

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (hereinafter this “**Agreement**”) is made on XXX,

BETWEEN

- (1) **XXX**, a XXX incorporated and existing under XXX law, having its registered office at XXX, with company number XXX (hereinafter the “**Disclosing Party**”);

AND

- (2) **XXX**, a XXX incorporated and existing under XXX law, having its registered office at XXX, with company number XXX (the “**Receiving Party**”)

The Disclosing Party and the Receiving Party are hereinafter referred to individually as a “**Party**” and together as the “**Parties**”.

WHEREAS:

- (A) The Receiving Party wishes to investigate the business of XXX (the “**Company**”) in connection with a potential business transaction involving the Company (the “**Potential Transaction**”);
- (B) For the purpose of such investigation, the Receiving Party and its Permitted Disclosees (as defined hereafter) will be given access to certain Confidential Information (as defined hereafter).
- (C) The Parties have agreed to enter into this Agreement for the purposes of recording the terms and conditions of the disclosure of Confidential Information in connection to the Permitted Purpose.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

ARTICLE 1 - DEFINITIONS

“**Confidential Information**” means:

- a. this Agreement and the existence and contents of any discussions relating to the Potential Transaction;
- b. all other information relating wholly or partly to the Potential Transaction, the Company or the Group and supplied to the Receiving Party or the Permitted Disclosees by, or on behalf of the Disclosing Party or the Group in the context of the Potential Transaction before or after the date of this Confidentiality Agreement in writing, in electronic form, orally or otherwise, even if this information is not expressly marked as confidential, as well as any information obtained by the Receiving Party or its Permitted Disclosees in writing, in electronic form, orally or otherwise through discussions with the Disclosing Party or the Group, in such a context; and;

- c. any reports, analyses, compilations, studies or other documents or data prepared by, on behalf of, or for, the Receiving Party which contain, derive from or otherwise reflect any information referred to in sub-clauses (a) and (b) above (such documents or data being referred to as “**Secondary Information**”).

Information is not considered to be Confidential Information if this information (i) at the time of its disclosure to the Receiving Party or a Permitted Disclosee is, or after such disclosure becomes, available in the public domain or within the industries in which any of the Parties operates for any reason except the Receiving Party’s failure, or failure on the part of any Permitted Disclosee, to comply with the terms of this Agreement, or (ii) was lawfully in the Receiving Party’s or a Permitted Disclosee’s possession prior to such disclosure, or (iii) is subsequently received by the Receiving Party or a Permitted Disclosee from a third party who is in the lawful possession thereof and is not, to the Receiving Party’s knowledge, breaching any obligation of confidentiality in respect of that information.

“**Group**” means: the Company along with its subsidiaries.

“**Permitted Disclosees**” means: the directors, officers, employees, financial, legal or other professional advisers and (potential) debt financing providers of the Receiving Party (and if relevant, of the relevant fund advised by the Receiving Party and/or of the relevant acquisition vehicle capitalized by funds advised by the Receiving Party), who need to have access to the Confidential Information in order to investigate, evaluate and/or negotiate the Potential Transaction.

ARTICLE 2 - OBJECT

- 2.1 The Disclosing Party may cause Confidential Information to be disclosed to the Receiving Party in relation to the Potential Transaction. In consideration thereof, the Receiving Party hereby undertakes and agrees to keep such Confidential Information secret and confidential and not to disclose it or permit any person (except Permitted Disclosees) to have access to such Confidential information, without the Disclosing Party’s prior written consent.
- 2.2 The Receiving Party hereby undertakes to use the Confidential Information only for the purpose of investigation, evaluation or negotiation of the Potential Transaction and to disclose Confidential Information only to Permitted Disclosees. The Receiving Party shall ensure that each Permitted Disclosee is fully aware, before any disclosure of Confidential Information, of the Receiving Party’s obligations under this Agreement and the Receiving Party shall cause all Permitted Disclosees to comply with the same obligations in respect thereof. The Receiving Party shall be liable for a breach of these obligations by any Permitted Disclosee.
- 2.3 The Receiving Party shall, and shall cause that its Permitted Disclosees shall, immediately inform the Disclosing Party upon becoming aware of any actual or imminent use or disclosure of Confidential Information in breach of the terms of this Agreement, and take all reasonable steps to assist in preventing or stopping such unauthorized use or disclosure.
- 2.4 Notwithstanding anything in this Agreement to the contrary, if the Receiving Party or a Permitted Disclosee is required to disclose Confidential Information pursuant to any law, any

regulation, or any order from a court or any other governmental authority, the Receiving Party or the Permitted Disclosee concerned may disclose such information provided that, to the extent reasonably practical taking into account any mandatory deadlines for such disclosure requirement, the Receiving Party will inform the Disclosing Party thereof prior to complying with such disclosure requirement.

ARTICLE 3 – RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

Upon the Disclosing Party's written demand, the Receiving Party shall, and shall cause that the Permitted Disclosees shall, at the Receiving Party's discretion, either return the Confidential Information and any copies of it or confirm in writing to the Disclosing Party that it has destroyed the Confidential Information, with the reservation that:

- (i) neither the Receiving Party nor any Permitted Disclosees shall be liable to return or destroy such Confidential Information and elaborations thereof as have been saved to electronic carriers under automatic archiving or data security procedures so long as no attempt is made to recover such information,
- (ii) the Receiving Party shall be allowed to retain one copy of Confidential Information for audit, insurance or regulatory compliance purposes,
- (iii) Confidential Information which is contained in the minutes or supporting papers relating to any board or committee meeting of the Receiving Party, and any other Secondary Information must not be returned or destroyed, and
- (iv) the Receiving Party or the Permitted Disclosees may retain such Confidential Information which is required to be retained for the purposes of complying with any judicial, governmental, supervisory or regulatory body or any applicable rule, regulation or law (including the rules of a professional body) or the rules of any stock exchange on which any securities of the Receiving Party or any of its affiliates may be listed,

provided that to the extent that any Confidential Information is not so returned or destroyed, the Confidential Information shall remain subject to the terms of this Agreement, and provided further that the Receiving Party and the Permitted Disclosees shall in any event ensure that none of its (or its affiliates') directors, officers or employees retains access to any Confidential Information, except strictly for the purposes set forth from (i) to (iv) above.

ARTICLE 4 - NO OFFER, REPRESENTATION OR WARRANTY

- 4.1 Notwithstanding anything in this Agreement to the contrary, neither of the Parties shall be obliged to enter into any further agreement relating to the Potential Transaction.
- 4.2 The Confidential Information disclosed within the framework of this Agreement will be provided in good faith without independent verification. Therefore, no representation or warranty, express or limited, is or will be made by the Disclosing Party as to the accuracy or completeness of the Confidential Information so disclosed.

- 4.3 The Receiving Party agrees and acknowledges that the Confidential Information is and shall remain the Disclosing Party's sole and exclusive property. The Receiving Party has no right of use or to disclose such Confidential Information except in strict compliance with this Agreement. No right or license under any patents, patent applications, know-how, trademark, copyrights, service mark, trade name, trade secret or other intellectual property that the Group may now or hereafter own or control, will be deemed granted to the Receiving Party or the Permitted Disclosees by the disclosure of the Confidential Information.

ARTICLE 5 – CONTACTS SOLELY THROUGH DESIGNATED PERSONS

Any communications or questions concerning the Confidential Information or the Potential Transaction, as well as any notices or consultations pursuant to this Agreement, will be directed by the Receiving Party or its Permitted Disclosees exclusively to **[NAMES CONTACT PERSONS]** (the "**Designated Persons**"). The Receiving Party or its Permitted Disclosees will not approach or contact any other person or party (including other directors, officers or employees of the Group or their advisers) without the prior written consent of the Designated Persons.

ARTICLE 6 – NON-SOLICITATION

The Receiving Party shall not for a period of two years from the date hereof solicit for employment or offer to enter into any contract with, any key employee (or key person having a consultancy or similar agreement), director or officer of the Group. General solicitations for employment not targeted to the Group's officers, directors or employees, by means of advertisements, public notices, or internal or external websites or job search engines, shall not be deemed to constitute a breach of this article.

This provision shall also apply to the Permitted Disclosees that are (or will be) involved in the investigation, evaluation or negotiation of the Potential Transaction, with the exception of the external advisers and (potential) debt financing providers who shall not be bound by this provision.

ARTICLE 7 – UNDERTAKING OF THE DISCLOSING PARTY

The Disclosing Party shall, and shall procure that the Group shall, keep confidential and not to reveal to any person (other than the Disclosing Party's and the Group's directors, officers, employees, financial, legal or other professional advisers who have a reasonable need to know) the fact of the Receiving Party's investigation into the Company or that discussions or negotiations are taking place or have taken place between the Parties.

ARTICLE 8 – REMEDIES

The Receiving Party agrees that the Disclosing Party will suffer loss and damage if the Confidential Information is used or disclosed other than as permitted by this Agreement and monetary damages alone would not be an adequate remedy for any breach of this Agreement. Accordingly, Receiving Party agrees that Disclosing Party shall be entitled to enforce any provision of this Agreement by means of a claim for specific performance or via immediate injunctive relief before the competent court in order to prevent any breach or any threatened breach of this Agreement, without Disclosing Party being obliged to prove special damages or the amount of the (possible) resulting losses it has incurred.

ARTICLE 9 – EXECUTION AND TERM

- 9.1 This Agreement will only be executed in one copy and will be exchanged between the Parties by e-mail transmission. No originals will be circulated for execution and the Parties accept that the electronic version of this Agreement will be sufficient proof of the obligations contained herein.
- 9.2 Unless specifically stated otherwise, the rights and obligations set out in this Agreement will terminate on the second anniversary of this Agreement.

ARTICLE 10 – GROUP AS THIRD-PARTY BENEFICIARY

Each company that belongs to the Group on the date of this Agreement shall be a third-party beneficiary for the purposes of this Agreement and be entitled to enforce the obligations of the Receiving Party pursuant to this Agreement directly against such Party.

ARTICLE 11 – GOVERNING LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with [XX] law and the Parties irrevocably submit to the exclusive jurisdiction of the Courts of [XX] in respect of any claim, dispute or difference arising out of or in connection with this letter.

On behalf of **XXX**,
On _____ 20XX

Name:
Title:

Name:
Title:

On behalf of **XXX**,
On _____ 20XX

Name:
Title:

Name:
Title: