

CONFIDENTIALITY LETTER

[on notepaper of supplier of confidential information e.g. vendor or his agent.]

To: [Potential Investor/Purchaser]

Dear Sirs

We understand that you wish to investigate the business of [***name of company***] (the "Company") [***and of its subsidiaries***] (together the "Group") [***in connection with [insert nature of transaction]***] (the "Permitted Purpose") and that you, your directors and employees, other potential syndicate members or other providers of finance and your financial and professional advisers acting in connection with the Permitted Purpose, (together referred to as the "Disclosees"), whose knowledge of such Confidential Information is essential to your evaluation of the Group in connection with the Permitted Purpose will need access to certain information relating to the Group (the "Confidential Information") [***including, without limitation [•]***].

1 OBLIGATIONS

In consideration of our agreeing to supply and so supplying any Confidential Information to you and agreeing to enter into discussions with you, you hereby undertake and agree as follows:

- 1.1 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 Disclosees), without our prior [***written***] consent;
- 1.2 to provide to us upon request a list of individuals or entities to whom any Confidential Information is disclosed (to include details of the Confidential Information disclosed);
- 1.3 only to use the Confidential Information exclusively for evaluating the Group in connection with the Permitted Purpose;
- 1.4 to ensure that each person to whom disclosure of Confidential Information is made by you (including, without limitation, each Disclosee) is fully aware in advance of your obligations under this letter and that, in the case of other potential syndicate members, each such person gives an undertaking in respect of the Confidential Information, in the terms of this letter;
- 1.5 upon written demand from us either¹ to return immediately all matter in tangible form which constitutes the Confidential Information, or any part of it, together with all copies of it (whether supplied to or made by you) or to confirm to us in writing that, save as required by law or regulation, it has been destroyed. You shall not be required to return reports, notes or other material prepared by you or other Disclosees or on your or their behalf, which incorporate Confidential Information ("Secondary Information") provided that the Secondary Information is kept confidential;
- 1.6 to keep confidential and not reveal to any person, firm or company (other than Disclosees) the fact of your investigations into the Group or that discussions or negotiations are taking place or have taken place between us in connection with the proposed transaction or that potential investors/acquirers are being sought for the Company;

1. This gives the Potential Investor / Purchaser the option to return the Confidential Information or confirm its destruction. Depending on the nature of the Confidential Information, this could be tightened, especially in a sale situation, to compel either return or destruction (as the Company directs).

- 1.7 that no contact, direct or indirect, in connection with your appraisal of the Group will be made by you or on your behalf with any director, officer or employee of the Group, or with any customer or supplier of the Group, without, in any such case, our prior written consent; and
- 1.8 that no person gives any warranty or makes any representation as to the accuracy or otherwise of the Confidential Information, save as may subsequently be agreed.

This paragraph 1 does not exclude liability for, or any remedy in respect of, fraudulent misrepresentation.

2 LIMITATIONS

Nothing in paragraphs 1.1 to 1.8 of this letter shall apply to any information or Confidential Information:

- 2.1 which at the time of its disclosure is in the public domain;
- 2.2 which after disclosure comes into the public domain for any reason except your failing, or failure on the part of any Disclosee, to comply with the terms of this letter²;
- 2.3 which is disclosed by us or the Company, its directors, employees or advisers on a non-confidential basis;
- 2.4 which was lawfully in your possession prior to such disclosure;
- 2.5 which is subsequently received by you from a third party without obligations of confidentiality; or
- 2.6 which you or a Disclosee are required to disclose, retain or maintain by law or any regulatory or government authority.³

3 COMPANY'S OBLIGATIONS

In consideration of the representations and undertakings given by you in this letter, we undertake and agree:

- 3.1 to disclose Confidential Information to you⁴;
- 3.2 to keep confidential and not to reveal to any person, firm or company (other than persons within our group who need to know, our bankers and professional advisers) the fact of your investigation into the Group or that discussions or negotiations are taking place or have been taking place between us; and
- 3.3 confirm 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.

2. This could be extended to a failure by "any person".

3. A provision could be included which puts the Disclosees under an obligation to notify the Company of any proceedings which may lead them to being compelled to disclose Confidential Information.

4. This obliges the Company to supply Confidential Information to the Disclosees. Care should be taken here, especially in sale situations.

4 **GENERAL**⁵

4.1 This letter shall be governed by and construed in accordance with Irish law [***and the parties irrevocably submit to the non-exclusive jurisdiction of the Courts of Ireland in respect of any claim, dispute or difference arising out of or in connection with this letter.***]

4.2 The obligations in paragraph 1 of this letter will terminate on [***insert expiry date***].

Please indicate your acceptance of the above by signing and returning the enclosed copy of this letter as soon as possible.

Yours faithfully

[•]

[Name]

On copy:

We have read and agree to the terms of the above letter.

Signed by [•]
for and on behalf of
[•] LIMITED

Date: [•] 20[•]

5. Consideration should be given, especially in a sale situation, to whether the following additional provisions should be included: -

- (a) a commitment on the part of the Disclosees not to solicit Company employees or to compete with business of the Company;
- (b) indemnification by the Disclosees and reservation of equitable remedies of the Company. (injunction); and
- (c) reservation of a right on the part of the Company to decline to supply information.