Non-Disclosure and Non-Circumvention Agreement

Between

COMPANY 1

and

COMPANY 2

Transaction Reference:

REF

Contents

Clause

1. Definitions and interpretation 1

2. Obligations of confidentiality 3

3. Return of information 5

4. Reservation of rights and acknowledgement 5

5. Warranty and indemnity 6

6. Non-Circumvention 6

7. Non Solicitation ………………………..……………….………………….………….……….....7

8. Term and termination 7

9. Entire agreement and variation 7

10. No waiver 8

11. Assignment 8

12. Notices 7

13. No partnership 8

14. Third party rights 9

15. Governing law and jurisdiction 9

**THIS AGREEMENT** is dated the XXth of Month, 2017 and is effective on the date hereof.

Parties

1. **COMPANY NAME 1**, a company registered in <country> under local companies house reference number <ref>, having its main place of business at <address>, represented by <name, position>, (the “First Party”); and
2. **COMPANY NAME 2**, a company registered in <country> under local companies house reference number <ref>, having its main place of business at <address>, represented by <name, position>, (the “Second Party”).

In connection with ongoing discussions, negotiations, proposals and/or relationships between the parties, First Party has found, or may find it, beneficial to disclose its Confidential Information and/or proprietary commercial and/or financial information relating to <typology of transaction> as well as to its business partners (law firms, financial & banking institutions, tax advisors, financial advisors, consultants & intermediaries, etc…).

First Party wishes to ensure that Second Party maintains the confidentiality of First Party’s 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

# Definitions and interpretation

## 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 the United Kingdom are opened for business.

Confidential Information**:** all confidential information (however recorded, preserved or disclosed) disclosed, whether provided orally or in writing or by electronic means or through any other means by First Party or its employees, officers, representatives or advisers to Second Party or its employees, officers, representatives or advisers (together, the Second Party Representatives) including but not limited to:

### the fact that discussions and negotiations are taking place concerning the above-referenced transaction and the status of those discussions and negotiations;

### the terms of this agreement;

### any information that would be regarded as confidential by a reasonable business person relating to the operations, trade secrets, procedures, processes, research, development, algorithms, software, software programs, software source codes and documents, hardware, network structure, data, designs sketches, drawings, models, inventions, know-how and formulae related to the current, future and proposed products and services of the First Party or the First Party’s business partners; and;

### any business information of the First Party or the First Party’s business partners, including but not limited to operations, objectives, management, assets, results, planning, marketing, timing and products; and

### conceptual ideas of the First Party or the First Party’s business partners, that give or may give rise to actual concepts, or mind generalizations;

### any information or analysis derived from Confidential Information but not including any information that:

#### is or becomes generally available to the public other than as a result of its disclosure by the Second Party or the Second Party 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

#### was available to the Second Party on a non-confidential basis prior to disclosure by the First Party; or

#### was, is or becomes available to the Second Party on a non-confidential basis from a person who, to the Second party’s knowledge, is not bound by a confidentiality agreement with the First Party or otherwise prohibited from disclosing the information to the Second Party; or

#### was lawfully in the possession of the Second Party before the information was disclosed to it by the First Party; or

#### the parties agree in writing is not confidential or may be disclosed; or

#### was or is independently developed by the Second Party or the Second Party Representatives without reference to or use of any of the First Party’s Confidential Information.

Group**:** in relation to a company, that company, each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company.

Purpose**:** description of the contemplated transaction

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

## 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.

## 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.

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

## 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.

## 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.

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

# Obligations of confidentiality

## The Second Party agrees that all Confidential Information shall automatically be deemed to be proprietary and confidential and subject to the terms of this Agreement.

## The Second Party shall keep the First Party's Confidential Information confidential and, except with the prior written consent of the First Party, shall, and shall procure that the Second Party Representatives shall:

### not use or exploit the Confidential Information, or permit it to be accessed or used, in any way except for the Purpose or any related transactions between the parties;

### not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this agreement;

### 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 First Party); and

### apply the same security measures, safeguards and degree of care to the Confidential Information as the Second Party applies to its own confidential information, which the Second Party warrants as providing adequate protection from unauthorised disclosure, copying or use and which shall in no event be less than a commercially reasonable degree of care.

## The Second Party may only disclose the First Party's Confidential Information to those of the Second Party Representatives who need to know this Confidential Information for the Purpose, provided that:

### it informs these Second Party Representatives of the confidential nature of the Confidential Information before disclosure;

### the Second Party Representatives are subject to confidentiality duties or obligations to the Second Party that are no less restrictive than the terms and conditions of this Agreement; and

### at all times, it is responsible for these Second Party Representatives' compliance with and breach of the obligations set out in this agreement.

## The Second 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, the Second Party shall make reasonable efforts to provide the First Party with (a) prompt written notice of such requirement so that the First Party may seek, at the First party’s sole cost and expense, a protective order or other remedy, and (b) reasonable assistance, at the First Party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on such disclosure.

## The Second Party shall establish and maintain adequate security measures (including any reasonable security measures proposed by the First Party from time to time) to safeguard the Confidential Information from unauthorised access or use.

## The Second Party shall not 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 First Party.

# Return of information

##  At the request of the First Party, the Second Party shall:

### destroy or return to the First Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the First Party's Confidential Information;

### erase all the First Party's Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and

### certify in writing to the First Party that it has complied with the requirements of this clause, provided that the Second Party may retain documents and materials containing, reflecting, incorporating, or based on the First 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 Second Party 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 Second Party, subject to clause 7.1.

# Reservation of rights and acknowledgement

## All Confidential Information shall remain the property of the First Party. The First Party reserves all rights in its Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of the First Party's Confidential Information are granted to the other party and no obligations are imposed on the First Party other than those expressly stated in this agreement.

## Except as expressly stated in this agreement, the First Party does not make any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.

## The disclosure of Confidential Information by the First Party shall not form any offer by, or representation or warranty on the part of, the First Party to enter into any further agreement in relation to the Purpose, or supply of any product or service to which the Confidential Information relates.

## The Second Party 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 First 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.

## The Second Party shall be liable to the First Party for the actions or omissions of the Second Party’s Representatives under this agreement, as if they were the actions or omissions of the Second Party.

# Indemnity

## Second Party shall indemnify and keep fully indemnified the First 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 First Party and/or its Group) arising from any breach of this agreement by the Second Party and from the actions or omissions of any Second Party Representatives.

## Second Party understands that the Confidential Information disclosed to it is a unique and valuable asset of First Party and that any violation or threatened violation by Second Party to this Agreement would cause First Party immediate and irreparable harm, and that in addition to any other remedies that may be available in law, equity, or otherwise, First Party shall be entitled to obtain injunctive relief against the threatened breach or the actual breach of the provisions of this Agreement without the necessity of proving actual damages.

## Second Party recognizes that in the event of a violation of the Agreement, monetary damages would be inadequate to compensate First Party. Second Party therefore consents to the entry of a restraining order and a preliminary and permanent injunction restraining any such violation upon release of proof of actual damages.

## Second Party agrees that any money damages shall include all pecuniary benefits obtained by Second Party and its Affiliates as a result of any breach of this Agreement.

# Non-Circumvention

## For a period of three (3) years from the date of this agreement, neither party shall circumvent the other party by directly contacting in relation, to the Purpose, any third party who has been introduced by the other party, without the introducing party’s permission. In addition, neither party shall deal with or seek the custom of any person who is or was a client or customer of the other party in relation to the type of business contemplated by the Purpose.

# NON SOLICITATION

Notwithstanding any other provision in this or other agreement to the contrary, the Second Party to this agreement declares in signing this Agreement that the First Party or any affiliated parties thereof, have not solicited the Second Party with regard to any investment about which the Second Party may be seeking information and that any information provided or to be provided by the First Party to the Second Party was made available to the Second Party at the initiative of the Second Party.

# Term and termination

## The term of this Agreement shall commence on the date hereof. 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, even if the Second Party has returned or destroyed any Confidential Information requested by the First party.

## Termination of this agreement shall not affect any accrued rights or remedies to which either party is entitled.

# 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).

# No waiver

## 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.

## 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.

# 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.

# Notices

## Any notice 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 at its registered office or as otherwise specified by the relevant party by notice in writing to each other party.

## Any notice shall be deemed to have been duly received:

### if delivered personally, when left at the address and for the contact referred to in this clause; or

### if sent by pre-paid first class post or recorded delivery, at 9.00 am on the third Business Day after posting; or

### if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

## A notice required to be given under this agreement shall not be validly given if sent by e-mail.

## Notices, designations, determinations and specification made under this Agreement shall be in the English language.

# 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.

# Third party rights

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

# Severability

## If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

# Counterparts

## This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

# Governing law and jurisdiction

## 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 the United Kingdom.

## The parties irrevocably agree that the courts of London 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.

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| Executed on behalf of **COMPANY 1**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: **Name**Title**: Position**Executed on behalf of **COMPANY 2**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_By: **Name**Title**: Position** |   |
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