

DATED

200[ ]

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(1) CELLHIRE PLC

- and -

(2) [ ]

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**NON-DISCLOSURE AGREEMENT**

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(Two-way Exchange of Information)

THIS AGREEMENT dated

200[ ]

**BETWEEN:**

- (1) **CELLHIRE PLC** a company registered in England and Wales (Registration No. 2159836) with registered office at Park House, Clifton Park, York YO30 5PB ("Cellhire"); and
- (2) [ ] [a company registered in England and Wales (Registration No. ) with registered office] [whose principal place of business is] at [ ] ("XYZ").

**BACKGROUND**

- (A) The parties possess certain confidential information and materials in connection with [INSERT].
- (B) For the purpose [PURPOSE?] the parties are willing to disclose information to each other under conditions of confidentiality.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

**"Confidential Information"** means all business, information technical know how and information in relation to inventions, practical experience, methodology, technical and scientific data, business organisations, formulae, specifications, manufacturing information (whether or not patentable or patented) developed or acquired by either party.

**"the Receiving Party"** means the party receiving any Confidential Information from the party disclosing the information ("the Disclosing Party") under this Agreement, its directors, officers and employees, agents and associated companies, and the Receiving Party shall ensure that the obligations contained in this Agreement shall extend to all such persons.

## **2. UNDERTAKINGS OF THE RECEIVING PARTY**

Each party will:

- 2.1 use all Confidential Information disclosed by the other exclusively for the purpose of technical collaboration and researching future developments in the technology stated in the Recitals, and evaluating the commercial potential and economic viability of products produced using the Confidential Information; and
- 2.2 maintain confidential all Confidential Information that either party may acquire in any manner;

and will, accordingly, not directly or indirectly use or disclose any of the Confidential Information in whole or in part, save for the purpose of, and in accordance with, this Agreement.

## **3. EXCEPTIONS**

The restrictions on the Receiving Party above will not apply to any Confidential Information which:

- 3.1 the Receiving Party can prove by documentary evidence produced to the Disclosing Party was already in the possession of the Receiving Party and at its free disposal before the disclosure to the Receiving Party;
- 3.2 is disclosed to the Receiving Party without any obligations of confidence by a third party who has not directly or indirectly obtained it from the Disclosing Party; and
- 3.3 is or becomes generally available to the public in printed publications in general circulation through no act or default on the part of the Receiving Party or the Receiving Party's agents or employees.

#### 4. INCLUSIONS

Information shall not be deemed to be generally available to the public by reason only that it is known to only a few of those people to whom it might be of commercial interest, and a combination of two or more portions of the Confidential Information shall not be deemed to be generally available to the public by reason only of each separate portion being so available.

#### 5. CONFIDENTIALITY MEASURES

5.1 To secure the confidentiality attaching to the Confidential Information, the Receiving Party shall:

5.1.1 ensure all Confidential Information received by it is marked as confidential;

5.1.2 keep separate all Confidential Information and all information generated by the Receiving Party based on the Confidential Information from all documents and other records of the Receiving Party;

5.1.3 keep all documents and any other material bearing or incorporating any of the Confidential Information at the specified places of business of the Recipient, agreed between the parties;

5.1.4 not use, reproduce, transform, or store any of the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of the places of business, referred to in **sub-clause 5.1.3** above, or between the said places of business of both the Receiving and Disclosing Parties and any such transfer or transmission shall be by private and exclusive means agreed to between the parties;

- 5.1.5 allow access to the Confidential Information exclusively to those employees of the Receiving Party who have reasonable need to see and use it for the purposes of its evaluation by the Receiving Party and shall inform each of the said employees of the confidential nature of the Confidential Information, and of the obligations on the Receiving Party in respect thereof;
  - 5.1.6 make copies of the Confidential Information only to the extent that the same is strictly required for the purposes of its evaluation by the Receiving Party; and
  - 5.1.7 on request of the Disclosing Party made at any time deliver up to the Disclosing Party all documents, samples and other material in the possession, custody or control of the Receiving Party that bear or incorporate any part of the Confidential Information including all copies made by the Receiving Party.
- 5.2 To secure the confidentiality attaching to the Confidential Information, the Disclosing Party shall:
- 5.2.1 supply the Confidential Information in written form, which will be identified as being confidential and disclosed under this Agreement; and
  - 5.2.2 confirm by written summary within [seven days] from its disclosure, any Confidential Information disclosed in oral form.

## **6. DURATION**

The obligation as to confidentiality expressed in this Agreement shall continue for [three years] following the return of the Confidential Information from the Receiving Party to the Disclosing Party.

## **7. GOVERNING LAW**

The construction, validity, and performance of this Agreement shall be governed by English law and be subject to the jurisdiction of the English Courts.

