

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

Kyiv

[Date of Execution]

Company A, a company duly incorporated and validly existing under the laws of [●] whose registered office is at: [●], registered under No. [●], represented by [●], acting on the basis of the [●], (jointly referred to as the “**Disclosing Party**”), on the one hand, and

Company B, a company duly incorporated and validly existing under the laws of [●] whose registered office is at: [●], registered under No. [●], represented by [●], acting on the basis of the [●], (the “**Receiving Party**”), on the other hand,

collectively referred to as the “**Parties**”, and individually as the “**Party**”, have entered into this confidentiality and non-disclosure agreement (the “**Agreement**”) as follows.

WHEREAS:

I. The Disclosing Party is an [advisor to a potential buyer] who is willing to, either itself or through its Affiliate(s) (as defined below), acquire, directly or indirectly, shares in the Target (as defined below) or assets owned by the Target (the “**Transaction**”).

II. In view of the proposed Transaction, the Disclosing Party has agreed to disclose to the Receiving Party certain Confidential Information (as defined below), and the Receiving Party has agreed to maintain secrecy in relation to such Confidential Information.

IT IS AGREED:

Definitions:

Unless otherwise defined in this Agreement, the following terms shall have the following meanings:

Affiliate of the Party and/or any person specified in this Agreement, means:

- (i) its parent company, its founder (participant or shareholder), including a physical person; and/or
- (ii) any company directly or indirectly controlled by the Party and/or its parent company.

Confidential Information means any information and documents (whether or not designated as confidential), including, without limitation, financial, tax, commercial, corporate, legal, technical, operational, management, business and other information and documents concerning the Target or any of their Affiliates, as well as any and all information and documents regarding the intended sale of the Target, that is directly or indirectly disclosed, furnished or made available, whether before or after the date hereof, in any way or by any means whatsoever (including, without limitation, in writing, orally or in electronic form), in a data room or elsewhere, to the Receiving Party or any employees of the Receiving Party, by any director, manager, agent, representative, advisor or employee of the Disclosing Party or any Affiliate of the Disclosing Party, in connection with the intended sale of the Target. Confidential Information may include, without limitation, trade secrets, know-how, inventions, technical data or specifications, testing methods, Target or financial information, research and development activities, product and marketing plans, and customer and supplier information. For the sake of clarity, the fact that the Seller is considering selling the Target, and the existence and contents of this Agreement, are deemed to be Confidential Information.

Target include: [Name of the company], a company duly incorporated and validly existing under the laws of [●] whose registered office is at: [●], registered under No. [●].

1. The subject of this Agreement is to secure the confidentiality of information determined hereunder as Confidential Information.
2. The Receiving Party undertakes to use Confidential Information only in direct connection with the Transaction.
3. The Receiving Party undertakes not to disclose Confidential Information to other persons, except the employees of the Receiving Party listed in Annex 1 to this Agreement that need to possess such information in order to achieve the purposes specified in Section 2 of this Agreement and who have signed confidentiality agreements or are otherwise obliged to maintain confidentiality in relation to the Confidential Information to the extent specified in this Agreement. The Receiving Party undertakes to keep Confidential Information separate from other information that belongs to the Receiving Party and/or third parties. The Receiving Party undertakes to take all possible measures that are necessary to prevent and avoid disclosure and/or loss of any Confidential Information. In any case, such measures should comply with the measures that the Receiving Party would take for proper handling and protection of its own confidential information, and thus it must be the safety level that is not less than may reasonably be necessary. In the case of unauthorised disclosure and/or loss of Confidential Information, the Receiving Party must immediately inform the Receiving Party.
4. The Parties agree and acknowledge that the information defined hereunder as Confidential Information is a commercial secret of the Disclosing Party, as it has commercial value in view of it being unknown and not publicly accessible.
5. The obligations of the Receiving Party with respect to the preservation and nondisclosure of the Confidential Information under this Agreement shall remain in full force and effect without being limited in time, except for cases when the Disclosing Party provides its written consent as to any reduction of said term.
6. This Agreement shall enter into effect upon its execution and shall remain effective for three (3) years, except for the obligations of the Receiving Party as to preservation and nondisclosure of the Confidential Information set forth in Section 5 hereof above which remain in force after termination (or expiration) of this Agreement.
7. No rights or obligations other than those expressly provided for in this Agreement shall be implied under this Agreement. Nothing contained herein shall in any way affect the present and/or future rights of the Parties under the law on intellectual property rights of any country, or be construed to grant to the Receiving Party a license (permit) for usage of any present or future object of intellectual property related to the Confidential information of the Disclosing Party.
8. This Agreement shall be binding for both Parties. This Agreement is executed in favor of the Parties and their respective successors. Neither Party shall have the right to assign or otherwise transfer its rights or obligations under this Agreement to other persons except with the prior written consent of the other Party.
9. Provisions of this Agreement do not refer to the Confidential Information which:
 - at the time of disclosure (or transfer/announcement) to the Receiving Party, was or became generally known or published without the Receiving Party's breach of this Agreement, provided that the Receiving Party may specify the source of such publicly known information;

- at the time of disclosure (or transfer/announcement) under this Agreement, was already known to the Receiving Party and was not received by the Receiving Party under the terms of confidentiality, provided that the Receiving Party can prove the same; and
 - was received by the Receiving Party lawfully from a third party after its disclosure (transfer, announcement) by the Disclosing Party pursuant to the terms of this Agreement, provided that the Receiving Party can prove the same.
10. If disclosure (transfer, announcement) of Confidential Information is required from the Receiving Party and/or its representatives by a court or another governmental body, the Receiving Party shall promptly, but in any event before the disclosure (or transfer/announcement) of the Confidential Information, notify the Disclosing Party in writing and provide the Disclosing Party with the opportunity to take appropriate measures to protect and preserve confidentiality of such information. If such a request (or demand) from a court or another governmental body to disclose (or transfer/announce) Confidential Information has not been revoked (or invalidated) before the moment the relevant information is to be provided, the Receiving Party has the right to disclose (or transfer) only the part of the Confidential Information that it is obliged to disclose (or transfer) under the laws of Ukraine
11. Upon the written request of the Disclosing Party, the Receiving Party undertakes to promptly return to the Disclosing Party, or, at the Disclosing Party's discretion, destroy all the Confidential Information (together with all copies and extracts) stored by the Receiving Party and/or its representatives (including without limitation, on computer disks and/or other digital media). Within five (5) calendar days from the date of termination (expiration) of this Agreement, unless there was a written request from the Disclosing Party, the Receiving Party shall destroy all Confidential Information (together with all copies and extracts) stored by the Receiving Party and/or its representatives (including without limitation, on computer disks and/or other digital media). In case of destruction of Confidential Information under the terms of this Section, the Receiving Party shall send to the Disclosing Party a written confirmation of such destruction, which should contain a list of the destroyed Confidential Information.
12. All disputes which may arise from or in connection with this Agreement shall be settled through negotiations between the Parties. If such a dispute between the Parties cannot be settled through negotiations between the Parties, either Party may submit such a dispute to a court in accordance with [*specify the jurisdiction*] laws.
13. In case the Receiving Party breaches this Agreement, the Disclosing Party, the Target or any of their Affiliates are entitled to receive from the Receiving Party compensation of financial and moral damages, suffered by the Disclosing Party, the Target or any of their Affiliates respectively, as a result of such breach by the Receiving Party.
14. This Agreement contains the final, complete and exclusive agreement of the Parties as to regulation of relations pertaining to the subject of this Agreement, and supersedes all prior and existing arrangements and agreements relating to the subject of this Agreement. The invalidity of one of the provisions of the Agreement does not entail the invalidity of the entire Agreement.
15. This Agreement and all legal relations arising from it shall be governed by the laws of [*specify the jurisdiction*].
16. All notices and documents sent by the Parties to each other under this Agreement shall be made in writing, sealed (if applicable) by the respective Party and delivered either by (i) courier and/or a representative of the Party concerned (in this case they are deemed received from the moment the representative of the Party to which such notice/document was sent, confirms receipt of the

notification/document with his signature, indicating the date and time of receipt), or (ii) insured letter by mail to the post address of the Party concerned, as indicated at the end of this Agreement (in this case, such letters are considered to be received after three (3) calendar days from the date of posting).

17. This Agreement is made in two identical copies in the English language with both having equal legal force and comes into effect once signed by the authorised representatives of the Parties and sealed by the Parties.

Disclosing Party

[Name of the Company]

[Registration/identification number]

[Address of registered office]

[Bank account details]

Receiving Party

[Name of the Company]

[Registration/identification number]

[Address of registered office]

[Bank account details]

ANNEX 1

to confidentiality and non-disclosure agreement
dated [*date of execution of the NDA*]

List of Authorised Employees

SAMPLE