



Mutual Non-Disclosure Agreement

This **AGREEMENT** is made the [] day of

BETWEEN:

- (1) XXX (the “**Vendor**”); and
- (2) The companies and Individuals whose names are set out in the attached schedule (the “**Buyer**”). Together the “**Parties**”.

WHEREAS:

- (1) The Buyer is proposing to purchase a company from the Vendor (the “**Target**”).
- (2) The Parties wish to exchange information to facilitate this.
- (3) After an initial investigation period the Parties intend to enter into a letter of intent and, in time, a formal Sale and Purchase Agreement.

It is AGREED:

1. For the purposes of this agreement:
 - (a) “**Disclosing Party**” means the party disclosing any Information, and shall include any entity that owns or controls, is owned or controlled by or under common ownership or control with the Disclosing Party
 - (b) “**Recipient**” means the party receiving any Information, and shall include any entity that owns or controls, is owned or controlled by or under common ownership or control with the Recipient.
 - (c) “**Materials**” means media of any nature on which information is stored or represented;
 - (d) “**Information**” means:
 - (i) Disclosing Party’s non-public information and material of whatever nature relating to the Disclosing Party’s activities, undertakings, technology, know-how, intellectual property, assets, positions, strategy and products (including without limitation information relating to management, financial, marketing, commercial, technical and other arrangements of the Disclosing Party and the affairs of its clients, current, former or prospective customers and suppliers) and/or the Materials which is obtained by the Recipient or any Designated Person as a result or in consequence of access to or inspection of the Materials by the Recipient or any Designated Person or which is provided to the Recipient or any Designated Person either in writing or in pictorial or machine-readable form or orally from or pursuant to discussions with the management, employees or officers of the Disclosing Party, or any agent, contractor or adviser to the Disclosing Party;

- (ii) any reports, analyses, data, plans, compilations, studies and other documents prepared by the Recipient, its employees, agents or advisers which contains or otherwise reflects or are generated from any such information as is specified in paragraph (i) above and the contents thereof;
 - (iii) the contents of this agreement.
- 2. In consideration of Information being made accessible or available to the Recipient or to any of the Recipient's directors, officers, employees, advisers or agents, the Recipient undertakes to the Disclosing Party as follows:
- 3. The Recipient will use the Information only for the purpose of collaboration or trade with the Disclosing Party and shall not otherwise use or exploit any of the information for its own or any other person's gain, benefit or purpose and, in particular but without limitation, it will not use any of the Information for commercial or competitive purposes.
- 4. The Recipient will not (directly or indirectly) at any time, without the Disclosing Party's prior written consent, disclose or reveal or permit access to the Information, in whole or in part, to any person other than its employees and agents with a need to know in connection with the performance of the collaboration or trade with the Disclosing Party.
- 5. The Recipient will treat and safeguard as private and confidential and take reasonable steps necessary or desirable to maintain the confidentiality and security of all Information received at any time by it.
- 6. The Recipient will not in any form or manner copy or reproduce or part with possession of any Information or Materials or any other documents or other material or data made available to it or disclosed or procured to be disclosed by the Disclosing Party except as consistent with its obligations under this agreement and in particular (but without limitation) its obligations under paragraphs 3, 4 and 5 above.
- 7. All of the Information shall remain the property of the Disclosing Party and the disclosure of such Information and the Recipient access to the Materials shall not be deemed to confer upon the Recipient any rights or licence whatsoever in respect of any part of the Information or Materials.
- 8. If the Disclosing Party so requests in writing at any time, the Recipient will forthwith return to the Disclosing Party or destroy all Information and Materials together with all copies, records, analyses, memoranda or other notes to the extent containing or reflecting any of the Information made by it or its directors, officers, employees, agents of advisers. In addition the Recipient, its directors, officers, employees, agents and advisers will erase all Information from any computer, word processor or other device containing Information in its or their possession, custody or control.
- 9. The confidentiality obligations and undertakings set out in this agreement do not apply to:
 - (a) information which now is or hereafter comes into the public domain, otherwise than by reason of a breach of this agreement; or
 - (b) information the disclosure of which is required by law provided that if the Recipient, its agents, advisers, or employees become legally obligated to disclose such information, prompt notice of such fact shall be given to the Disclosing Party, to the extent permitted by

law, prior to making any disclosure so that the Disclosing Party may seek an appropriate remedy to prevent such disclosure or waive compliance with the provisions of this agreement and the Recipient, its directors, officers, employees, agents and advisers shall fully co-operate with the Disclosing Party if the Disclosing Party elects to challenge the validity of such requirement and/or take such steps as the Disclosing Party may reasonably require to avoid or limit such disclosure.

- (c) information made available to the Recipient from other sources without obligation of confidentiality.
 - (d) information that is already in the possession of or independently developed by the Recipient.
10. The Disclosing Party makes no representation or warranty, express or implied, as to the accuracy, completeness or reasonableness of the Information or Materials, and the Recipient agrees that neither the Disclosing Party nor any of its respective directors, officers, employees, advisers and agents shall have any liability to it, its directors, officers, employees, advisers or agents resulting from the furnishing or use of the Information or Materials. In furnishing or making available the Information or Materials, the Disclosing Party undertakes no obligation to provide the Recipient, its directors, officers, employees, advisers or agents with access to any additional information or to update the Information or Materials or correct inaccuracies therein which may become apparent and neither the Disclosing Party nor any other person shall be liable for any direct, indirect or consequential loss or damage suffered by any person as a result of relying on any statement contained in or omitted from the Information or Materials, whether caused by the negligence of the Disclosing Party or otherwise.
 11. The Recipient agrees to indemnify, and to keep indemnified, each of the Disclosing Party, its directors, officers, employees, advisers and agents and each of them against all actions, claims, liabilities, damages, costs, charges and expenses which the Disclosing Party, its directors, officers, employees, advisers and agents (or any of them) may suffer or incur in connection with or arising out of any breach by the Recipient or by any other person to whom the Recipient has disclosed or given access to any part of the Information, of any of the provisions of this agreement.
 12. Should any provision of this agreement become illegal or void for any reason, the validity of the remaining provision shall not be affected and the Recipient shall enter into negotiations in good faith with the Disclosing Party to find a replacement for the provision which is of similar economic effect to both parties.
 13. No forbearance or failure by the Disclosing Party to exercise or assert or claim any right or entitlement hereunder shall be construed (in the absence of a written agreement to waive or a written confirmation of a past waiver) as a waiver of that right or entitlement. No waiver of any breach of any term of this agreement shall (unless expressly agreed in writing by the Disclosing Party) be construed as a waiver of a future breach of the same term or as authorising a continuation of a particular breach.
 14. The Recipient recognises and acknowledges the Disclosing Party's representation of the competitive value and confidential nature of the Information and Materials and that any use or

disclosure of the Information or Materials other than as expressly authorised by this agreement will be detrimental to the Disclosing Party, and may result in the Disclosing Party suffering substantial and irreparable loss and damage. Without affecting any other rights or remedies that any party may have, the Recipient acknowledges and agrees that due to the character of the Information to be made available hereunder, damages would not be an adequate remedy for any breach by it or any of its directors, officers, employees, agents or advisers of the provisions of this agreement, and that the Disclosing Party will be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this agreement by the Recipient or any of its directors, officers, employees, agents or advisers and that no proof of special damage or special damages shall be necessary for the enforcement of this agreement. Nothing contained in this paragraph shall, however, be construed as a waiver by the Disclosing Party of any other rights, including without limitation, rights for damages.

15. The Recipient acknowledges and agrees that its obligations under this agreement shall be continuing and, in particular, they shall survive the termination of this Agreement and shall not be affected by any discussions between the Recipient and the Disclosing Party regarding the Information or Materials.
16. The Disclosing Party retains sole ownership and title to the Information and Materials at all times. The Recipient shall keep the Materials free of liens, attachments, and other encumbrances.
17. The provisions contained in this letter shall be governed by and construed in accordance with English law and each of the parties hereto submits to the exclusive jurisdiction of the English courts in relation hereto.
18. The Parties agree that the Buyers have either (i) had access to the Vendor's key personnel or (ii) may have access to the Vendor's key personnel in the course of this transaction ("Key Personnel" being those employees who have senior or strategic positions within the Target). The Buyers agree that they will not (collectively or individually and/ or either directly or indirectly) solicit the employment or engagement or attempt to solicit the employment or engagement of the Key Personnel or otherwise employ or engage any of the Vendors Key Personnel (other than in the Target or otherwise following the successful acquisition of the Target) in any capacity whatsoever for 12 months following the date of this letter or the date on which the proposed acquisition is aborted (whichever is the latter).
19. In default of any of the above obligations and stipulations, the Buyers shall immediately forfeit a fine payable to the Vendor, without a warning or notice of default being required, to the amount of 250,000 Euro without prejudice to the Buyers' obligation to compensate the Vendor fully for damages sustained. *Note this penalty clause may not be enforceable in all jurisdictions.*

IN WITNESS WHEREOF the parties hereto have executed this document the day and year first above written.

Signed by
for and on behalf of
[INSERT NAME]

By: _____
Name:
Title:

By: _____
Name:
Title:

Signed by
for and on behalf of
The Company

By: _____
Name:
Title:

By: _____
Name:
Title:

Schedule 1

Information Relating to Non-Disclosure Agreement

EFFECTIVE DATE:	
COMPANY NAME:	
REGISTERED OFFICE:	
COMPANY REGISTRATION NO:	
VAT NO:	