

Our ref: ASK/RB/AR/AS/1119568  
Your ref:

**Strictly Private & Confidential**

The Directors

**RSM Restructuring Advisory LLP**

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Date 25 November 2019

Dear Sirs

**Project Witness**

## **BACKGROUND**

We understand that you wish to enter discussions regarding the Permitted Purpose (as defined below) and that you, your directors and employees, providers of finance and your financial and professional advisers in relation to the Permitted Purpose, will need access to certain Confidential Information relating to the Principal and/or the Target.

**IT IS AGREED** as follows:

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following definitions shall apply:

"RSM" means RSM Restructuring Advisory LLP acting as agent for the Principal

"Confidential Information" means Information relating to either the Principal or the Target (the "Disclosing Party") and/or the business carried on or proposed or intended to be carried on by the Disclosing Party and which is made available for the purposes of the Permitted Purpose to the other party (the "Receiving Party") by the Disclosing Party or RSM or which is recorded in agreed minutes following oral disclosure to the Receiving Party and any other information which is otherwise made available by the Disclosing Party to the Receiving Party, whether before, on or after the date of this Agreement, including any information, analysis or specifications derived from, containing or reflecting such information but excluding information which:-

- (a) is publicly available at the time of its disclosure or becomes publicly available (other than as result of disclosure by the Receiving Party contrary to the terms of this Agreement); or

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- (b) which is disclosed on a non-confidential basis;
- (c) which was already lawfully in the Receiving Party's possession prior to such disclosure;
- (d) which is subsequently received by the Receiving Party from a third party without obligations of confidentiality (and, for the avoidance of doubt, the Receiving Party shall not be required to enquire whether there is a duty of confidentiality); or
- (e) which the Receiving Party is required to disclose, retain or maintain by law or the rules of any governmental or regulatory body provided that the Receiving Party shall promptly notify RSM if any Confidential Information is required or requested to be disclosed and, so far as it is permitted by law, seek RSM's approval regarding the manner of such disclosure and the content of any announcement or co-operate with any reasonable action which the Principal may elect to take to challenge the validity of such requirement.

"Information"	means all information including, without limitation, any information relating to systems, operations, plans, intentions, market opportunities, know-how, trade secrets and business affairs in whatever form, whether in oral, tangible or in documented form and, if in tangible or documented form, whether marked or identified as being proprietary or not;
"Permitted Purpose"	means the confidential discussions between the parties concerning the Receiving Party's expression of interest in investigating the affairs of the Principal or the Target
"Principal"	means the client of RSM Restructuring Advisory LLP, the identity of which will only be disclosed on completion of this agreement.
"Target"	means the business of certain companies and their assets being the subject of the Permitted Purpose.

## **2 AGREEMENT**

- 2.1 In consideration of the Disclosing Party agreeing to supply, and so supplying, the Confidential Information to the Receiving Party, the Receiving Party undertakes and agree as follows:
- a) to hold the Confidential Information in confidence and not to disclose or permit it to be made available to any person, firm or company (except to other Receiving Parties) without the Disclosing Party's or RSM's prior written consent;
  - b) not to use, except in connection with the performance of the Permitted Purpose or otherwise as reasonably necessary for the purposes of the Permitted Purpose or as expressly stated in this agreement or subsequently agreed to in writing, any Confidential Information obtained or given in connection with the Permitted Purpose;
  - c) to ensure that each person to whom disclosure of Confidential Information is made by the Receiving Party is fully aware in advance of the Receiving Party's obligations under this agreement and that each such person, other than the Receiving Party's directors, members, and employees, gives an undertaking in respect of the Confidential Information, in the terms of this agreement;

- d) upon written demand from either the Disclosing Party or RSM either to return the Confidential Information and any copies of it or to confirm to the Disclosing Party in writing that it has been destroyed. The Receiving Party shall not be required to return reports, notes or other material prepared by the Receiving Party which incorporate Confidential Information ("Secondary Information") provided that the Secondary Information is kept confidential;
- e) to keep confidential and not reveal to any person, firm or company (other than other Receiving Parties) the fact that discussions or negotiations are taking place or have taken place between the parties in relation to the Permitted Purpose;
- f) that no person gives any warranty or makes any representation as to the accuracy or otherwise of the Confidential Information and no liability is accepted to any party who is shown or gains access to any letters, reports, Information, advice or opinions that either the Disclosing Party or RSM gives to the Receiving Party in connection with the Permitted Purpose, save as may subsequently be agreed;
- g) that if any Receiving Party, or others engaged by a Receiving Party, breach any of the obligations under this Agreement and there is a claim made or threatened against the Disclosing Party or RSM by a third party as a result of that breach, the Receiving Party shall compensate the Disclosing Party or RSM and reimburse the Disclosing Party or RSM for and protect the Disclosing Party or RSM against any loss, damage or expense or liability incurred by the Disclosing Party or RSM which results from or arises from or is connected with any such breach and any such claim;
- h) to agree that any Personal Data, as defined by the Data Protection Act 1998 ("the Act"), as amended from time to time, disclosed to the Receiving Party shall at all times be treated as Confidential Information and shall be subject to the terms of this agreement. In addition, the Receiving Party shall not use the Personal Data other than where necessary for the Permitted Purposes and the Receiving Party shall at all times take appropriate technical and organisational measures against unauthorised and unlawful processing of such Personal Data and against accidental loss or destruction of, or damage to, such Personal Data, as required by the Seventh Principle under schedule 1 of the Act;
- i) that damages will not be an adequate remedy for any breach of this agreement and that RSM, the Principal and the Companies are entitled to equitable relief including injunctions to the maximum extent available under any applicable law in respect of any breach of this letter.
- j) to only make contact with such professional advisers to, or any officer or person employed by the Principal or the Company as RSM shall nominate from time to time and not with any other person connected with the Principal or the Company and not, without prior written consent, discuss with or communicate to any employees of the Company or suppliers, landlords, financiers, bankers or customers of the Company or any of their respective employees or advisers any possible interest in the Company or the proposed transaction, it being understood that all communications regarding the possible sale of the Company and requests for additional information will be submitted or directed to Amy Slee or Andrew Rumsey at RSM.

This paragraph does not exclude liability for, or any remedy in respect of, fraudulent misrepresentation.

2.2 In consideration of the undertakings given by the Receiving Party in this agreement, the Disclosing Party undertakes and agrees:

- a) to keep confidential and not to reveal to any person, firm or company (other than persons within the Disclosing Party's group who need to know, the Disclosing Party's professional advisers) the fact of the Receiving Party's investigation into Principal or the Target(s) or that discussions or negotiations are taking place or have taken place between the parties; and

- b) that any personal information contained or referred to in any of the Confidential Information, has been obtained, maintained and handled and all relevant licences, authorities and consents have been obtained in accordance with all applicable data protection laws, rules and regulations.

### **3 STATUS**

- 3.1 The Receiving Party confirms that it is acting as principal and not as nominee, trustee, agent or broker for any third party.

### **4 ANNOUNCEMENTS**

- 4.1 Neither party will make or permit to be made any announcement or disclosure of its prospective interest in the Permitted Purpose without the prior written consent of the other party.

### **5 ENTIRE AGREEMENT**

- 5.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed without the invalid, illegal or unenforceable provisions. If a provision of this Agreement that is fundamental to the accomplishment of the purpose of this Agreement is held invalid, the parties shall immediately commence good faith negotiations to remedy such invalidity.
- 5.2 The Receiving Party and RSM agree that the Principal and the Target may rely on the Contracts (Rights of Third Parties) Act 1999 should they need to enforce the terms of this letter.

### **6 GOVERNING LAW**

- 6.1 This agreement shall be governed by, and construed in accordance with, [English/Scottish law]. The [Courts of England/Scotland] shall have exclusive jurisdiction in relation to any claim, dispute or difference concerning this agreement and any matter arising from it. Each party irrevocably waives any right it may have to object to an action being brought in those Courts, to claim that the action has been brought in an inconvenient forum, or to claim that those Courts do not have jurisdiction.

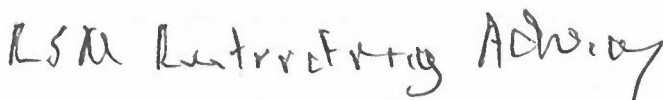
### **7 TERM AND TERMINATION**

- 7.1 The obligations contained in this Agreement shall become effective on the date first set forth above and shall terminate upon 25 November 2025.

Any change to this Agreement shall only be valid if it is in writing and duly signed by persons authorised on behalf of each party.

We shall be grateful if you will confirm in writing your agreement to these terms by signing and returning the enclosed copy of this agreement.

Yours faithfully



**RSM Restructuring Advisory LLP**

We acknowledge receipt of this agreement and agree to the above terms regulating the disclosure of the Confidential Information:

..... Director  
**For and on behalf of the Board of Directors**  
Of .....

