

**PROJECT R**

---

**CONFIDENTIALITY AGREEMENT**

---

THIS AGREEMENT is dated on

2017

**BETWEEN:**

- 1) **THE SELLERS** (as defined); and
- 2) \_\_\_\_\_, incorporated and registered in England and Wales with company number \_\_\_\_\_ whose registered office is at \_\_\_\_\_ (**"the Buyer"**).

**BACKGROUND**

- (A) The Buyer wishes to receive Confidential Information from the Sellers and Company in connection with the Proposed Transaction.
- (B) The Sellers wish to ensure that the Buyer maintains the confidentiality of the Confidential Information. In consideration of the mutual benefits of disclosing and receiving the Confidential Information, the parties have agreed to comply with the terms of this Agreement.
- (C) Christie & Co (with the company registration number 00453594 whose registered office is at Whitefriars House, 6 Carmelite Street, London, EC4Y 0BS) is duly authorised to sign as an agent for and on behalf of the Sellers.

**AGREED TERMS**

**1 Interpretation**

1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

**"Company"** a private limited company incorporated and registered in England and Wales whose identity will be confirmed in the subsequent information memorandum provided to the Buyer in connection with the Proposed Transaction.

**"Confidential Information"** all confidential information (however recorded or preserved) that is disclosed or made available (in any form or by any method) by the Sellers, the Company or any member of its Group (or any of their Representatives) to the Buyer (or any of its Representatives) whether before, on or after the date of this Agreement, in connection with the Proposed Transaction, including:

- 1) the fact that discussions or negotiations are taking place concerning the Proposed Transaction and the content and status of such discussions or negotiations;
- 2) the existence of this Agreement and its terms;
- 3) all confidential or proprietary information relating to the business or affairs, financial or trading position, assets, intellectual property rights, customers, clients, suppliers, employees, plans, operations, processes, products, intentions or market opportunities of the Company or any member of its Group;
- 4) the know-how, financial information, parent or child data, designs, trade secrets, technical information or software of the Company or any member of its Group; and
- 5) any other information that is identified or reasonably considered as being of a confidential or proprietary nature.

References to **"Confidential Information"** shall include any Copies.

**"Copies"** copies or reproductions of Confidential Information in any form or medium including any document, electronic file, note, extract, analysis, study, plan, compilation or any other way of representing or recording and recalling information which contains, reflects or is derived or generated from, Confidential Information (or any part of it).

**"Group"** in relation to a company, that company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a **"member of the Group"**.

**“Permitted Purpose”** considering, evaluating, negotiating or advancing the Proposed Transaction.

**“Permitted Recipient”** each and any of the following persons:

- 1) those of the Buyer’s Representatives that need to know or require access to the Confidential Information for the Permitted Purpose, or to provide advice in connection with the Proposed Transaction;
- 2) a person whom the Sellers agree in writing may receive any Confidential Information.

**“Proposed Transaction”** the acquisition of the entire issued share capital of the Company by the Buyer, also known as Project R.

**“Representatives”** in relation to a company, the employees, officers, representatives and advisers of that company or any member of its Group.

**“Sellers”** the holders of the entire issued share capital in the Company.

- 1.2 References to clauses are to the clauses of this Agreement.
- 1.3 A **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s successors and permitted assigns.
- 1.4 This Agreement shall be binding on, and ensure to the benefit of, the parties to this Agreement and their respective successors and permitted assigns, and references to any **“party”** shall include that party’s successors and permitted assigns.
- 1.5 A reference to a **“holding company”** or a **“subsidiary”** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.
- 1.6 Any words following the terms **“including”**, **“include”**, **“in particular”**, **“for example”** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.7 Any obligation not to do something includes an obligation not to allow that thing to be done.

## **2 Confidentiality undertakings**

- 2.1 The Buyer undertakes to the Sellers that it shall (and shall procure that each member of its Group shall):
  - 2.1.1 keep the Confidential Information secret and confidential and shall take all necessary steps to preserve its confidentiality;
  - 2.1.2 not disclose or make available any Confidential Information to any person, except as permitted by this Agreement; and
  - 2.1.3 not use or exploit the Confidential Information in any way, except for the Permitted Purpose.
- 2.2 The Buyer shall only make such Copies as are strictly necessary for the Permitted Purpose and shall:
  - 2.2.1 clearly mark all Copies as confidential;
  - 2.2.2 ensure that all Copies can be separately identified from its own information; and
  - 2.2.3 ensure that all Copies within its control are protected against theft or unauthorised access.
- 2.3 At the written request of the Sellers, the Buyer shall promptly:
  - 2.3.1 destroy or return to the Sellers all documents and materials containing, reflecting, incorporating, or based on any Confidential Information;

- 2.3.2 erase all Confidential Information from its computer and communications systems and devices used by it (or any members of its Group), including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and
  - 2.3.3 certify in writing to the Sellers that it has complied with its obligations under this clause.
- 2.4 The undertakings and obligations in this Agreement do not apply to any Confidential Information:
  - 2.4.1 that is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed in breach of this Agreement;
  - 2.4.2 that was available to the Buyer on a non-confidential basis before it was disclosed by the Sellers or their Representatives;
  - 2.4.3 that becomes available to the Buyer on a non-confidential basis from a person who was not bound by a confidentiality agreement with the Sellers (or any other member of its Group) or otherwise prohibited from disclosing the information to the Buyer; or
  - 2.4.4 where the Sellers agree in writing that such information is not Confidential Information, or that it may be disclosed (subject to any limitations or other terms specified by the Sellers regarding the method or recipient or such disclosure).

### **3 Permitted and mandatory disclosure**

- 3.1 The Buyer may disclose Confidential Information to a Permitted Recipient, provided that it:
  - 3.1.1 informs the Permitted Recipient of the confidential nature of the Confidential Information before it is disclosed; and
  - 3.1.2 procures that the Permitted Recipient shall, in relation to any Confidential Information disclosed to it, comply with this Agreement as if it were the Buyer and, if the Sellers so request, procures that the Permitted Recipient enters into a confidentiality agreement with the Sellers on terms equivalent to those contained in this Agreement.
- 3.2 The Buyer shall be liable for the actions or omissions of the Permitted Recipients in relation to any Confidential Information as if they were the actions or omissions of the Buyer.
- 3.3 The Buyer may disclose Confidential Information to the extent it is required to do so by law, or by any regulatory or governmental authority of competent jurisdiction (including any listing authority or stock exchange on which the Buyer's shares or those of any member of its Group are listed or traded), or by a court of competent jurisdiction. To the extent it is legally permitted to do so, the Buyer shall give the Sellers as much notice of the disclosure as possible, and take into account the reasonable requests of the Sellers in relation to the content of the disclosure.

### **4 Reservation of rights and Buyer's acknowledgement**

- 4.1 The Buyer acknowledges and agrees that:
  - 4.1.1 neither the entry into this Agreement nor the supply of Confidential Information shall constitute an offer or other commitment by the Sellers to enter into the Proposed Transaction, or any further agreement with the Buyer;
  - 4.1.2 the Confidential Information may not be accurate or complete and no warranty or representation (whether express or implied) is made by any person concerning the Confidential Information or its accuracy or completeness;

- 4.1.3 all rights in the Confidential Information are reserved and none of the Confidential Information shall be the property of the Buyer; and
- 4.1.4 damages alone would not be an adequate remedy for any breach of this Agreement. Accordingly, without prejudice to any other rights or remedies it may have, the Sellers shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of this Agreement.

## **5 Duration**

- 5.1 This Agreement shall terminate upon the earlier of: (1) completion of the Proposed Transaction; and (2) the date falling 42 months after the date of this Agreement.
- 5.2 Subject to clause 5.1, the Buyer's obligations under this Agreement shall not be affected by any termination of the negotiations or discussions between the parties in relation to the Proposed Transaction.
- 5.3 Termination of this Agreement shall not affect any accrued rights or remedies to which a party is entitled.

## **6 Assignment**

Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement.

## **7 Entire agreement**

- 7.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 7.2 Each party acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

## **8 Variation and waiver**

- 8.1 No variation of this Agreement shall be effective unless it is in writing and signed by all the parties (or their authorised representatives).
- 8.2 No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **9 Costs**

Each party shall pay its own costs and expenses incurred in connection with the Proposed Transaction, including the negotiation, preparation and execution of this Agreement and the evaluation and review of Confidential Information.

## **10 Third party rights**

- 10.1 Subject to clause 10.2, a person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 10.2 The Company or any member of its Group shall be entitled to enforce the terms of this Agreement as if it were a party.

10.3 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

**11 Governing law and jurisdiction**

11.1 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

11.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

This agreement has been entered into on the date stated at the beginning of it.

**SIGNED** by **CHRISTIE & CO** )  
as duly authorised agent for )  
and on behalf of the **SELLERS** ).....

**SIGNED** by [-----] )  
A director )  
For an on behalf of [-----] ).....