

This agreement is made on the day of 201[*].

PARTIES

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

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.

IT IS HEREBY AGREED

1. DEFINITIONS AND INTERPRETATION

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

"Business Day"; a day (other than a Saturday, Sunday or public holiday) when banks in [London] are open for business.

"Confidential Information"; all confidential information (however recorded, preserved or disclosed) disclosed by a party or its Representatives to the other party and that party's Representatives [after the date of this agreement] including but not limited to:

- (a) the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
- (b) [the [existence and] terms of this agreement];
- (c) any information that would be regarded as confidential by a reasonable business person relating to:
 - (i) the business, affairs, customers, clients, suppliers, plans[, intentions, or market opportunities] of the Disclosing Party [or of the Disclosing Party's Group]; and
 - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party [or of the Disclosing Party's Group];

- (d) any information or analysis derived from Confidential Information; and
- (e) [any information detailed in Schedule [NUMBER];]

but not including any information that:

- (f) 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
- (g) [was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party; or]
- (h) [was, is or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient; or]
- (i) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party; or
- (j) the parties agree in writing is not confidential or may be disclosed; or
- (k) [is developed by or for the Recipient independently of the information disclosed by the Disclosing Party; or]
- (l) [is trivial, obvious or useless.]

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

["Group"; in relation to a company, that company, each and any subsidiary or holding company [from time to time OR at the date of this agreement] of that company[, and each and any subsidiary [from time to time OR at the date of this agreement] of a holding company of that company].]

["Holding company and subsidiary"; mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 [and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee]. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a

majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights.]

"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.

1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) [and that person's legal and personal representatives, successors and permitted assigns].

1.4 The schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the schedules.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

1.6 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment, and includes any subordinate legislation for the time being in force made under it.

1.7 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.

1.8 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule.

2. OBLIGATIONS OF CONFIDENTIALITY

2.1 The Recipient shall [use reasonable endeavours to] keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall, and shall procure that its Representatives 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 to any third party, except as expressly permitted by this agreement;
- (c) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Disclosing Party);
- (d) [not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business;]
- (e) [keep separate the Confidential Information from all documents and other records of the Recipient;]
- (f) [apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use;]
- (g) [keep a written record of: any document or other Confidential Information received from the other in tangible form; any copy made of the Confidential Information; and]
- (h) [ensure that any document or other records containing Confidential Information shall be kept at its premises at [PREMISES] and shall not remove or allow to be removed such document or records from its premises.]

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

- (a) it informs these Representatives of the confidential nature of the Confidential Information before disclosure [and obtains from its Representatives enforceable undertakings to keep the Confidential Information confidential in terms at least as extensive and binding upon the Representatives as the terms of this agreement are upon the parties]; and
- (b) at all times, it is responsible for these Representatives' compliance with the obligations set out in 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 (including, without limitation, [LIST ANY RELEVANT

SECURITIES EXCHANGES)), 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 [and, where notice of disclosure is not prohibited and is given in accordance with this clause 2.3, it takes into account the reasonable requests of the other party in relation to the content of this disclosure].

- 2.4 The Recipient may, provided that the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first notifying the Disclosing Party of such disclosure.
- 2.5 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.
- 2.6 No party shall make, or permit any person to make, any public announcement concerning this agreement, the Purpose or its prospective interest in the Purpose without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) except as required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange) or by any court or other authority of competent jurisdiction. [No party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.]

3. RETURN OF INFORMATION

- 3.1 At the request of the Disclosing Party, the Recipient shall:
 - (a) destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information;
 - (b) erase all the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and
 - (c) certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Recipient to keep evidence

that it has performed its obligations under this agreement. The provisions of this clause 3 shall continue to apply to any such documents and materials retained by the Recipient, subject to clause 6.1.

- 3.2 If the Recipient develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the Disclosing Party's Confidential Information, the Recipient shall, at the request of the Disclosing Party, supply to the Disclosing Party information reasonably necessary to establish that the Disclosing Party's Confidential Information has not been used or disclosed.

4. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT

- 4.1 All Confidential Information shall remain the property of the Disclosing Party. Each party reserves all rights in its Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of a party's Confidential Information are granted to the other party and no obligations are imposed on the Disclosing Party other than those expressly stated in this agreement.
- 4.2 Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.
- 4.3 The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of, the Disclosing Party to enter into any further agreement [in relation to the Purpose, or the development or supply of any product or service to which the Confidential Information relates].
- 4.4 The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this agreement.
- 4.5 The Recipient shall be liable to the Disclosing Party for the actions or omissions of the Recipient's Representatives under this agreement, as if they were the actions or omissions of the Recipient.

5. WARRANTY AND INDEMNITY

- 5.1 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.
- 5.2 Each Recipient shall indemnify and keep fully indemnified the Disclosing Party [and its Group] 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 [and/or its Group]) arising from any breach of this agreement by the Recipient and from the actions or omissions of any Representative of the Recipient.

6. TERM AND TERMINATION

- 6.1 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 [NUMBER] years from the termination of this agreement.
- 6.2 Termination of this agreement shall not affect any accrued rights or remedies to which either party is entitled.

7. ENTIRE AGREEMENT AND VARIATION

- 7.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to its subject matter.
- 7.2 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that its only liability in respect of those representations and warranties that are set out in this agreement (whether made innocently or negligently) shall be for breach of contract.
- 7.3 No variation of this agreement shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

8. NO WAIVER

- 8.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 8.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.
- 8.3 [A party that waives a right or remedy provided under this agreement or by law in relation to another party, or takes or fails to take any action against that party, does not affect its rights in relation to any other party.]

9. 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.

10. NOTICES

- 10.1 Any notice [or other communication] required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice [or communication] at its address as set out below:

- (a) [PARTY 1]: [CONTACT NAME] [ADDRESS]
- (b) [PARTY 2]: [CONTACT NAME] [ADDRESS]

or as otherwise specified by the relevant party by notice in writing to each other party.

- 10.2 Any notice [or other communication] shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
- (b) if sent by pre-paid first class post or recorded delivery, at [9.00 am] on the [second] Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

10.3 A notice [or other communication] required to be given under this agreement shall not be validly given if sent by e-mail.

11. 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.

12. THIRD PARTY RIGHTS

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

13. GOVERNING LAW AND JURISDICTION

13.1 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.

13.2 The parties irrevocably agree that the courts of England and Wales shall have [exclusive **OR** non-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 on the date stated at the beginning of it.

[SIGNATURE PAGE FOLLOWS]

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF DEFINED TERM FOR PARTY]	Director
Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF DEFINED TERM FOR PARTY]	Director