Confidential Information, whether disclosed before or after its execution.

1. Confidential Information includes, without limitation, any information of any nature and in any form (whether oral, written, electromagnetic or otherwise) disclosed by a Disclosing Party or its Representative, or is otherwise learned by the Receiving Party or its Representative in connection with the Purpose, which relates in any way to the Disclosing Party’s (and in the case of Company for purposes of the definition of Confidential Information, to any member of Carnival Corporation & plc’s) business or operations, as well as such information relating to third parties that the Disclosing Party has an obligation to treat as confidential, whether tangible or intangible and in whatever form or medium, including, but not limited to: (a) information relating to the Disclosing Party’s current or contemplated operations, finances, personnel matters, accounting data, markets, internet marketing strategies or e-commerce operations, market analyses, market projections, consulting and sales methods and techniques, strategies, technology, equipment and software (including source code related thereto), customers, expansion plans, pricing plans, the identity of suppliers of goods and/or services (and their pricing) and competitors and other business data of the Disclosing Party; (b) Trade Secrets (as defined below) (including any improvements thereto), whether in development, prototype or finished form and whether patentable or not; and (c) processes, notes, analyses, compilations, studies or other materials prepared by the Receiving Party or its affiliates, directors, officers, partners, owners, employees, agents, independent contractors, auditors, attorneys, consultants or advisors, (collectively, “**Representatives**”) which contain or otherwise reflects such information and prospective business relations between the parties. “**Trade Secrets**” means information related to the services or business of the Disclosing Party that (i) derives economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain economic value from its disclosure or use; and (ii) is the subject of reasonable efforts by the Disclosing Party to maintain its secrecy (as described below). “Reasonable efforts by the Disclosing Party to maintain secrecy” shall include, but shall not be limited to, (x) marking any information reduced to tangible form clearly and conspicuously as confidential or proprietary in nature; (y) identifying any oral presentation or communication as Confidential Information immediately before, during or after such oral presentation or communication; or (z) otherwise treating such information as confidential or secret.
2. The following shall not be considered Confidential Information:

a. information that was already known to the Receiving Party or its Representatives without obligation of confidentiality prior to disclosure of it to the Receiving Party or its Representatives by the Disclosing Party or its Representatives;

b. information that is disclosed to the Receiving Party or its Representatives by a third party who, to the best of the Receiving Party’s or its Representatives’ knowledge, does not have any legal, fiduciary or contractual obligation of confidentiality to the Disclosing Party or its Representatives;

c. information that is in the public domain or hereafter enters the public domain through no fault of the Receiving Party or its Representatives; or

d. information that has been approved for release to the general public by a written authorization of the Disclosing Party or has been independently developed by the Receiving Party or its Representatives without use, directly or indirectly, of the Confidential Information received from the Disclosing Party or its Representatives.

4. The Confidential Information will be kept confidential and will not, without the Disclosing Party’s prior written consent, either directly or indirectly, be either (a) disclosed by the Receiving Party or its Representatives to any person or entity not a party hereto, in any manner whatsoever, in whole or in part, except as provided in Section 6 below; or (b) used by the Receiving Party or its Representatives other than (i) for internal purposes for evaluating and furthering the Purpose, or (ii) in collaboration with the Disclosing Party. The Receiving Party and its Representatives will hold the Disclosing Party’s Confidential Information in strict confidence and protect the Disclosing Party’s Confidential Information from disclosure using the same care the Receiving Party and its Representatives uses to protect its own confidential information of like importance, but not less than reasonable care. The Receiving Party and its Representatives may copy the Disclosing Party’s Confidential Information only as necessary for the Purpose and any reproduction must contain any and all notices or legends that appear on or in the original. All other rights in the Confidential Information are reserved by the Disclosing Party. The restrictions contained herein are in addition to any and all restrictions which may apply under applicable laws relating to Trade Secrets, it being acknowledged that all Confidential Information hereunder is being disclosed in strict confidence.

5. Without the Disclosing Party’s prior written consent, neither the Receiving Party nor its Representatives shall disclose to any person (except as otherwise expressly permitted herein) the fact that the Confidential Information has been, and is being, made available by the Disclosing Party or its Representatives or that discussions or negotiations between the parties are taking place or the status of any of the foregoing.

6. The Confidential Information shall only be revealed to the Receiving Party’s Representatives who: (i) need to know the Confidential Information for the Purpose; (ii) who are informed of the confidential nature of the Confidential Information; (iii) who are either under existing confidentiality obligations no less stringent than those in this Agreement or who are under an obligation of confidentiality via a legally recognized privilege (e.g., attorney-client privilege); and (iv) who agree not to disclose any of the Disclosing Party’s Confidential Information other than as permitted under the terms of this Agreement. A Receiving Party agrees to be responsible for any breach of this Agreement by any of its Representatives.

1. No rights or obligations other than those expressly recited herein are to be implied from this Agreement and the parties hereto agree that all Confidential Information disclosed shall remain the property of the Disclosing Party. The parties acknowledge and agree that this Agreement constitutes neither an authorization nor commitment by either party to enter into any future formal agreement or be otherwise obligated in connection with the Purpose (excluding the confidentiality obligations herein). Nothing herein shall in any way affect the present or prospective rights of the parties under the patent laws of any country, or be construed as granting any rights, by license (either express or implied) or otherwise, in or to any Confidential Information disclosed pursuant to this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information.
2. In the event that the Receiving Party or anyone to whom the Receiving Party transmits the Confidential Information pursuant to this Agreement receives a request of any type in any judicial or administrative proceeding or from any governmental or regulatory authority or otherwise becomes legally compelled to disclose any of the Confidential Information, the Receiving Party shall provide the Disclosing Party with notice of such event promptly upon the Receiving Party obtaining knowledge thereof (provided that the Receiving Party is not otherwise prohibited by law from giving such notice) so that the Disclosing Party may seek a protective order or other appropriate remedy. Such Receiving Party further agrees that (i) to the extent practicable, it will continually consult with the Disclosing Party on the advisability of taking steps to resist or narrow such request or compulsion and (ii) if it must disclose any of the Confidential Information pursuant to applicable law or legal process and no injunction has been granted restraining such disclosure, it may do so without violating this Agreement provided that it furnishes only: (a) that portion of the Confidential Information which its counsel advises in writing is legally required and in a manner reasonably designed to preserve its confidential nature and exercises its reasonable efforts to obtain reliable assurance that the Confidential Information will be treated as confidential; or (b) such Confidential Information to which the Disclosing Party agrees in writing.
3. Each Party shall, under this Agreement, comply with all applicable trade control laws, regulations, and restrictions imposed, administered or enforced by the United States, the United Kingdom, the European Union, and other jurisdictions (collectively, “**Trade Control Laws**”).  Each Party agrees that neither it nor its affiliates shall import, export, re-export, transfer, or release, directly or indirectly, Items provided by the Disclosing Party under this Agreement in violation of Trade Control Laws.  Vendor acknowledges that all products, materials, goods, software source code or object code, proprietary technical data and information, or any other items provided by Company pursuant to the Agreement (collectively “**Items**”) may be subject to Trade Control Laws. Each Party agrees to provide timely prior notification and identification of the applicable Trade Control Laws and export classification or designation before providing to the Receiving Party any Items that are: (1) controlled under the ITAR; (2) controlled on the Commerce Control List of the EAR for reasons other than anti-terrorism (“**AT**”) reasons; or (3) requiring a governmental authorization under Trade Control Laws for provision to the Receiving Party, including any subsequent re-export or transfer by the Receiving Party to any destination except to regions, countries, or parties that are prohibited or restricted by Trade Control Laws. In the event any Confidential Information is export-controlled, the Disclosing Party shall provide the Receiving Party with written notice containing the nature of the export-controlled information, prior to any exchange of export-controlled Confidential Information.
4. In the event that the Purpose is discontinued, or upon the written request of the Disclosing Party at any time, the Receiving Party shall redeliver to the Disclosing Party the copies of the Confidential Information that were furnished to the Receiving Party and any of its Representatives by or on behalf of the Disclosing Party and represent to the Disclosing Party that the Receiving Party has destroyed all other copies thereof, including all summaries, extracts, notes, drawings, blueprints, specifications, computer listings, tapes or disks, engineering drawings, technical records or papers, or any other papers or records whatsoever in whatever form or medium relating to the Confidential Information, other than a copy kept by the Receiving Party’s internal legal department and by any outside legal counsel and auditors, subject to continued compliance with the terms of this Agreement with respect to such Confidential Information and in accordance with the Receiving Party’s document retention policies. Such destruction shall be confirmed in writing by an officer of the Receiving Party to the Disclosing Party. All of the Receiving Party’s obligations hereunder and all of the Disclosing Party’s (and their respective Representatives’) rights and remedies hereunder shall survive any return or destruction of the Confidential Information.
5. The Receiving Party acknowledges that disclosure of the Confidential Information in violation of the terms of this Agreement could have serious consequences and that money damages would not be a sufficient remedy for any breach of any provision of this Agreement, and agrees that, in the event of any breach by the Receiving Party or its Representatives of this Agreement, the Disclosing Party shall be entitled to seek equitable relief (including injunctive relief (without the posting of any bond or other securities) and specific performance) in addition to all other remedies available to it at law or in equity.
6. Each party represents and warrants to the other party that (a) it has the requisite corporate authority to enter into and perform this Agreement, (b) this Agreement constitutes its legally binding obligation, enforceable in accordance with its terms, and (c) its execution and performance under this Agreement, including its disclosure of Confidential Information to the Receiving Party, will not result in a breach of any obligation to any third party or infringe or otherwise violate any third party’s rights.
7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the applicable state set forth below based upon the Carnival Corporation & plc signing party hereto, without giving effect to choice of law principles. Exclusive jurisdiction for litigation of any dispute, controversy or claim arising out of or in connection with this Agreement or the breach thereof shall only be brought in accordance with the terms of this Section 13. In connection with any litigation arising from this Agreement, the prevailing party shall be entitled to recover all reasonable costs incurred, including, but not limited to, reasonable attorneys’ fees for such litigation and any subsequent appeals.
8. **Carnival Corporation and Carnival Cruise Line**

Governing Law: State of Florida

Exclusive Jurisdiction: The Federal or State court with competent jurisdiction in Miami-Dade County, Florida

1. **Holland America Line and Seabourn**

Governing Law: State of Washington

Exclusive Jurisdiction: The Federal or State court with competent jurisdiction in King County, Washington

1. **Princess Cruise Line and Cunard**

Governing Law: State of California

 Exclusive Jurisdiction: The Federal or State court with competent jurisdiction in Los Angeles County, California

1. Neither party nor its Representatives shall make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information of the Disclosing Party; provided, however, that nothing in this Agreement shall prohibit or restrict either party’s right to develop, use or market products or services similar to or competitive with those of the other parties, as long as such shall not otherwise be a breach of this Agreement and each party acknowledges that the other party may already possess, market, or have developed or marketed products, services, concepts or ideas similar to or competitive with those of the other party disclosed in the Confidential Information. Further, the parties shall not be required to disclose any planning or other information to each other.
2. All Confidential Information is provided “AS IS”. Neither party, nor their Representatives, makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information provided or to be provided by it or on its behalf and the parties agree that neither party nor their Representatives will have any liability under the terms of this Agreement to the other party or its Representatives relating to the Confidential Information or for any errors therein or omissions therefrom. The parties further agree that they are not entitled to rely on the accuracy or completeness of the Confidential Information and that they will be entitled to rely solely on such representations and warranties as may be included in any definitive agreement with respect to the subject matter of these business negotiations entered into by the parties hereto, subject to such limitations and restrictions as may be contained therein.
3. The Vendor hereby acknowledges that the Vendor and its Representatives are (a) aware that the United States securities laws prohibit any person who has material, non-public information concerning a company from purchasing or selling securities of such company or from communicating such information to any other person under circumstances which it is reasonably foreseeable that such person is likely to purchase or sell such securities, and (b) familiar with the Securities and Exchange Act 1934, as amended, and the rules and regulations promulgated thereunder (collectively, the "**Exchange Act**"), and that the Vendor and its Representatives will neither use, nor cause any third party to use, any Confidential Information in contravention of such Exchange Act.
4. It is understood and agreed that no failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
5. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement which shall remain in full force and effect.
6. Notwithstanding anything contained herein to the contrary, nothing in this Agreement is intended to prohibit either party from availing itself of any protections or exercising any rights that are afforded under any applicable state or federal whistleblower protection laws.
7. This Agreement and the obligations set forth herein shall survive and continue in full force and effect for five (5) years from the date of disclosure of the particular Confidential Information, except with respect to trade secrets and other legally protected information such as personal data, as defined under applicable law, or payment card industry data, for which the Receiving Party’s obligations of confidentiality and non-use with respect thereto shall be perpetual. This Agreement may be terminated by either party at any time upon thirty (30) days prior written notice (which notice will set forth the effective termination date of this Agreement (the “**Termination Date**”)) in accordance with Section 22 hereof; provided, however, that the termination of this Agreement shall not relieve either party of any of its obligations or duties imposed under this Agreement with respect to any Confidential Information disclosed prior to the Termination Date of this Agreement. Each party agrees that such obligations and duties shall survive the Termination Date in accordance with this Section 20.
8. Neither party may assign or otherwise transfer this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other party. Any attempt to do so shall be void. Notwithstanding the foregoing, either party may assign this Agreement without the other party’s consent to any successor in business; provided, however, that any assignment of this Agreement shall not relieve the assigning party of any of its obligations set forth in this Agreement.

22. All notices given under this Agreement shall be (i) in writing; and (ii) either sent by (a) certified mail, postage prepaid, return receipt requested or hand-delivered (including delivery by a reputable, international commercial courier or overnight delivery service), which will be deemed received three business days after mailing with respect to certified mail, and upon receipt of evidence of delivery with respect to hand-delivery; or (b) email, which will be deemed received upon sending, unless the party sending the notice receives a failure to send notification. In the event the notifying party receives a failure to send notification for notice by email, notice shall be provided in accordance with subsection (a) of this Section 22. Notices shall be sent to the addresses set forth below, unless different or additional addresses are provided by the applicable party in writing from time to time.

1. **Notice to Company**: Notices to Company provided under subsection (ii)(a) of this Section 22 shall be sent to the address first set forth above, Attn: General Counsel. Email notices to Company shall be sent to Attn: General Counsel at: cclegaldepartment@carnival.com.
2. **Notice to Vendor:** Notices provided to Vendor shall be sent to the information below:

|  |  |
| --- | --- |
| Attn:[ADDRESS][ADDRESS] |  |

 Email:

1. This Agreement, including a facsimile, electronic version, or photocopy hereof, may be signed in counterpart, by hand or secure electronic signature, each of which shall be an original, with the same effect as if the signature were an original signature upon the same instrument, and each such signature will be deemed to be an original and valid signature.
2. This Agreement constitutes the entire, final, and complete agreement between Company and Vendor with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations, agreements, understandings and arrangements, both oral and written, between Company and Vendor with respect to such subject matter. This Agreement may not be modified in any way, except by a written instrument executed by each of the parties.

IN WITNESS WHEREOF, intending to be legally bound hereby, the undersigned parties have executed this Agreement as of the date last written below.

**[VENDOR NAME]**  **SELECT CARNIVAL OPERATING COMPANY**

By: By:

Name: Name:

Title: Title:

Date: Date: