

MUTUAL CONFIDENTIALITY AGREEMENT

This mutual confidentiality agreement is made on 3d of September 2015 among the following parties:

1. **INTERESTED BUYER**, a company incorporated under _____ Law, holding its offices at _____, hereinafter referred to as "**Interested Buyer**", represented by _____;

and

2. _____, a company incorporated under Dutch law, holding its offices at _____, **`Shareholder I`**, represented by _____;

and

3. _____, a company incorporated under Dutch law, holding its offices at _____, hereinafter referred to as "**Shareholder II**", represented by _____;

4. _____, a company incorporated under Dutch law, holding its offices at _____, hereinafter referred to as "**Company**", represented by _____;

Shareholder I and Shareholder III referred herein collectively the "**Shareholders**"; each of the Shareholders, Company and INTERESTED BUYER are individually referred herein as a "**Party**" and collectively as the "**Parties**".

WHEREAS:

- (A) The Parties have been discussing a potential sale of a company, [_____ target company _____] to INTERESTED BUYER or a legal entity designated by INTERESTED BUYER (the "**Proposed Transaction**").
- (B) In connection with the Proposed Transaction, INTERESTED BUYER and Shareholders recognise that it may be necessary or desirable to provide each other with certain confidential information. In order for INTERESTED BUYER and Shareholders to evaluate the legal and economic situation and possible prospects related to a possible Transaction, the Shareholders and/or the Target have already and/or will provide

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certain information on a reciprocal basis with respect to the Transaction. The Parties intend to keep such information confidential.

- (C) This agreement sets out the terms upon which INTERESTED BUYER and Shareholders agree to provide each other with such information and certain other arrangements made between the Parties.

NOW HEREBY AGREE AS FOLLOWS:

1. DEFINITIONS

In this agreement:

"Affiliate" means in relation to any company, any person or entity, directly or indirectly, solely or jointly, controlling or controlled by that company.

"Authorised Recipients" means, in relation to each Party, that Party's Connected Persons.

"Connected Persons" means, in relation to each Party, in respect of a. and b. to the extent that they are involved in the Proposed Transaction:

- a. the Party's Affiliates and each of the Party's and their Affiliates' respective officers, employees, advisers, agents and representatives;
- b. officers, employees and partners of each Party's advisers, agents and representatives or of their Affiliates; and
- c. in relation to INTERESTED BUYER : banks and other lenders and other investors that may become involved in the Proposed Transaction.

"Information" means:

- a. this agreement and the existence and contents of any discussions relating to the Proposed Transaction;
- b. all other information of whatever nature relating to the Proposed Transaction or to Shareholders or to INTERESTED BUYER and/or its (intended) businesses, supplied by SHAREHOLDERS or INTERESTED BUYER or any of Shareholders' or INTERESTED BUYER 's Connected Persons to any of Shareholders' or INTERESTED BUYER 's Authorised Recipients, before or after the date of this agreement in writing, in electronic form, orally or otherwise;

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- c. any information obtained by INTERESTED BUYER or Shareholders or by any of their respective Connected Persons, in writing, in electronic form, orally or otherwise through discussions with the management, employees and/or advisers of any of INTERESTED BUYER or Shareholders , respectively;
- d. and any information acquired pursuant to any visits to the offices or other premises of any Party related to the Proposed Transaction.

"Proposed Transaction" has the meaning as defined in recital (B).

"Provider" means, as the context requires, that Party (either directly or indirectly through any of its Connected Persons) who provides Information to the other Party or to the other Party's respective Authorised Recipients or on whose behalf Information is so provided.

2. **CONFIDENTIALITY UNDERTAKINGS**

- 2.1 Each Party will keep all Information strictly confidential and in a secure place and will not disclose, copy, reproduce or distribute any of it or otherwise make it available to any person other than an Authorised Recipient or otherwise without the specific prior written consent of the Provider of the relevant Information (which may be withheld in the Provider's absolute discretion).
- 2.2 Each Party will procure that each of its respective Authorised Recipients to whom Information is disclosed is made aware (in advance of disclosure) of the terms of this agreement and adheres to those terms as may apply to them, as if that person were a party to this agreement.
- 2.3 Each Party will keep the Information securely and properly protected against theft, damage, loss and unauthorised access (including access by electronic means), with at least the same degree of care that they apply to their own confidential information. Each Party will notify the relevant Provider immediately upon becoming aware that any Information has been disclosed to, or obtained by, a third party otherwise than as permitted by this agreement.
- 2.4 Without derogating from the obligations under Article 2.2, each Party assumes liability for any action or omission of any of its:
 - a. Authorised Recipients to whom Information is disclosed; and
 - b. Connected Persons that had access to Information, which action or omission would, if such Connected Person was a party to this agreement, be a breach of the terms of this agreement, as they may apply to such Connected Persons.

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- 2.5 Each Party undertakes that neither it nor any of its respective Connected Persons will, without the prior written consent of the other Parties, reveal to any person other than another Party or its Authorised Recipients or otherwise announce that the Proposed Transaction is (or was) under consideration, that negotiations or discussions are (or were) taking place, the status or progress of such negotiations or discussions (including the possible termination thereof) or that Information has been provided.
- 2.6 Each Party including its respective Connected Persons undertakes to use the Information solely for the purpose of the implementation of the Proposed Transaction or for the fulfilment of its obligations pursuant to the Proposed Transaction.

3. **EXCEPTIONS**

The undertakings in Article 2 will not apply to Information which:

- a. at the time of supply by (or on behalf of) the Provider is in the public domain or subsequently comes into the public domain, except through breach of any undertaking set out in this agreement or through breach of any other duty of confidentiality relating to that Information;
- b. is already in the lawful possession of a Party (other than the Provider of the relevant Information) or that of an Authorised Recipient prior to its supply by the Provider;
- c. subsequently comes lawfully into the possession of a Party (other than the Provider of the relevant Information) or an Authorised Recipient from a third party who does not owe the Provider of that Information or any of its Connected Persons an obligation of confidence in relation to it;
- d. is independently developed in good faith by Connected Persons of a Party who did not have access to the Information; or
- e. is required to be disclosed by law, regulation or by any competent judicial, governmental, supervisory or regulatory authority (including without limitation, any securities exchange), provided that the Party that is so required to disclose, where this is reasonably possible:
 - (i) informs, as soon as possible, the Provider thereof so that the Provider may timely seek a protective order or other appropriate remedy;
 - (ii) furnishes only that portion of the Information that is legally required to be disclosed; and

- (iii) uses its best efforts to comply with the Provider's instructions as to the contents of the Information to be disclosed and the manner of such disclosure.

4. RETURN/DESTRUCTION OF INFORMATION

- 4.1 Upon the written request of the relevant Provider, the other Parties agree to and agree to procure that its Authorised Recipients will, to the extent reasonably practicable:
 - a. return to the relevant Provider, without keeping any copies, all documents containing Information (other than reports, analyses, compilations, studies or other documents containing Information prepared by the other Parties), provided (or otherwise made available) to them by, or on behalf of, the relevant Provider; and
 - b. permanently remove all Information from any computer, word processor, disk, memory stick or other device containing such Information, except for any computer records or files that have been created pursuant to the Recipient's or any Authorised Recipients automatic archiving and back-up procedures and the removal of which is not technically or commercially reasonable.
- 4.2 Article 4.1 does not apply to the extent that a Party or any of its Authorised Recipients is required to retain any such Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body (it being understood that such Information must be kept confidential in accordance with this agreement).

5. NO WARRANTY ON INFORMATION

- 5.1 Each Party acknowledges and agrees, on behalf of itself and its Authorised Recipients, that the Information does not purport to be all inclusive and, without prejudice to the terms of any possible future binding agreements with respect to the Proposed Transaction, no warranty, express or implied, is or will be made by the Provider of the Information, or by any of its Connected Persons, as to the accuracy, reliability or completeness of any of that Information.
- 5.2 Accordingly, each Party agrees with the other Party on behalf of itself and its Authorised Recipients that neither it nor any of its respective Authorised Recipients will, unless and to the extent set out in any final documentation with respect to the Proposed Transaction:

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- a. have any responsibility or liability to the other Party or to any other person resulting from the use of Information by it or any of the other Parties or Authorised Recipients; and
- b. be under any obligation to provide access to any additional Information, or to update, or to correct any inaccuracies which may become apparent in the Information supplied.

5.3 This Article 5 does not exclude any liability for fraud (*bedrog*).

6. CONSEQUENCES OF BREACH

- 6.1 In the event that a Party, or its Connected Persons, breaches an obligation of this agreement, it will forfeit without any prior notice, an immediate payable penalty to the Provider of EUR _____ (_____ euro) and of EUR _____ per day for the duration of the violation, notwithstanding the obligation of said Party to compensate the relevant Provider and, by way of third party stipulation (*derdenbeding*) its Affiliates, or, in respect of article 6.1, Shareholders, respectively, for any damages, liabilities, losses and costs reasonably relating to a breach of that Party's obligations, or those of its Connected Persons, pursuant to this agreement.
- 6.2 Nothing contained in this agreement will be construed as prohibiting any relevant Provider from pursuing any other remedies available to it.

7. GENERAL

- 7.1 Except as otherwise provided herein, the obligations of the Parties under this agreement will expire upon the earlier to occur of:
- a. five (5) years from the date of termination of the discussions between, or on behalf of, the Parties in relation to the Proposed Transaction; and
 - b. the date of implementation of the Proposed Transaction.
- 7.2 If at any time any provision of this agreement is or becomes illegal, invalid or unenforceable in any respect under the laws of any jurisdiction, this will not affect or impair:
- a. the legality, validity or enforceability in that jurisdiction of any other provision of this agreement; or

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- b. the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this agreement; and
 - i. any such illegal, invalid or unenforceable provision will be replaced by a legal, valid and enforceable provision which, given the contents and purpose of this agreement is, to the greatest extent possible, similar to the original provision.
- 7.3 No failure or delay in exercising any right, power or privilege under this agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power or privilege under this agreement or otherwise.
- 7.4 To the extent that any Information is covered or protected by privilege, disclosure of such Information by one Party to its Authorised Recipients does not constitute a waiver of privilege or any other rights which the other Parties may have in the Information.
- 7.5 A waiver in respect of the confidentiality of certain Information or the disclosure thereof will not constitute a waiver for other purposes in respect of the same Information and will not imply a waiver for the same purpose of disclosing any other Information.
- 7.6 Each of the Parties will pay its own costs and expenses incurred by it in connection with entering into this agreement.
- 7.7 Any applications for consent or notifications in relation to this agreement should be made in writing and addressed to the addresses stated at the beginning of this agreement.
- 7.8 This agreement and any contractual or non-contractual obligations arising out of or in connection to it, are governed by and must be construed in accordance with the laws of the Netherlands.
- 7.9 Any disputes arising out of or in connection with this agreement (including any disputes relating to any non-contractual obligations arising out of or in connection with this agreement as well as its termination) must be settled in first instance by the District Court in Amsterdam, The Netherlands.

This agreement has been executed by the Parties in two counterparts on [____] September 20[____].

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INTERESTED BUYER Group

Name
Title
Place

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