

CONFIDENTIALITY AGREEMENT AND UNDERTAKING

----- (the “Contractor”)

This Agreement and Undertaking sets out the Contractor’s confidentiality obligations in respect of information and material disclosed to the Contractor by or on behalf of IDA Ireland for the Legitimate Purpose (as defined below), and is entered into by the Contractor in consideration of IDA Ireland engaging the Contractor to carry out the Legitimate Purpose and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the Contractor.

1. Confidential Information

Certain business, commercial, technical, financial, operational, administrative, marketing, economic and other information, and material in connection with various enterprises may be disclosed (whether in writing, orally or in any other manner) by or on behalf of IDA Ireland to the Contractor in the provision of **[insert tender title]** to IDA Ireland (hereinafter called the “Legitimate Purpose”). This information and material, the Contractor’s involvement in the matter, this agreement, any discussions with IDA Ireland in relation to the said information and material (including the status and existence thereof), including any memorandum, report and evaluation prepared by the Contractor or by parties other than the Contractor, is referred to in this agreement as “Confidential Information”.

The Confidential Information will be kept secret and confidential by the Contractor and will not, without the prior written consent of IDA Ireland (which may be given on such terms as it considers appropriate), be disclosed (whether in writing or orally), in whole or in part, to any other person nor used for any purpose (including any competitive or commercial purpose) other than to the extent necessary to carry out the Legitimate Purpose.

2. Exceptions

The restrictions in paragraph 1 of this agreement do not apply to:

- i. Confidential Information which, at the time of disclosure to the Contractor can be shown by the Contractor to be in the public domain; or
- ii. Confidential Information which, after disclosure to the Contractor can be shown by the Contractor to have become publicly available by publication or otherwise through no breach of this agreement or of any other agreement by the Contractor; or
- iii. Confidential Information which was lawfully in the Contractor’s possession prior to disclosure, as evidenced by the Contractor’s written records, and which was not acquired directly or indirectly from IDA Ireland, or any of the advisers to IDA Ireland; or

- iv. The disclosure of Confidential Information to a third party which is required by law or by the rules of any applicable regulatory organisation, in which event the Contractor must nevertheless comply with paragraph 6 (Disclosure) of this agreement; or
- v. The disclosure of Confidential information to the Contractor's employees, agents, and professional advisers (the "**Contractor's Agents**") who need to know the relevant Confidential Information for the Legitimate Purpose.

3. Copies

The Contractor will not make any copies in any form of any documents containing Confidential Information or authorise any other person to do so, except (i) for the purpose of supplying Confidential Information to persons to whom disclosure of Confidential Information is expressly permitted by this agreement or (ii) with the prior written consent of IDA Ireland or (iii) for the purpose of making one paper copy of documents sent to the Contractor in electronic format.

4. Records

The Contractor will keep a record (which shall be made available to IDA Ireland on request) of the Confidential Information provided in writing to the Contractor and of the location of that Confidential Information. The Contractor will ensure that all Confidential Information (save for Confidential Information which was disclosed orally and has not been reduced into writing or stored on any disc, tape, or other device) is kept in a secure place at all times and is properly protected against theft, damage, loss, or unauthorised access.

5. Return of Confidential Information

The Contractor will, upon demand by IDA Ireland made in writing at any time either return to IDA Ireland or destroy (and the Contractor will confirm such destruction in writing to IDA Ireland) any document (including any notes, analyses, records, or memoranda prepared by the Contractor) containing, or derived from, any Confidential Information and all copies which have been made by the Contractor or on the Contractor's behalf. In addition, the Contractor will, in these circumstances, erase (and the Contractor will confirm such erasure in writing to IDA Ireland) all Confidential Information from any computer, word processor or other device containing such information. Notwithstanding the return or destruction of the Confidential Information, the Contractor will continue to be bound by the obligations of confidentiality and other obligations hereunder.

6. Disclosure

In the event that the Contractor becomes aware that the Contractor may become compelled by law or by the rules of any applicable regulatory organisation to disclose any Confidential Information, prompt notice of that fact will be given to IDA Ireland so that IDA Ireland may seek an appropriate remedy to prevent that disclosure and the Contractor will take such steps as IDA Ireland may reasonably require for that purpose and will keep IDA Ireland promptly and fully informed of all developments relating to any such potential disclosure.

In the event that the Contractor become compelled by law or by the rules of any applicable regulatory organisation to disclose any Confidential Information, full details of any proposed disclosure will be given to IDA Ireland in advance and any such disclosure will be limited to the minimum amount of Confidential Information required to satisfy that disclosure obligation, and the Contractor will exercise

the Contractor's best efforts to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information.

7. Agents

The Contractor will be responsible for any breach of the terms of this Agreement by the Contractor or any of the Contractor's Agents (which shall include each of the Contractor's employees, agents, and professional advisers). The Contractor will ensure that the Contractor's Agents comply with the Contractor's obligations under this Agreement and any action by them will be treated as an action by the Contractor for the purposes of this Agreement.

8. Statutory Obligation

The Contractor's attention is brought to paragraph 4, Schedule 2 of the Industrial Development (IDA Ireland) Act 1993 (as amended by the section 47 of the Industrial Development (Enterprise Ireland) Act 1998)) which makes it an offence for the Contractor or any of the Contractor's employees to disclose any information obtained by the Contractor while performing (or as a result of having performed) duties as an adviser or consultant to IDA Ireland.

4. (1) Save as otherwise provided by law and paragraph 3, a person shall not without the consent of the Board, other than in respect of clause (f) of this subparagraph, disclose any information obtained by him or her while performing (or as a result of having performed) duties as—

(e) an adviser or consultant to IDA or an employee of such person whilst performing duties relating to such advice or consultation,

(2) A person who contravenes subparagraph (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.¹

(3) Nothing in this section shall prevent disclosure of information in a report made to IDA or on behalf of IDA to the Minister.

9. Equitable Remedies

The Contractor acknowledges and agrees that damages would not be an adequate remedy for any breach by the Contractor or the Contractor's Agents of the provisions of this Agreement, and that IDA Ireland 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 Contractor or the Contractor's Agents and that no proof of special damages shall be necessary for the enforcement of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or equity. In the event that IDA Ireland enforces the Contractor's obligations hereunder, the Contractor shall reimburse IDA Ireland for all costs and expenses, including legal expenses, incurred by IDA Ireland in this regard.

10. Remedies

¹ The penalty set out in the legislation is IRE£1500, however, applying the euro conversion and the Fines Act 2010 bring the penalty for an offence committed today to a class B fine, which is a maximum of EUR€4,000.

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.

11. Indemnity

The Contractor agrees to indemnify and save IDA Ireland harmless from and against any loss or liability resulting from, or arising in connection with, the unauthorised use or disclosure of the Confidential Information by the Contractor or the Contractor's Agents.

12. General

The undertakings, indemnities, confirmations, and acknowledgements on the Contractor's part referred to in this Agreement are given by the Contractor on behalf of the Contractor itself and each of the Contractor's Agents who are at any time in receipt of Confidential Information.

This Agreement will inure to the benefit of and may be enforced by IDA Ireland and its successors or assigns and will be binding upon the Contractor and the Contractor's Agents and the Contractor's respective successors in interest; provided, however that any assignment by the Contractor of the Contractor's rights and obligations hereunder without IDA Ireland's prior written consent will be void.

Each of the provisions of this Agreement is separate and severable and enforceable accordingly. If at any time any of the provisions is held to be void or unenforceable, the validity or enforceability of the remaining provisions shall not be affected. If any provision is held to be void or unenforceable, the parties agree to substitute any such provision with a valid enforceable provision which achieves to the greatest extent possible the economic, legal, and commercial objectives of the invalid or unenforceable provision.

13. Governing Law

This Agreement and Undertaking will be governed by, and constructed in accordance with Irish Law and shall be subject to the exclusive jurisdiction of the Irish Courts.

(Please sign here to confirm the Contractor's acceptance of the above conditions).

I agree to the above conditions on behalf of the Contractor

Signed:

Authorised Person

Position

Name:

(Block Capitals)

Date: