

**THIS AGREEMENT** is dated [DATE]

## **PARTIES**

- (1) [THE NAME OF INDIVIDUAL OR COMPANY AS APPLICABLE] incorporated and registered in \_\_\_\_\_ (NAME OF THE COUNTRY/STATE OR CITY) with company number [NUMBER] whose registered office is at \_\_\_\_\_ (**DEFINE A TERM FOR FIRST PARTY EITHER THE SHORTNED NAME OF THE COMPANY OR CALL THEM FIRST PARTY OR IF INDIVIDUAL NAME OF INDIVIDUAL**).
- (2) [THE NAME OF INDIVIDUAL OR COMPANY AS APPLICABLE] incorporated and registered in \_\_\_\_\_ (NAME OF THE COUNTRY/STATE OR CITY) with company number [NUMBER] whose registered office is at \_\_\_\_\_ (**DEFINE A TERM FOR FIRST PARTY EITHER THE SHORTNED NAME OF THE COMPANY OR CALL THEM FIRST PARTY OR IF INDIVIDUAL NAME OF INDIVIDUAL**).

## **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:

**Authorised Persons:** means a Recipient's [and its Group member's] officers, directors, members, partners, employees, consultants, agents, representatives or professional advisers [in each case] engaged in the evaluation and negotiation of the Project;

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in \_\_\_\_\_ (NAME OF THE PLACE WHERE YOU ARE LOCATED) 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.

**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. PROVISION AND USE OF CONFIDENTIAL INFORMATION**

- 2.1 In consideration of each Party agreeing to disclose the Confidential Information to the other, the Recipient undertakes to the Discloser that it will, and will procure that its Authorised Persons will:
- (a) keep the Confidential Information secret and confidential;
  - (b) not Use the Confidential Information in any way except to the extent reasonably necessary for the Purpose;
  - (c) not disclose the Confidential Information or any part of it to any person other than in accordance with clause 3;
  - (d) not Use or benefit from any Confidential Information received by it so as to procure any commercial advantage over the Discloser; and
  - (e) not disclose to any person, other than to any Authorised Person involved in considering and advising the Recipient in relation to the Purpose, that the Purpose is in contemplation, that discussions or negotiations in relation to the Purpose may take, are taking or have taken place, or any of the terms, conditions or other facts with respect to the Purpose or its progress.
- 2.2 The Parties acknowledge that the Confidential Information is of significant commercial value and importance to the Discloser and is being disclosed in confidence solely for the Purpose.
- 2.3 [Neither Party nor any of its Authorised Persons makes any representation or warranty concerning the accuracy, efficacy, completeness, capabilities or safety of the Confidential

Information disclosed by it (or of any materials or media by which it is supplied), except to the extent expressly agreed by it in writing. No representation or warranty is made or is to be implied that the information will remain unchanged. For the avoidance of doubt there shall be no obligation to update or correct any inaccuracies in any Confidential Information, which may be provided to a Recipient. In particular, any projected results for future periods or management accounts which may be contained in the Confidential Information are for indicative purposes only and, while they may represent the current estimates of the board and management of each Party, neither Party nor its Authorised Persons will warrant or in any way accept liability for the accuracy of such information. The Recipient must make its own independent assessment of the Discloser and the Project and rely on its own judgment and advisers in reaching any conclusion or decisions.]

2.4 [Each Party represents and warrants that:

- (a) it has the right and authority to disclose the Confidential Information to the other Party and authorises that Party to Use the Confidential Information for the Purpose; and
- (b) all Confidential Information disclosed by it to the other Party further to this Agreement is true and accurate in all respects.]

2.5 The obligation to keep the Confidential Information confidential in accordance with this Agreement shall survive and subsist (notwithstanding the prior termination or expiry of this Agreement or service of any notice by either Party) for a period of [*specify*] years from the date of disclosure of the relevant Confidential Information.

### **3. AUTHORISED DISCLOSURE**

3.1 A Recipient may disclose some or all of the Confidential Information received by it to any of its Authorised Persons, provided that such disclosure is made only to such persons and to the extent reasonably necessary for the Purpose and is made under no less strict obligations of confidentiality than those set out in this Agreement.

3.2 The Recipient undertakes to procure that all Authorised Persons to whom it discloses the Confidential Information will comply with the confidentiality obligations set out above as if they were parties to this Agreement [and, if required by the Discloser, to procure that its Authorised Persons enter into a confidentiality agreement in the same or similar terms as those set out in this Agreement].

### **4. TERMINATION**

Without prejudice to the obligations of confidentiality contained in clause 2 and to the undertakings given by each Recipient in clause 3, this Agreement shall expire or terminate on the earliest to occur of the following dates or events:

- (a) the date on which the Purpose has been fulfilled;
- (b) the execution and exchange by the Parties of contracts providing for the completion of the Project;

- (c) the date specified in a written notice of termination served by one Party to the other, being a date not less than [*one month*] following the date of service of such a notice; and
- (d) immediately upon service of a written notice served by one Party to the other in accordance with this Agreement following a breach by that other Party of any material term of this Agreement.

## **5. RETURN OF INFORMATION**

### **4.1 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 agreement shall continue to apply to any documents and materials retained by the Recipient.

### **4.2 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.**

## **6. INDEMNITY**

### **6.1 Each Recipient agrees that it shall be responsible for any breach of any of the terms of this Agreement by it or by any of its Authorised Persons and will indemnify and keep indemnified and hold harmless the Discloser from and against any losses, damages, liability, costs (including legal fees), expenses, claims, actions, proceedings, fines, penalties, and loss of profit (including any consequential, direct, indirect, special, incidental or punitive damages or loss or any other form of economic loss) however arising out of or in connection with this Agreement or the unauthorised disclosure or use of any of the Confidential Information by that Recipient or by any of its Authorised Persons.**

### **6.2 All the terms and conditions set out in this Agreement shall extend to any further negotiations or discussions of any kind between the Parties and shall continue for the period specified under this agreement.**

6.3 Each Party is acting as principal and not as agent or broker for or in concert with any other person.

6.4 Each Party acknowledges and confirms that the Confidential Information may contain material which is covered or protected by privilege and agrees that the disclosure of such Confidential Information to the Recipient is not intended to and does not constitute a waiver of such privilege or any other rights which the Discloser may have in respect of such Confidential Information.

## **7. ENTIRE AGREEMENT AND VARIATION**

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.

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.

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.

## 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 the laws of \_\_\_\_\_ ( *insert name of the country or state which you want the laws to be governed by*).

13.2 The parties irrevocably agree that the courts of \_\_\_\_\_(*insert city or country which will govern this contract*) 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