

## **MODEL FOR A SEARCH AND IMAGING ORDER**

### **IMPORTANT NOTE**

A search order is an exceptional form of relief, more particularly where it includes provision for the imaging of electronic data storage devices in cases in which the Listed Items include documents and information stored electronically.

Applicants are reminded of their duty of full and frank disclosure to the court. Failure to comply with that duty may lead to the discharge of the order and other sanctions including in relation to costs.

An applicant for a search and/or imaging order should always base their draft of the proposed order on the model order. The draft order presented to the court should only include those parts of the model order which are necessary based on a realistic assessment of what is required.

Departures from the model order are permissible, but the existence and scope of any suggested changes must be highlighted and the reasons for the proposed departures must be explained.

This model order includes footnotes, which are provided for guidance, and do not form part of the model order itself. Two copies of the draft order proposed by the applicant must be submitted at or before the hearing in Word, one with the footnotes included for the assistance of the court and one without the footnotes for sealing and service.

## SEARCH [AND IMAGING] ORDER

Claim No

**IN THE HIGH COURT OF JUSTICE**  
**[BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES]**  
**[ ] DIVISION**  
**[[ ] LIST / COURT]**  
**[[ ] DISTRICT REGISTRY]**

**Before** [*Name of Judge*<sup>1</sup>], (sitting in private)

**Dated**

**BETWEEN**

[*Name*]

**Applicant(s)**

**and**

[*Name*]

**Respondent(s)**<sup>2</sup>

**To:** [*Name, address and reference of Respondent(s)*]

### **PENAL NOTICE**<sup>3</sup>

**IF YOU [*name of Respondent(s)*] DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED OR FINED, OR HAVE YOUR ASSETS SEIZED**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING WHICH HELPS OR PERMITS THE RESPONDENT(S) TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED OR FINED, OR HAVE THEIR ASSETS SEIZED.**

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<sup>1</sup> There are restrictions on the judges who may grant a search order. In the High Court a search order may only be made by a Judge (not including Insolvency and Companies Court Judges): Practice Direction 2B, paragraph 2 and Practice Direction – Insolvency Proceedings, paragraph 3.2(2). In County Court proceedings a search order may only be made by a High Court Judge or a judge of the Court of Appeal, sitting as a judge of the County Court: Reg 3 County Court Remedies Regulations 2014.

<sup>2</sup> It is possible to make a single search order against more than one respondent, and the wording of this model order caters for this.

<sup>3</sup> The penal notice is a warning endorsed on the front of the order by or at the request of the applicant (CPR 81.2) and see also the requirements of CPR 81.4(1)(e)). It is not part of the order.

## ORDER

1. This is a search [and imaging] order made against [*name of Respondent(s)*] (“the Respondent”) on [*date*] by [*name of judge*] (“the Judge”) on the application of [*name of applicant*] (“the Applicant”). The Judge read the affidavits listed in Schedule C and accepted the undertakings set out in Schedules D, E, F and G at the end of this order.
2. [This order was made at a hearing without notice to the Respondent, at which the court was satisfied that it was in the interests of justice to sit in private.] [The court was satisfied that publicity would defeat the object of the hearing and that it is in the interests of justice that until after 4.30pm on the Return Date or further order:
  - (1) this order is not published on the judiciary website, pursuant to CPR 39.2(5);
  - (2) the court’s file is marked as confidential and the parties’ names shall not be visible to a non-party;
  - (3) a non-party shall not be permitted to obtain copies of the documents filed in support of this application; and
  - (4) any further listing of these proceedings shall be anonymised.]
3. The Applicant was represented by [*name*] [of counsel]. The Respondent did not appear and was not represented.
4. There will be a further hearing in respect of this order on [*date*] (“the Return Date”)<sup>4</sup>.
5. In this order and its Schedules:
  - (1) if there is more than one Respondent, then
    - (a) unless otherwise stated, references in this order to ‘the Respondent’ mean both or all of them; and
    - (b) this order is effective against any Respondent on whom it is served or who is given notice of it
  - (2) any requirement that something shall be done to or in the presence of the Respondent means
    - (a) if there is more than one Respondent, to or in the presence of any one of them; and
    - (b) if a Respondent is not an individual, to or in the presence of a director, officer, partner or responsible employee
  - (3) a Respondent who is an individual and who is ordered not to do something must not do it personally, and must not do it through others acting on behalf of the

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<sup>4</sup> The timing of the Return Date is in the discretion of the Judge but will usually be 7 or 14 days after the order is made. In the Commercial Court in London, it should normally be a Friday.

Respondent or on the instruction or with the encouragement of the Respondent, or in any other way; and

- (4) a Respondent which is not an individual and which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way;
  - (5) “the Supervising Solicitor” means [*name*] a solicitor in the firm of [*name and address of firm*]<sup>5</sup>;
  - (6) “the Applicant’s Solicitors” means [*name(s) of individual solicitors*] and their firm [*name and address of firm*];
  - (7) “the Independent IT Expert” means [*name*] of [*name and address of firm*])<sup>6</sup>;
  - (8) “the Premises” means the premises identified in Schedule A to this order, any other premises of the Respondent disclosed under paragraph 24 of this order and any vehicles under the Respondent’s control on or around the Premises;
  - (9) “the Listed Items” means all the documents and articles listed in Schedule B to this order;
  - (10) “the Information” means the information described in Schedule B to this order; and
  - (11) the expressions “Electronic Data Storage Devices”, “Relevant Online Accounts” and “Electronic Copies” have the meanings given in paragraphs 20 and 21 of this order.
6. This order must be complied with by the following persons, each of whom is also entitled to the protections granted by this order:
- (1) the Respondent;
  - (2) any director, officer, partner or responsible employee of the Respondent;
  - (3) if the Respondent is an individual, any other person having responsible control of the Premises; and
  - (4) any person with control of (alternatively, knowledge or ability to give access to documents on) the Electronic Data Storage Devices or Relevant Online Accounts.

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<sup>5</sup> A search order should never be granted without including the protections envisaged by those parts of this model order which relate to the Supervising Solicitor, including the undertakings to the court set out in Schedule F, which he or she is required to give.

<sup>6</sup> If it is envisaged that the Respondent’s Electronic Data Storage Devices are to be imaged (i.e. the electronic data is to be copied wholesale, thereby reproducing Listed Items and Information, together with other items and information, indiscriminately), such relief should not be granted without including the protections envisaged by those parts of this model order which relate to the Independent IT Expert, including the undertakings to the court set out in Schedule G which he or she is required to give.

## THE SEARCH

7. The Respondent must permit the Supervising Solicitor, the Applicant's Solicitors, the Independent IT Expert and up to [number] of other persons<sup>7</sup> being [*their identity or capacity*] accompanying them (together "the Search Party")<sup>8</sup>:

- (1) to enter the Premises;
- (2) to access any containers of documents at the Premises (such as without limitation) safes, boxes and filing cabinets

so that they can search for, inspect, photograph and electronically copy the Listed Items and deliver them into the safekeeping of the Applicant's Solicitors.

8. Having permitted the Search Party to enter the Premises, the Respondent must allow the Search Party to remain on the Premises until the search is complete. In the event that it becomes necessary for any of those persons to leave the Premises before the search is complete, the Respondent must allow them to re-enter the Premises immediately upon their seeking re-entry on the same or the following day in order to complete the search.

## RESTRICTIONS ON SEARCH

9. This order may not be carried out at the same time as a police search warrant.
10. Before anybody enters the Premises to carry out this order, the Supervising Solicitor must explain the terms and effect of this order to the Respondent in everyday language and advise them (a) of their right to take legal advice and to apply to vary or discharge the order; and (b) that they may be entitled to legal professional privilege and the privilege against self-incrimination.
11. The Respondent is entitled to seek legal advice and to apply to the court to vary or discharge this order - see paragraph 34 of this order. Whilst doing so, the Respondent may ask the Supervising Solicitor to delay starting the search for up to two hours or such other longer period as the Supervising Solicitor may permit. However, the Respondent:
- (1) must comply with the terms of paragraphs 26 to 28 of this order; and
  - (2) must permit the Supervising Solicitor to enter the Premises together with up to two other members of the Search Party, but not start to search.
12. Before permitting entry to the Premises by any person other than the Supervising Solicitor, the Respondent may, for a short time (not to exceed two hours, unless the Supervising Solicitor agrees to a longer period) gather together any documents the Respondent believes

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<sup>7</sup> Where the respondent or another person at the premises is likely to be unaccompanied, the court must consider whether to direct that some other appropriate person accompany the Supervising Solicitor at all times while the order is carried out.

<sup>8</sup> None of these persons should be people who could gain personally or commercially from anything they might read or see on the Premises, unless their presence is essential.

may be incriminating or privileged and hand them to the Supervising Solicitor for assessment as to whether they are incriminating or privileged as claimed.

13. If the Supervising Solicitor decides that the Respondent is entitled to withhold production of any of the documents on the ground that they are privileged or incriminating, the Supervising Solicitor must exclude them from the search, record them in a list for inclusion in the written report on the carrying out of this order and return them to the Respondent.
14. If the Supervising Solicitor believes that the Respondent may be entitled to withhold production of the whole or any part of a document on the ground that it or part of it may be privileged or incriminating, or if the Respondent claims to be entitled to withhold production on those grounds, the Supervising Solicitor will exclude it from the search and retain it pending further order of the court.
15. If the Respondent wishes to take legal advice and gather documents as permitted by this order, the Respondent must first inform the Supervising Solicitor and keep the Supervising Solicitor informed of the steps being taken.
16. The Premises must be searched in the presence of the Respondent, unless the Supervising Solicitor is satisfied that it is not practicable to do so.

## **DELIVERY UP OF LISTED ITEMS**

17. The Respondent must immediately hand over to the Applicant's Solicitors any of the Listed Items, which are in the Respondent's possession, custody or control, save for anything listed in paragraph 20 of this order. Any items the subject of a dispute as to whether they are Listed Items must immediately be handed over to the Supervising Solicitor for safe keeping pending resolution of the dispute or further order of the court.
18. The Applicant's Solicitors may only remove a Listed Item from the Premises when a list of the items to be removed has been prepared, a copy of the list has been supplied to the Respondent and the Respondent has been given a reasonable opportunity to check the list<sup>9</sup>.
19. Items may only be removed from the Premises in the presence of the Respondent, unless the Supervising Solicitor is satisfied that it is not practicable for this obligation to be complied with.

## **ELECTRONIC DATA IMAGING**

20. The Respondent must immediately give the Independent IT Expert effective access to:

- (1) any electronic data storage devices, including but not limited to USBs., mobile telephones, PDAs, tablets, computers, laptops, internal or external hard disks, compact discs, magnetic tapes, electronic files, back-ups and servers ("Electronic

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<sup>9</sup> Where material in dispute is removed pending trial, the Applicant's Solicitors should normally place it in the custody of the Respondent's solicitors on their undertaking to keep it safe and to produce it to the court when required. Questions as to the custody of all Listed Items and their insurance should be raised with the court on the Return Date.

Data Storage Devices”) in the control of the Respondent which may contain reference to the Listed Items or the Information;

- (2) any online accounts in the control of the Respondent, including but not limited to email accounts, online accounting or payment systems, online storage platforms or cloud services, online message services and online bank accounts which may contain reference to the Listed Items or the Information (“the Relevant Online Accounts”) [*where appropriate list the accounts*]; and
  - (3) without limitation to subparagraphs (1) and (2) above, all relevant account information, usernames, PIN numbers, passwords, combinations, keys, codes, security tokens, software, permissions and/or devices associated with any two factor or other authentication in the knowledge, possession or control of the Respondent relevant to achieving effective access to the Electronic Data Storage Devices and/or the Relevant Online Accounts.
21. The Independent IT Expert shall make two electronic copies of the contents of the Electronic Data Storage Devices and of the Relevant Accounts (“the Electronic Copies”). If it is not practical to make the Electronic Copies at the Premises, the Independent IT Expert may remove any Electronic Data Storage Device from the Premises for the purpose of making the Electronic Copies provided that if the Respondent is then left without a mobile phone or internet access, the Independent IT Expert shall, pending its return and if so requested by the Respondent, provide a generic device with such facilities.
22. The Electronic Copies will be held by the Independent IT Expert who will keep them safely in their custody to the order of the court.
23. The Applicant is not allowed to access or inspect or use the Electronic Copies without the permission of the court.

## **PROVISION OF INFORMATION**

24. The Respondent must [immediately / as soon as practicable] inform the Applicant’s Solicitors (in the presence of the Supervising Solicitor) so far as the Respondent is aware:
- (1) the location of all the Listed Items;
  - (2) the location of all Electronic Data Storage Devices;
  - (3) full details of all Relevant Online Accounts;
  - (4) the name and address of everyone who has supplied the Respondent, or offered to supply the Respondent, with Listed Items;
  - (5) the name and address of everyone to whom the Respondent has supplied, or offered to supply, Listed Items; and
  - (6) full details of the dates and quantities of every such supply and offer.

25. Within [*number of working days*] working days<sup>10</sup> after being served with this order, the Respondent must swear and serve on the Applicant's Solicitors an affidavit setting out the above information.

## **PROHIBITED ACTS**

26. Except for the purpose of obtaining legal advice, the Respondent must not directly or indirectly inform anyone of these proceedings or of the contents of this order, or warn anyone that proceedings have been or may be brought against the Respondent by the Applicant until 4.30 p.m. on the Return Date or further order of the court.
27. Until 4.30 p.m. on the Return Date, the Respondent must not destroy, tamper with, cancel, disturb, remove from the Premises or part with possession, power, custody or control of the Listed Items otherwise than in accordance with the terms of this order.
28. Until informed by Independent IT Expert that the exercise of making the Electronic Copies is complete, the Respondent must not access, use, change the password or prompt or otherwise obstruct access to, disturb, remove, conceal, erase, amend, destroy, or tamper with any Electronic Data Storage Device or Relevant Online Account or any information or documents contained in it; provided that once so informed, the Respondent is permitted to make use of any of the Electronic Storage Devices and Relevant Online Accounts in the ordinary course of business or for personal use.
29. [*Insert any other negative injunctions.*]
30. [*Insert any further order*]

## **COSTS**

31. The costs of this application are reserved to the judge hearing the application on the Return Date.

## **RESTRICTIONS ON SERVICE**

32. This order may only be served between [*time*] am/pm and [*time*] am/pm [and on a weekday]<sup>11</sup>.
33. This order must be served by the Supervising Solicitor, and the search under paragraph 7 of this order (including any continuation of the search in accordance with paragraph 8 of

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<sup>10</sup> Careful consideration should be given to ensuring that this period is realistic having regard to the nature and volume of information that may be involved. It is not acceptable to invite the court to impose unrealistic time limits, and costs orders may be made where this results in the party subject to the order having to bring the matter back before a judge. The period should ordinarily be longer than the period in paragraph (4) of Schedule E, if any of the information is likely to be included in Listed Items taken away of which the Respondent does not have copies.

<sup>11</sup> Normally, the order should be served in the morning (not before 9.30 a.m.) and on a weekday (avoiding public holidays) to enable the Respondent more readily to obtain legal advice.



this order) must be carried out in the presence and under the supervision of the Supervising Solicitor.

## **VARIATION OR DISCHARGE OF THIS ORDER**

34. Anyone served with or notified of this order may apply to the court at any time to vary or discharge this order (or so much of it as affects that person), but they must first inform the Applicant's Solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Applicant's Solicitors in advance.

## **PARTIES OTHER THAN THE APPLICANT AND RESPONDENT**

35. It is a contempt of court for any person notified of this order knowingly to assist in or permit a breach of this order. Any person doing so may be imprisoned or fined, or have their assets seized.

## **COMMUNICATIONS WITH THE COURT**

All communications to the court about this order should be sent to –

*[insert the address and telephone number of the appropriate court office]*

*[Where the order is made in the Chancery Division in London:*

Chancery Judges' Listing, Ground Floor, The Rolls Building, 7 Rolls Building, Fetter Lane, London EC4A 1NL, quoting the case number.

Email: [ChanceryJudgesListing@justice.gov.uk](mailto:ChanceryJudgesListing@justice.gov.uk)

Telephone: 020 7947 6297]

*[Where the order is made in the King's Bench Division (apart from the Business & Property Courts) in London:*

King's Bench Judges' Listing, Royal Courts of Justice, Strand, London WC2A 2LL, quoting the case number.

Email: [KBJudgesListingOffice@justice.gov.uk](mailto:KBJudgesListingOffice@justice.gov.uk)

Telephone: 020 3936 8957.]

*[Where the order is made in the Commercial Court in London:*

Commercial Court Listing Office, 7 Rolls Building, Fetter Lane, London EC4A 1NL, quoting the case number.

Email: [comct.listing@justice.gov.uk](mailto:comct.listing@justice.gov.uk)

Telephone: 020 7947 7357.]

*[Where the order is made in the Technology & Construction Court in London:*

Technology & Construction Court Listing Office, 7 Rolls Building, Fetter Lane, London, EC4A 1NL, quoting the case number.

Email: [TCC.Listing@justice.gov.uk](mailto:TCC.Listing@justice.gov.uk)

Telephone: 020 7947 7897.]

The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday

## **SCHEDULE A**

### **THE PREMISES**

*[To be described in full]*

## **SCHEDULE B**

### **THE LISTED ITEMS AND THE INFORMATION**

*[To be listed in full]*

## **SCHEDULE C**

### **AFFIDAVITS**

The Applicant relied on the following affidavits

*[name] [number of affidavit] [date sworn] [filed on behalf of]*

## **SCHEDULE D**

### **UNDERTAKINGS GIVEN TO THE COURT BY THE APPLICANT**

- (1) If the court later finds that this order or carrying it out has caused loss to the Respondent, and decides that the Respondent should be compensated for that loss, the Applicant will comply with any order the court may make.
- (2) If the court later finds that the carrying out of this order has been in breach of the terms of this order or otherwise in a manner inconsistent with the Applicant's Solicitors' duties as officers of the court, the Applicant will comply with any order the court may make.
- (3) If the court later finds that this order has caused loss to anyone other than the Respondent, and decides that such person should be compensated for that loss, the Applicant will comply with any order the court may make.
- (4) [The Applicant will:

- (a) [on or before *[date]* cause a written guarantee in the sum of £ *[amount]* to be issued from a bank with a place of business within England or Wales], [maintain pending further order the sum of £ *[amount]* in an account controlled by the Applicant's Solicitors] in respect of any order the court may make pursuant to paragraphs (1), (2) and/or (3) of this Schedule; and
  - (b) [immediately upon issue of the guarantee, cause a copy of it to be served on the Respondent].]
- (5) [As soon as practicable the Applicant will issue and serve a claim form [in the form of the draft produced to the court] [claiming the appropriate relief]].
- (6) [As soon as practicable the Applicant will [swear and file an affidavit] [cause an affidavit to be sworn and filed] [substantially in the terms of the draft affidavit produced to the court] [confirming the substance of what was said to the court by the Applicant's Solicitors]].
- (7) The Applicant will not, without the permission of the court, use any information or documents obtained as a result of carrying out this order nor inform anyone else of these proceedings except for the purposes of these proceedings (including adding further Respondents) or commencing civil proceedings in relation to the same or related subject matter to these proceedings until after the Return Date.
- (8) Anyone notified of this order will be given a copy of it by the Applicant's Solicitors.
- (9) The Applicant will pay the reasonable costs of anyone other than the Respondent which have been incurred as a result of this order.

## **SCHEDULE E**

### **UNDERTAKINGS GIVEN BY THE APPLICANT'S SOLICITORS**

- (1) The Applicant's Solicitors will provide to the Supervising Solicitor for service on the Respondent-
  - (a) a sealed copy of this order;
  - (b) copies of each affidavit [draft affidavit] and exhibits containing the evidence relied upon by the Applicant, and any other documents provided to the court on the making of the application including the skeleton argument<sup>12</sup>;
  - (c) a note of any allegation of fact made orally to the court where such allegation is not contained in the affidavits or draft affidavits read by the Judge;

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<sup>12</sup> Exceptionally, where exhibits are confidential, the court may direct that they need not be served but must be made available for inspection by the Respondent in the presence of the Applicant's solicitors while the order is carried out. Such exhibits may afterwards be retained by the Respondent's solicitors on their undertaking not to permit the Respondent to (a) see them or copies of them except in their presence; nor to (b) make or take away any note or record of them.

(d) a transcript (if available), failing which a note, of the hearing at which this order was made; and

(e) the claim form (with defendant's response pack) or, if not issued, the draft produced to the court;

(f) an application for hearing on the Return Date;

(2) The Applicants' Solicitors will answer at once to the best of their ability any question whether a particular item is a Listed Item.

(3) Subject as provided below the Applicant's Solicitors will retain in their own safe keeping all items obtained as a result of this order until the court directs otherwise.

(4) The Applicant's Solicitors will return the originals of all documents obtained as a result of this order (except original documents which belong to the Applicant) as soon as possible and in any event within [two] working days of their removal.

## **SCHEDULE F**

### **UNDERTAKINGS GIVEN BY THE SUPERVISING SOLICITOR**

(1) The Supervising Solicitor will use all reasonable endeavours to serve this order upon the Respondent and at the same time to serve upon the Respondent the other documents required to be served and referred to in paragraph (1) of Schedule E.

(2) The Supervising Solicitor will offer to explain to any person served with this order its meaning and effect fairly and in everyday language, and to inform such person of their right to take legal advice (including an explanation that the Respondent may be entitled to exercise the privilege against self-incrimination and legal professional privilege) and to apply to vary or discharge this order as mentioned in paragraph 34 of this order.

(3) The Supervising Solicitor will retain in the safe keeping of their firm all items retained as a result of this order until the court directs otherwise.

(4) Unless and until the court otherwise orders, or unless otherwise necessary to comply with any duty to the court pursuant to this order, the Supervising Solicitor will not disclose to any person any information relating to the Listed Items or the Information, and will keep the existence of the Listed Items and the Information confidential.

(5) Within [48] hours of completion of the search the Supervising Solicitor will make and provide to the Applicant's Solicitors, to the Respondent and to the Judge (for the purposes of the court file) a written report on the carrying out of this order.

## **SCHEDULE G**

### **UNDERTAKINGS GIVEN BY THE INDEPENDENT IT EXPERT**

(1) The Independent IT Expert will make the Electronic Copies in accordance with paragraph 21 of this order and will hold them in accordance with paragraphs 22 and 23 of this order.

(2) As soon as reasonably practical after completing the making of the Electronic Copies, the Independent IT Expert will tell the Applicant's Solicitors and the Respondent that the copying has been completed.

(3) The Independent IT Expert will take all reasonable steps to ensure that no damage is done to any Electronic Data Storage Device or Relevant Online Account or the data contained or recorded in them.

(4) The Independent IT Expert will not use, deal with or dispose of any information obtained pursuant to this order for any purpose other than for the purposes of carrying out or complying with this order.

(5) The Independent IT Expert will keep confidential any information learned about the Respondent as a consequence of performing the actions required by this order.

(6) If it should be necessary for the Independent IT Expert to remove any Electronic Data Storage Device from the Premises to make the Electronic Copies, it will be returned to the Respondent within [two] business days of the Electronic Copies being made.

[(7) The Independent IT Expert will as soon as practicable provide an affidavit which confirms the undertaking set out above.]

#### **NAME AND ADDRESS OF THE APPLICANT'S SOLICITORS**

The Applicant's Solicitors are -

*[Name, address, reference, fax (if any) and telephone numbers both in and out of office hours and e-mail]*