

Dated

2019

[DISCLOSING PARTY]

-AND-

[RECIPIENT]

THE FORM OF NON-DISCLOSURE/
CONFIDENTIALITY AGREEMENT

relating to

[XXX]

THIS AGREEMENT is made on []

BETWEEN

(1) [NAME] of [ADDRESS] (the “Disclosing Party”); and

(2) [NAME] of [ADDRESS] (the “Recipient”).

BACKGROUND

- (A) The Disclosing Party and wishes to disclose to the Recipient and wishes to ensure that the Recipient maintains the confidentiality of, the Disclosing Party's Confidential Information.
- (B) In consideration of the benefits to the parties of disclosing and receiving 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 definitions and rules of interpretation in this clause apply in this agreement and shall have the following meanings:

“Business Day” a day (other than a Saturday, Sunday or public holiday) when the banks in London are open for business;

“Confidential Information” all confidential information (however recorded or preserved) disclosed or made available, directly or indirectly, by the Disclosing Party or its employees, officers, representatives or advisers to the Recipient and its Representatives after the date of this agreement concerning:

- (a) provided by the Disclosing Party to the Recipient and or its Representatives;
- (b) or analysis derived from the Confidential Information;
- (c) the Purpose and or detailed in the Schedule;
- (d) the terms of this agreement;
- (e) any information that would be regarded as confidential by a reasonable businessperson relating to:
 - (i) the business, affairs, customers, clients, suppliers, plans,

- intentions, or market opportunities of the Disclosing Party,
 - (ii) and
 - the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party; and
 - (d) any information developed by the parties in the course of carrying out this agreement;
 - (e) but not including any information that:
 - (i) 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), (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
 - (ii) was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party; or
 - (iii) 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
 - (iv) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party as evidenced by written records; or
 - (v) the parties agree in writing is not confidential or may be disclosed; or
 - (vi) is developed by or for the Recipient independently of the information disclosed by the Disclosing Party; or
 - (vii) is trivial, obvious or useless.

“Purpose” to protect [XXX] as a whole and as further set out in the Schedule;

“Schedule” the schedule attached to this agreement;

“Representatives” employees, agents 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).
- 1.4 The Schedule forms 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 Schedule.
- 1.5 Words in the singular shall include the plural and vice versa.
- 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 References to clauses and schedules are to the clauses and schedules of this agreement.

2. OBLIGATIONS OF THE RECIPIENT

- 2.1 The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall not, and shall procure that its Representatives shall not:
- (a) use or exploit the Confidential Information in any way except for the Purpose; or
 - (b) disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this agreement; or
 - (c) copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose.
- 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 shall obtain 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 Recipient; and
 - (b) at all times, it is responsible for these Representatives' compliance with the obligations set out in this agreement.
- 2.3 The Recipient may disclose Confidential Information only to the extent required 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 Disclosing Party as much notice of such disclosure as possible and, where notice of

disclosure is not prohibited and is given in accordance with this clause 10, it takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.

3. RETURN OF INFORMATION AND ANNOUNCEMENTS

3.1 At the request of the Disclosing Party, the Recipient shall promptly:

- (a) 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 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 shall continue to apply to any such documents and materials retained by the Recipient, subject to clause 10.

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 written 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 in order to develop or use that product or process.

3.3 No party shall make, or permit any person to make, any public announcement concerning this agreement 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.

4. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT

4.1 The Disclosing Party reserves all rights in its Confidential Information. No rights in respect of the Disclosing Party's Confidential Information are granted to the Recipient and no obligations are imposed on the Disclosing Party other than those expressly stated in this agreement. In particular, nothing in this agreement shall be construed or implied as

obliging the Disclosing Party to disclose any specific type of information under this agreement, whether Confidential Information or not.

- 4.2 Except as expressly stated in this agreement, the Disclosing Party does not make 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. INDEMNITY

The 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.

6. TERM AND TERMINATION

- 6.1 If either party decides not to become 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 an indefinite period from the termination of this agreement.
- 6.2 Termination of this agreement shall not affect any accrued rights or remedies to which the Disclosing Party is entitled.

7. ENTIRE AGREEMENT AND VARIATION

7.1 This agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.

7.2 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, save that the Disclosing Party may assign its rights under this agreement on prior written notice to the Recipient.

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 at the beginning of the agreement 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

12.1 Except as provided in this clause 12, this agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by, anyone else.

12.2 This agreement is made for the benefit of the Disclosing Party from time to time, may enforce this agreement as if they were the Disclosing Party and a party to this agreement.

12.3 The parties may terminate, rescind or vary this agreement without the consent of any person who is not a party to this agreement.

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 the law of England and Wales.

13.2 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 on the date stated at the beginning of it.

Signed by the DISCLOSING PARTY:

.....

Authorised Officer

.....

Authorised Officer

and

Signed by the RECIPIENT:

.....

Signature

.....

Print Name

SCHEDULE

To protect and treat as confidential all matters and affairs (indirectly or directly) associated with the [XXX]