

DATED

2015



**MUTUAL NON-DISCLOSURE AND
NON-CIRCUMVENTION AGREEMENT**

between

[INSERT PARTY 1]

and

[INSERT PARTY 2]

THIS AGREEMENT is dated [DATE]

PARTIES

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS].
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS].

BACKGROUND

Each party wishes to disclose to the other party Confidential Information in relation to the Purpose. Each party wishes to ensure that the other party maintains the confidentiality of its Confidential Information. In consideration of the benefits to the parties of the disclosure of the Confidential Information, the parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions and rules of interpretation in this clause apply in this agreement:

Confidential Information: any information relating to the business of the disclosing party which is not publicly available including, but not limited to, any information:

- (a) specifically designated by the disclosing party as confidential;
- (b) supplied to the disclosing party by any third party in relation to which a duty of confidentiality is owed or arises;
- (c) which should otherwise be reasonably regarded as possessing a quality of confidence or as having commercial value in relation to the business of the disclosing party; or
- (d) that relates to the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations,

but not including any information that:

- (e) is or becomes generally available to the public other than as a result of its disclosure by the Recipient or its Representatives in breach of this agreement or of any other undertaking of confidentiality addressed to the party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or

- (f) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party.

Disclosing Party: a party to this agreement which discloses or makes available directly or indirectly Confidential Information.

Purpose: [STATE THE PURPOSE, FOR EXAMPLE, THE EVALUATION OR ESTABLISHMENT OF A COLLABORATION IN RESPECT OF A PARTICULAR PROJECT].

Recipient: a party to this agreement which receives or obtains directly or indirectly Confidential Information.

Representative: employees, agents, officers, advisers and other representatives of the Recipient.

2. OBLIGATIONS OF CONFIDENTIALITY

2.1 The Recipient shall keep the Disclosing Party's Information confidential and, except with the prior written consent of the Disclosing Party, shall:

- (a) not use or exploit the Confidential Information in any way except for the Purpose;
- (b) not disclose or make available the Confidential Information in whole or in part of any third party, except as expressly permitted by this agreement;
- (c) keep the Disclosing Party's Confidential Information in a secure manner and shall ensure that no unauthorised party may gain access to the Confidential Information.

2.2 The Recipient may disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know this Confidential Information for the Purpose, provided that it:

- (a) informs its Representatives of the confidential nature of the Confidential Information before disclosure;
- (b) procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with this agreement as if they were the Recipient and, if the Disclosing Party so requests, procure that any relevant Representative enters into a confidentiality agreement with the Disclosing Party on terms equivalent to those contained in this agreement;
- (c) keeps a written record of these Representatives; and
- (d) shall at all times be liable for the failure of any Representative to comply with the terms of this agreement.

2.3 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction

provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible.

- 2.4 The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Disclosing party from time to time) to safeguard the Confidential Information from unauthorised access or use.
- 2.5 No party shall make, or permit any person to make, any public announcement concerning the Purpose without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).

3. NON-CIRCUMVENTION

- 3.1 At any time prior to the expiration of [NUMBER OF YEARS] from the date of this agreement, it is expressly agreed that the identities of any individual or entity and any other third parties including, without limitation, suppliers, customers, financial sources, manufacturers and consultants) discussed and made available by the Disclosing Party in respect of the Purpose and any related business opportunity shall constitute Confidential Information and the Recipient or associated entity or individual shall not, (without prior written consent of the Disclosing Party):
 - (a) directly or indirectly initiate, solicit, negotiate, contract or enter into any business transactions, agreements or undertaking with any such third party identified or introduced by the Disclosing Party; or
 - (b) seek to by-pass, compete, avoid or circumvent the Disclosing Party in respect of any business opportunity that relates to the Purpose by utilising any Confidential Information or by otherwise exploiting or deriving benefit from the Confidential Information.
- 3.2 The Recipient covenants that any financial gain made by it, or any associated party, from a breach of clause 3.1 shall be held on trust for the benefit of the Disclosing Party and then be transferred to a nominated account of the Disclosing Party, until which time such outstanding amount shall incur interest at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment and the Recipient shall pay the interest together with the overdue amount.
- 3.3 Clause 3.2 does not affect the Disclosing Party's ability to also claim damages should the covenants in clause 3.1 be breached in any way.

4. WARRANTY AND INDEMNITY

- 4.1 Each Disclosing Party warrants that it has the right to disclose its Confidential Information to the Recipient and to authorise the Recipient to use such Confidential Information for the Purpose.
- 4.2 Each Recipient shall indemnify and keep fully indemnified the Disclosing Party at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Disclosing Party) arising from any breach of this agreement by the Recipient and from the actions or omissions of any Representative of the Recipient.

5. TERM AND TERMINATION

- 5.1 If either party decides not to become, or continue to be involved in the Purpose with the other party it shall notify the other party in writing immediately. The obligations of each party shall, notwithstanding any earlier termination of negotiations or discussions between the parties in relation to the Purpose, continue for a period of two years from the termination of this agreement.
- 5.2 Termination of this agreement shall not affect any accrued rights or remedies to which either party is entitled.

6. ASSIGNMENT

Except as otherwise provided in this agreement, no party may assign, sub-contract or deal in any way with, any of its rights or obligations under this agreement or any document referred to in it.

7. NOTICES

Any notice or other communication required to be given under this agreement, shall be in writing, shall be delivered by email and shall be deemed to be received at the time of successful transmission to the commonly used email address of the other party.

8. NO PARTNERSHIP

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

9. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under or in connection with it.

10. GOVERNING LAW AND JURISDICTION

10.1 This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

10.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into as a deed on the date stated at the beginning of it.

SIGNED as a DEED by)
an authorised signatory)
for and on behalf of)
[INSERT PARTY NAME] in the)
presence of:)

W Signature:
I Name:
T Address:
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S Occupation:

SIGNED as a DEED by)
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[INSERT PARTY NAME] in the)
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