

## NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT** is made on *[Insert the date you all sign the agreement]*.

### **BETWEEN:**

- (1) *[Insert your company name]* incorporated under the laws of Belgium with company number *[Insert registered company number]* whose registered office is at *[Insert address]*; and
- (2) *[Insert the company name of the other company]* incorporated under the law of *[Belgium OR insert relevant jurisdiction]* with company number *[Insert registered company number]* whose registered office is at *[Insert address]*.

### **BACKGROUND:**

The parties wish to exchange confidential information for the purpose of considering a potential collaboration between their respective businesses.

### **IT IS AGREED:**

#### **1. DEFINITIONS AND INTERPRETATION**

- 1.1 The words defined below shall have the following meaning:

**"Confidential Information"** means all confidential information (however recorded, preserved or disclosed) disclosed or made available by the Discloser or any of its Representatives to the Recipient or any of its Representatives including but not limited to:

- (a) any information that is marked, or at the time of disclosure is otherwise designated, as being confidential;
- (b) any information that would be regarded as confidential by a reasonable business person on or relating to:
  - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Discloser; or
  - (ii) the operations, processes, products, techniques and specifications, test procedures and results, inventions, know-how, trade secrets, designs or software of the Discloser;
- (c) the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
- (d) the existence and terms of this agreement; and
- (e) any information or analysis derived from any of the Confidential Information.

**"Discloser"** means a party to this agreement which discloses or makes available directly or indirectly Confidential Information.

**"Purpose"** means considering whether or not to enter into a business collaboration between the parties and putting into place the arrangements for that collaboration.

**"Recipient"** means a party to this agreement that receives or obtains directly or indirectly Confidential Information.

**"Representative"** means, in relation to a party, that party's employees, agents, accountants and lawyers.

- 1.2 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.
- 1.3 Any schedule(s) 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 schedule(s). Any obligation in this agreement on a person not to do something includes an obligation not to allow that thing to be done.

## **2. COMPLIANCE WITH THIS AGREEMENT**

In consideration of the Discloser or any of its Representatives disclosing or making available Confidential Information to the Recipient or any of its Representatives, the Recipient, on behalf of itself and its Representatives, undertakes to comply with the terms of this agreement. The Recipient shall, at all times, be liable for the failure of any of its Representatives to comply with the terms of this agreement.

## **3. OBLIGATIONS OF CONFIDENTIALITY**

- 3.1 The Recipient shall keep the Discloser's Confidential Information confidential and, except with the prior written consent of the Discloser or as expressly permitted by this agreement, shall:
  - 3.1.1 not use the Confidential Information except for the Purpose;
  - 3.1.2 not disclose or make available the Confidential Information in whole or in part to any third party;
  - 3.1.3 not make any copies, reduce to writing or otherwise record the Confidential Information in whole or in part except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Discloser);
  - 3.1.4 keep the Confidential Information in a safe and secure place and establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised access or use, including but not limited to implementing any reasonable security measures proposed by the Discloser from time to time; and
  - 3.1.5 at the written request of the Discloser, or in any event on termination of this agreement, return or destroy all documents or other records containing Confidential Information to the Discloser and confirm to the Discloser that it has done so in writing.

- 3.2 The obligations in clause 3.1 shall not apply any information that:
- 3.2.1 is or becomes available to the Recipient or the public other than as a result of its disclosure by the Recipient or its Representatives in breach of this agreement or any other obligation of confidence owed by the Recipient or its Representatives to the Discloser;
  - 3.2.2 the Recipient can establish was lawfully in the possession of or available on a non-confidential basis to the Recipient before the information was disclosed to it by the Discloser; or
  - 3.2.3 the parties agree in writing may be disclosed.

#### **4. PERMITTED DISCLOSURES**

- 4.1 The Recipient may disclose all or part of the Discloser's Confidential Information to a Representative who needs to know that particular Confidential Information for the Purpose provided that, in relation to each Representative to whom the Discloser's Confidential Information is to be disclosed, the Recipient prior to disclosure:
- 4.1.1 informs the Representative of the confidential nature of the Confidential Information;
  - 4.1.2 informs the Discloser of the identity of the Representative to whom it intends to disclose Confidential Information;
  - 4.1.3 procures that the Representative shall, in relation to any Confidential Information disclosed, comply with this agreement as if it were the Recipient; and
  - 4.1.4 if the Discloser so requests, in relation to a Representative other than an employee of the Recipient, procures that such Representative enters into a confidentiality agreement with the Discloser on terms equivalent to those contained in this agreement.
- 4.2 The Recipient or its Representatives may disclose the Discloser's 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, the Recipient or its Representatives give the Discloser as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 4.2, it takes into account the reasonable requests of the Discloser in relation to the content of this disclosure.

#### **5. OTHER MATTERS**

- 5.1 All Confidential Information shall remain the property of the party disclosing it, which reserves all rights in its Confidential Information. No rights, including, but not limited to, any and all intellectual property rights, in respect of a party's Confidential Information are granted to the other party.
- 5.2 Neither party makes any express or implied warranty or representation concerning its Confidential Information, including without limitation the accuracy or completeness of its Confidential Information.

5.3 The disclosure of Confidential Information by a party shall not form any offer by, or representation or warranty on the part of, that party to enter into any further agreement in relation to the Purpose.

5.4 The parties each acknowledge 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, each party shall be entitled to seek the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this agreement.

## **6. SUCCESSORS AND ASSIGNMENT**

This agreement shall be binding on and endure for the benefit of each party's successors and personal representatives but shall not be assignable at law or otherwise without the prior written consent of the parties.

## **7. TERM AND TERMINATION**

If either party decides not to continue to be involved in the Purpose with the other party it shall notify the other party in writing and this agreement will terminate with immediate effect. The obligations of each party shall continue for a period of [*Insert number of years - this should be a realistic estimate of how long it is likely that the information that is to be disclosed will remain important to protect, e.g. 5*] years from the termination of this agreement. Termination of this agreement shall not affect any accrued rights or remedies to which either party is entitled.

## **8. DEEMED DELIVERY**

8.1 Any notice to be given in connection with this agreement shall be in writing in English and shall either be delivered by hand or sent by first class post or fax, email or other electronic form:

8.1.1 to any company which is a party at its registered office (or such other address as it may notify to the other parties to this agreement for such purpose); or

8.1.2 to any individual who is a party at the address of that individual shown on page 1 of this agreement;

(or in each such case such other address as the recipient may notify to the other parties for such purpose).

8.2 A communication sent according clause 8.1 shall be deemed to have been received:

8.1.1 if delivered by hand, at the time of delivery;

8.1.2 if sent by pre-paid first class post, on the second day after posting; or

8.1.3 if sent by fax, email or other electronic form, at the time of completion of transmission by the sender.

## **9. ENTIRE AGREEMENT AND VARIATION**

9.1 This agreement and the documents referred to or incorporated in it constitute the entire agreement between the parties relating to the subject matter of this agreement and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and

arrangements of any nature whatsoever, whether or not in writing, between the parties in relation to the subject matter of this agreement.

- 9.2 Each of the parties acknowledges and agrees that it has not entered into this agreement in reliance on any statement or representation of any person (whether a party to this agreement or not) other than as expressly incorporated in this agreement.
- 9.3 Without limiting the generality of the foregoing, each of the parties irrevocably and unconditionally waives any right or remedy it may have to claim damages and/or to rescind this agreement by reason of any misrepresentation (other than a fraudulent misrepresentation) having been made to it by any person (whether party to this agreement or not) and upon which it has relied in entering into this agreement.
- 9.4 Without prejudice to clause 5.4, each of the parties acknowledges and agrees that the only cause of action available to it under the terms of this agreement and the documents referred to or incorporated in this agreement shall be for breach of contract.
- 9.5 Nothing contained in this agreement or in any other document referred to or incorporated in it shall be read or construed as excluding any liability or remedy as a result of fraud.
- 9.6 No variation of this agreement or any of the documents in the agreed form shall be valid unless it is in writing and signed by or on behalf of each of the parties to this agreement.

#### **10. 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.

#### **11. PARTNERSHIP**

Nothing in this agreement is intended or shall be construed as establishing or implying any partnership of any kind between the parties.

#### **12. GOVERNING LAW AND JURISDICTION**

- 12.1 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 Belgium.
- 12.2 Each party irrevocably agrees to submit to the exclusive jurisdiction of the courts of Belgium over any claim or matter arising under or in connection with this agreement.

#### **13. COUNTERPARTS**

This agreement may be executed in any number of counterparts each of which when executed by one or more of the parties hereto shall constitute an original but all of which shall constitute one and the same instrument.

**Agreed on by the below-mentioned parties and drawn up in as many originals as there are parties. Each party declares that it has received one original.**

Signed for and on behalf of [INSERT NAME )  
OF COMPANY ONE] by: ) Signature .....

Name (block capitals) .....  
**Director/authorised  
signatory**

Signed for and on behalf of [INSERT NAME )  
OF COMPANY TWO] by: ) Signature .....

Name (block capitals) .....  
**Director/authorised  
signatory**