



NON-DISCLOSURE AGREEMENT [AUCTION PROCESS, ONE-WAY DISCLOSURE]

PARTIES:

- I. [●●]¹ (the "Discloser"); and
- II. [●●] (the "**Receiver**Interested Party"),

together the "**Parties**" and each a "**Party**".

RECITALS:

- A. The **Receiver**Interested Party has expressed an interest in evaluating a potential acquisition of [*the entire issued share capital/the business of*] [●●]² (together with its subsidiary undertakings, the "**Group**") (the "**Proposed Transaction**").
- B. This non-disclosure agreement (the "**Agreement**") sets out the undertakings about the non-disclosure and use of Information (as defined below).

IT IS HEREBY AGREED AS FOLLOWS:

"**Affiliate**" means, with respect to a Person: a Person Controlling, or Controlled by, that Person, or which is Controlled by a Person who also Controls that Person, including funds managed by, or under common Control with, such Person, whereby "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting interests, by contract or otherwise. "Controlling" and "Controlled" are construed accordingly;

"**Information**" means any information of whatever nature in whatever form furnished by or on behalf of the Discloser to ~~the Recipients (as defined below)~~ a Recipient, whether deliberately or not, directly or indirectly, on or after the date of this Agreement, in relation to the Proposed Transaction, the Discloser ~~or its Representatives (as defined below) and~~ the Group, or their respective business(es), including Transaction Information, but excluding information that (i) is or becomes publicly known, other than by breach of this Agreement by a Recipient, (ii) is or becomes lawfully available to a Recipient from a third party without restrictions or breach of this Agreement or any other confidentiality undertaking that ~~the such~~ Recipient is aware of, or (iii) is independently developed by a Recipient without reference to any Information furnished pursuant to this Agreement;

"**Person**" means any individual, company, corporation, partnership, or unincorporated association (whether or not having separate legal personality);

"**Permitted Purpose**" means evaluating, discussing and/or negotiating the Proposed Transaction;

"**Recipient**" means the Interested Party or any Representative of the Interested Party that receives Information, provided that the Interested Party may solely disclose Information to

¹ Note: include name of the disclosing party, which may be the seller (or one or more of the sellers) or the target company.

² Note: include name of top holding company of the target group, which may be the same entity as the Discloser.

its Representatives who reasonably need to know or receive such Information in connection with the Permitted Purpose and, if the Interested Party is a fund or fund manager, the Interested Party may only disclose Information to portfolio companies which are active in the same or similar business as the Group with the prior written consent of the Discloser (and thereafter, taking any additional clean-team restrictions into account);

"Representative" means in relation to a Person: that Person and its Affiliates, and its and their respective directors, officers, employees, fund managers, limited partners, professional advisers, consortium partners or co-parties in a cooperation or on-sale agreement (subject to the provisions of paragraph 409), W&I brokers and providers of W&I insurance (subject to the provisions of paragraph 409) and potential providers of debt finance (subject to the provisions of paragraph 409); and

~~"Recipient" means the Receiver and any of its Representatives that receives Information in the framework of the Proposed Transaction, provided that the Receiver may solely disclose Information to its Representatives who reasonably need to know or receive such Information in connection with the Permitted Purpose (as defined below) and, if the Receiver is a fund or fund manager, the Receiver may only disclose Information to portfolio companies which are active in the same or similar business as the Group with the prior written consent of the Discloser (and thereafter, taking any additional clean-team restrictions into account); and~~

"Transaction Information" means the existence and terms of this Agreement, the fact that the Parties are considering the Proposed Transaction, and the contents and status of their discussions and negotiations in connection with the Proposed Transaction.

1. **Permitted Purpose.** The Recipients may only use the Information for the Permitted Purpose.
2. **Recipients.** The ~~Receiver~~ Interested Party shall procure that each of the other Recipients is made aware of and is directed to act in a manner consistent with the provisions of this Agreement. Accordingly, the ~~Receiver~~ Interested Party shall be responsible and liable for any breach by ~~it or any of the other Recipients~~ Recipient of the provisions of this Agreement ~~as determined in accordance with paragraph 21~~ that apply to such Recipient, unless and until such Recipient executes a written undertaking towards the Discloser on the basis of which it individually and separately adheres to, and becomes responsible for compliance with, the obligations of this Agreement that apply to such Recipient. The ~~Receiver~~ Interested Party shall notify the Discloser of any disclosure of Information in breach of this Agreement as soon as it becomes aware thereof.
3. **Use and treatment of Information.** Each Recipient shall hold all Information in strictest confidence, using at least the same degree of care as it uses to safeguard its own information of a confidential nature.
4. **Restricted contact.** No Recipient shall make or have any contact with any Representative, supplier, customer or subcontractor of the Discloser or the Group in relation to the Proposed Transaction (the **"Restricted Parties"**), other than those

Restricted Parties specifically identified in writing by the Discloser for this purpose. Nothing in this Agreement shall prevent a Recipient from [\(a\)](#) contacting Restricted Parties in the ordinary course of business without reference to the Proposed Transaction and/or [\(b\)](#) conducting any ordinary course of business commercial or market review, provided that such review is conducted (i) on a "no names" basis, (ii) without reference to the Proposed Transaction, (iii) without disclosing any Information and (iv) without treating the Group differently than any other party in the relevant industry.

5. **Rights to Information.** All Information shall become, shall be and shall remain the exclusive property of the Discloser and the Group, and except as specifically provided hereunder, nothing in this Agreement shall give, or shall be construed as giving, the Recipients any right, title, ownership, interest, licence or any other right in or to any Information.
6. **Process.** Except as set forth in a signed definitive agreement regarding the Proposed Transaction, neither the Discloser nor any of its Representatives makes any representation or warranty, whether express or implied, as to the accuracy, reliability or completeness of any Information nor does any of them have any duty to update or correct any Information. Except as may be agreed otherwise in writing, (i) the provision of Information under this Agreement and any discussions held in connection with the Proposed Transaction are on a non-exclusive basis, (ii) neither the Discloser, nor the ~~Receiver~~ [Interested Party](#), nor any of their respective Representatives, has any obligation to enter into or continue discussions or negotiations, or any other duty or care in respect of the Proposed Transaction, and (iii) the Discloser and its Representatives may at any time, without giving any reason for doing so, modify the procedures, scope and structure of the ~~Potential~~ [Proposed](#) Transaction.
7. **Required disclosure.** If a Recipient is legally required to disclose any Information by law or regulatory or governmental authority, the relevant Recipient shall, as soon as practicable and to the extent permitted by law, (i) notify the Discloser in writing about all material details of the required disclosure so that the Discloser may seek a protective order or other appropriate remedy, (ii) co-operate with the Discloser and take such actions as are reasonably requested by the Discloser to prevent or limit (the scope and consequences) of such disclosure, and (iii) furnish only that portion of the Information that is legally required to be disclosed.
8. **Return or destruction of Information.** As soon as possible after a written request from the Discloser [to the Interested Party](#), each Recipient will return, or at the Recipient's sole discretion, destroy all copies of any document or materials that contain Information. The undertaking of this paragraph shall not apply to (i) electronic copies made pursuant to automatic archiving, computer back-up procedures and/or disaster recovery systems (so long as no attempt is made to access any retained Information other than by IT, legal or compliance personnel in connection with their ordinary duties) and (ii) Information which a Recipient is obliged to store under law, regulation or otherwise for bona fide internal compliance, audit or insurance purposes, consistently applied, however such Information

retained shall remain subject to the undertakings of this Agreement and such undertakings shall survive the lapse of the term of this Agreement. Upon written request of the Discloser, the ~~Recipient-Interested Party~~ shall confirm in writing that ~~it has~~ all Recipients have returned or destroyed all such Information.

~~9. **Discloser's obligations.** The Discloser shall not, and shall procure that its Representatives shall not, disclose any Transaction Information to any third party other than the Discloser's Representatives (provided such Representative is bound by a duty of confidence and reasonably needs to know or receive such Transaction Information), except (i) with the prior written approval of the Receiver, (ii) if disclosure is reasonably required to enforce its rights under this Agreement, or (iii) to the extent the Discloser is legally required to do so by law or regulatory or governmental authority, provided that the provisions of paragraph 7 shall then *mutatis mutandis* apply.~~

~~9. **No third party engagement.** No Recipient shall Restricted engagements. The Interested Party and its Representatives shall not directly or indirectly [exclusively]³ engage, enter into or continue any agreement or understanding, written or oral, with any (potential) provider of debt financing ~~[10. nor [, or any~~ W&I insurer or broker,⁴ in connection with the Proposed Transaction without the prior written consent of the Discloser.~~

~~10. **11.No consortium or on-sale.** The Receiver-Interested Party confirms that it is acting as principal and that neither the Receiver-Interested Party nor any of its Representatives is acting as nominee, agent or broker for any other Person. The Receiver-Interested Party and its Affiliates shall not, directly or indirectly, enter into, or continue any consortium, on-sale or other co-operation agreement with any third party in relation to the Potential Proposed Transaction, without the prior written consent of the Discloser. In deviation of the above, ~~it is acknowledged that if the Receiver- if the Interested Party or any of its Affiliates~~ is a fund or fund manager, the limited partners in the relevant fund may, alongside the Receiver-Interested Party or its Affiliates, co-invest in connection with the Potential Proposed Transaction.~~

~~11. **Discloser's obligations.** The Discloser shall not, and shall procure that its Representatives shall not, disclose any Transaction Information to any third party other than the Discloser's Representatives (provided such Representative is bound by a duty of confidence and reasonably needs to know or receive such Transaction Information), except (i) with the prior written approval of the Interested Party, (ii) if disclosure is reasonably required to enforce its rights under this Agreement, or (iii) to the extent the Discloser is legally required to do so by law or regulatory or governmental authority, provided that the provisions of paragraph 7 shall then *mutatis mutandis* apply.~~

³ Note: part between brackets to be deleted if there should be a general restriction on engaging (exclusively or non-exclusively) with providers of finance.

⁴ Note: part between brackets to be deleted if no W&I insurer or broker has been or will be engaged by the sell-side as part of the auction.

12. **Third party stipulation.** Each of the undertakings in this Agreement given for the benefit of the Discloser is also given for the benefit of, and will be enforceable by, the members of the Group as an irrevocable third party stipulation without consideration (*onherroepelijk derdenbeding om niet*).
13. **Term.** Unless specifically provided for otherwise in this Agreement or otherwise agreed between the Parties in writing, the undertakings under this Agreement shall continue until the earlier of (i) a period of two (2) years after the date of this Agreement or (ii) the entry of any definitive agreement(s) relating to the Proposed Transaction with the **Receiver**[Interested Party](#), or any Person designated by it. Each Recipient acknowledges and agrees that the rights of the Discloser as a result of an attributable breach of a Recipient in the performance of its obligations under this Agreement that dates from before the termination of the Agreement continue to apply in full.
14. **No termination.** Each Party waives the right to (seek to) rescind (*ontbinden*), nullify (*vernietigen*) or otherwise terminate or amend this Agreement, in whole or in part, in or out of court.
15. **No assignment.** No Party is entitled to assign or transfer (*goederenrechtelijke werking*) all or part of its rights and/or obligations under this Agreement to any third Person, without the prior written consent of the other Party, provided that the Discloser shall be allowed to assign or transfer (*goederenrechtelijke werking*) this Agreement (or any rights or obligations under this Agreement) to the ultimate purchaser of (the business of) the Group or any Person designated by such purchaser.
16. **Partial invalidity.** If any term or provision of this Agreement is found by a court or arbitral tribunal of competent jurisdiction to be invalid or unenforceable, the remaining terms and provisions hereof shall not in any way be affected or impaired and shall remain in full force and effect.
17. **Amendment.** Any amendment or variation of this Agreement is not valid, unless agreed between the Parties in writing.
18. **Waiver.** No Party shall be deemed to have waived any of its rights under this Agreement, unless such waiver has been made explicitly and in writing.
19. **Headings.** The headings are included for convenience of reference only and shall not affect the interpretation of this Agreement or of any provisions thereof.
20. **Governing law.** This Agreement and any non-contractual obligations arising out of or in connection with it, shall be governed by and construed in accordance with the laws of the Netherlands.
21. **Dispute ~~settlement~~resolution.** Any dispute arising out of or in connection with this Agreement shall in first instance be exclusively submitted to the competent courts in Amsterdam, the Netherlands.
22. **Counterparts.** This Agreement may be signed through electronic signatures, or in one or more counterpart originals, each of which shall constitute an original document.

[signature page to follow](#)

SIGNATURE PAGE – NON-DISCLOSURE AGREEMENT

THUS AGREED UPON AND EXECUTED:

[●●]

By:

Position:

Date:

Place:

[●●]

By:

Position:

Date:

Place:

RIDERS

Non-solicitation (include as new paragraph 11)

Non-solicitation. *No Recipient may, for a period of [●●] months following the date of this Agreement, without the prior written consent of the Discloser, directly or indirectly, solicit or enter into an agreement regarding the employment (or consultancy, secondment, or similar position) of any Person who is engaged with the Discloser or the Group on the date of this Agreement, provided that the recruitment of a Person (i) through an employment agency (it being understood that no Recipient may instruct or encourage that agency to approach any such Person), (ii) resulting from placing an advertisement of a position available to a member of the public in general, or (iii) that contacts a Recipient on its own initiative for the purpose of seeking employment (or consultancy, secondment, or similar position) with a Recipient, in each case without any direct or indirect solicitation by or encouragement from a Recipient, will not constitute a breach of this Agreement. This paragraph shall not apply to brokers, insurers, potential providers of debt finance and advisers of a Recipient.*

Arbitration (replacement for paragraph 21)

Dispute resolution. *Any dispute arising out of or in connection with this Agreement shall be finally settled in accordance with the Arbitration Rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut) as at present in force. The arbitral proceedings shall be conducted in the English language in Amsterdam, the Netherlands. The tribunal shall comprise of 3 arbitrators. The tribunal shall decide in accordance with the rules of law.*

Summary Report	
Title	Comparison Result
Date & Time	18-12-2021 16:55:32
Comparison Time	5,84 seconds
compareDocs version	v5.1.300.3

Sources	
Original Document	2021.09 - NDA NVP [ENG] - short - auction - one way disclosure.DOC
Modified Document	2021.12.18 - NDA NVP [EN] - auction - one-way disclosure.doc

Comparison Statistics	
Insertions	17
Deletions	8
Changes	31
Moves	8
Font Changes	0
Paragraph Style Changes	0
Character Style Changes	0
TOTAL CHANGES	64

Word Rendering Set Markup Options	
Name	
<u>Insertions</u>	
Deletions	
<u>Moves</u> / Moves	
Font Changes	
Paragraph Style Changes	
Character Style Changes	
Inserted cells	
Deleted cells	
Merged cells	
Changed lines	Mark left border.

compareDocs Settings Used	Category	Option Selected
Open Comparison Report after saving	General	Always
Report Type	Word	Redline
Character Level	Word	False
Include Comments	Word	True
Include Field Codes	Word	True
Flatten Field Codes	Word	True
Include Footnotes / Endnotes	Word	True
Include Headers / Footers	Word	True
Image compare mode	Word	Insert/Delete
Include List Numbers	Word	True
Include Quotation Marks	Word	False
Show Moves	Word	True
Include Tables	Word	True
Include Text Boxes	Word	True
Show Reviewing Pane	Word	True
Summary Report	Word	End
Detail Report	Word	Separate (View Only)
Document View	Word	Print