



### **3. UNDERTAKINGS**

- 3.1 In consideration of the provision of the Confidential Information by the Discloser to the Recipient and any heirs, successors or affiliates, the Recipient undertakes:
- 3.1.1 to keep the Confidential Information secret at all times and not to disclose it or allow it to be disclosed in whole or in part to any third party without the Discloser's prior written consent;
  - 3.1.2 not to disclose, contact, or attempt to engage with product providers directly. All communications should be solely made through the Discloser;
  - 3.1.3 not to disclose the Confidential Information (whether directly or indirectly) to actual or potential competitors of the Discloser;
  - 3.1.4 to take all necessary precautions to ensure that the undertakings in clauses 2.1.1 and 2.1.1 are enforced and are enforceable and take such action as to ensure that patentability is not destroyed through making information available to the public for instance by written or oral description;
  - 3.1.5 not to use the Confidential Information in whole or in part for any purpose excepted for the Permitted Purpose;
  - 3.1.6 not to copy the Confidential Information in any way for its own purposes;
  - 3.1.7 not without the Discloser's consent to make any commercial use of or make any commercial gain from the Confidential Information or seek to obtain any protection of the intellectual property contained in the Confidential Information;
  - 3.1.8 to keep separate from other documents and records in the Recipient's possession Confidential Information received from the Discloser and all information generated by the Recipient based upon such Confidential Information and ensure that any copies of the Confidential Information that are made are treated in the same way; and
  - 3.1.9 to promptly notify the Discloser if it becomes aware that any of the Confidential Information falls within the provisions of Clause 3.
- 3.2 The Recipient further undertakes to take proper and all reasonable measures to ensure the confidentiality of the Confidential Information.
- 3.3 Without prejudice to the generality of the foregoing, the Recipient undertakes that, except as may be permitted in any future written agreement between the Recipient and the Discloser;
- 3.3.1 The Recipient shall not make any inventions or developments or patent applications using or based on the Confidential Information, and if any such inventions or developments or patent applications are made, the Recipient shall assign all rights in them to Discloser or its nominee;
  - 3.3.2 The Recipient shall not attempt to replicate the Confidential Information or to investigate detailed aspects of the Confidential Information that were not disclosed by the Discloser; and
  - 3.3.3 The Recipient shall not use the Confidential Information directly or indirectly to procure a commercial benefit to the Recipient or a commercial disbenefit to the Discloser.

### **4. EXCEPTIONS**

- 4.1 The obligations of confidentiality set out in this Agreement shall not apply to any Information that the Recipient can show by written records;
- 4.1.1 was known to the Recipient before the Information was imparted by the Discloser, or is in or subsequently comes into the public domain (through no fault on the Recipient's part);
  - 4.1.2 is received by the Recipient without restriction on disclosure or use from a third party lawfully entitled to make the disclosure to the Recipient without such restrictions; or
  - 4.1.3 is developed by any of the Recipient's employees who have not had any direct or indirect access to, or use or knowledge of, the Information imparted by the Discloser.

### **5. DISCLOSURE TO AGENTS AND INFORMED PARTIES**

- 5.1 The Recipient undertakes to permit access to the Confidential Information only to those of its agents who reasonably need access to such Confidential Information for the Permitted Purpose and on the conditions that such agents shall have;
  - 5.1.1 entered into legally binding confidentiality obligations to the Recipient on terms equivalent to those set out in this Agreement (and such obligations extend to the Confidential Information);
  - 5.1.2 been informed of the Discloser's interest in the Confidential Information and the terms of this Agreement, and instructed to treat the Confidential Information as secret and confidential in accordance with the provisions of this Agreement.
- 5.2 The Recipient shall be responsible for ensuring that its agents comply with the provisions of this Agreement.
- 5.3 The Recipient undertakes to permit access to the Confidential Information only to the Informed Parties to the extent necessary for them to know the Confidential Information.
- 5.4 The Recipient shall be responsible for ensuring that the Informed Parties comply with the provisions of this Agreement and the Recipient shall inform the Informed Parties of the Discloser's interest in the Confidential Information and the terms of this Agreement and shall instruct them to treat the Confidential Information as secret and confidential in accordance with the provisions of this Agreement.
- 5.5 The Recipient shall indemnify the Discloser in respect of all damage (including but not limited to legal costs) which may arise directly or indirectly from the unauthorised disclosure of the Confidential Information by its directors, officers, employees, agents and the Informed Parties.

## **6. RETURN OF INFORMATION AND PROPERTY**

- 6.1 The Recipient acknowledges and agrees that the property and copyright in the Confidential Information, including any documents, files and other items, including copies, containing any Confidential Information, belongs to the Discloser.
- 6.2 Upon termination of this Agreement and at any other time on the Discloser's written request, the Recipient will return immediately to the Discloser all Confidential Information which the Recipient received under this Agreement and which may still be in the Recipient's possession, including any copies made, and Recipient will make no further use or disclosure of any of it. If the Discloser so dictates, the Recipient shall destroy the Confidential Information under the said circumstances.

## **7. NO IMPLIED RIGHTS**

- 7.1 This Agreement shall not be construed;
  - 7.1.1 to grant the Recipient any licence or rights other than as expressly set out herein in respect of the Confidential Information; nor
  - 7.1.2 to require the Discloser to disclose any Confidential Information to the Recipient.
- 7.2 No warranty or representation, express or implied, is given as to the accuracy, efficacy, completeness, capabilities or safety of any materials or information provided by the Discloser under this Agreement.

## **8. NON-CIRCUMVENTION**

The Recipient shall not:

- 8.1 make contact or contracts with, deal with or otherwise involve themselves in any manner with any third party or parties concerning any product or service offered by the Discloser or its associated companies without the prior written consent of the Discloser;
- 8.2 request, encourage, or cause any person, firm, partnership, association, corporation or business entity to withdraw, curtail or cancel a business relationship with the Discloser.

## **9. PUBLICATION**

The recipient shall not permit any comment, announcement or publication or any information regarding the results or outcome of the Confidential Information without the prior written consent of the discloser.

## **10. REMEDIES**

The parties agree that any impending or existing breach of any provision of this Agreement may cause the Discloser irreparable injury for which it would have no adequate remedy at law and that the

Discloser will be entitled to seek immediate injunctive relief, specific performance or any other equitable relief prohibiting such breach, in addition to any other rights and remedies available to it.

**11. NO WAIVER**

Any failure or delay by the Discloser in exercising any right, power or privilege contained in this Agreement will not act as a waiver nor will any single or partial exercise preclude any further exercise.

**12. NO RELATIONSHIP**

Nothing contained in this Agreement or in any discussions undertaken or disclosures made pursuant hereto will constitute or be deemed to constitute any commitment to enter into any business, joint venture, ownership or share arrangement or make either party the agent of the other for any purpose.

**13. LAW AND JURISDICTION**

This Agreement shall be governed by and construed in accordance with English law and shall be subject to the non-exclusive jurisdiction of the English courts.

**14. ASSIGNMENT**

This agreement is personal to the parties neither of whom may assign its rights or obligations under this Agreement either in whole or part without the other party's written agreement.

**15. NOTICES**

All notices required to be served pursuant to this Agreement shall be made in writing to the addresses at the head of this Agreement.

**16. SEVERANCE**

If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable or illegal or otherwise unenforceable or indications of this are received by either party from any relevant competent authority the remaining provisions of this Agreement are to remain in full force and effect.

IN WITNESS WHEREOF the parties to this Agreement have caused these presents to be duly executed the day and year first above written:

SIGNED for and on behalf of Opes Distribution  
by its duly authorised officer  
[James Cook

)  
)



SIGNED by the Recipient  
or if a company, for and on behalf of

)

by its duly authorised officer  
[Print name:

)  
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