

THIS AGREEMENT is made this day of _____

BETWEEN:

(1) _____ a company registered in England
(registered number _____) whose registered office is at
_____;

and

(2) _____ a company registered in England
(registered number _____) whose registered office is at
_____;

WHEREAS

The Company and Kite (together the “Parties” and each separately a “Party”) wish to enter into discussions regarding the Proposal (as defined below) and it is envisaged that each Party may from time to time receive Information (as defined below) relating to the other in respect thereof and more generally. In consideration of the benefits to the parties of disclosing and receiving Confidential Information, the Parties have agreed to comply with the following terms in connection with use and disclosure of Confidential Information.

IT IS HEREBY AGREED

1. Interpretation

1.1. In this Agreement:

- a) “Agents” means directors, officers, employees, agents, partners and professional advisers:
- b) “Confidential Information” means all Information: (i) relating directly or indirectly to the Proposal (including the existence of the Proposal and this Agreement and of the discussions between the Parties and/or its Agents; or (ii) relating to the Disclosing Party or any member of its Group including, without limitation, Information relating to the property, assets, business, trading practices, plans, proposals and/or trading prospects of the Disclosing Party or any member of its Group which is made available by, or acquired from, the Disclosing Party in the course of, or in connection with, discussions relating to the Proposal by the Receiving Party and/or its Agents whether before, on or after the date of this Agreement (either directly or indirectly and in whatever form, either orally, whether by telephone, at meetings or otherwise, or in writing or in disc or electronic form, or in any other format whatsoever) including any information, analysis or specifications derived from, containing or reflecting such information
- c) “Disclosing Party” means the Party disclosing or making available (directly or indirectly and including via its Agents) any Information to the Receiving Party;

- d) "Group" means, in respect of any Party, its subsidiaries and subsidiary undertakings ("subsidiaries" and "subsidiary undertakings" having the meanings given to them by section 1159 and section 1162 respectively of the Companies Act 2006);
- e) "Information" means all information of whatever nature and in whatever form including, without limitation, in writing, conveyed orally or stored or held in a machine-readable or electronic medium;
- f) "Proposal" means discussions in relation to a business proposition providing advice, assistance, information, services or any goods to or with the Kite; and
- g) "Receiving Party" means the Party receiving any Information (directly or indirectly) from the Disclosing Party and/or its Agents.

1.2 The obligations are given by each Party in favour of the other Party and each member of its Group.

2. Undertaking of Confidentiality

2.1. In consideration of the Disclosing Party supplying Information to the Receiving Party, the Receiving Party undertakes that it will:

- a) treat the Confidential Information as being strictly confidential and will not without the prior written consent of the Disclosing Party, or as expressly permitted below, disclose or use or allow any third party to disclose or use it;
- b) take at least the same care in protecting the Disclosing Party's Information as it takes in protecting its own confidential information and in any event not less than that which a reasonable person or business would take in protecting its own confidential information;
- c) only use the Confidential Information in relation to its evaluation, negotiation or discussion of the Proposal; and
- d) only disclose the Confidential Information to such of the Receiving Party's Agents who need to have access to it solely for the purpose of evaluating, negotiating or discussing the Proposal provided that the Receiving Party ensures that each person to whom the Confidential Information is disclosed is made aware of the terms of this Agreement and ensure that all such persons shall abide by those terms (but in any event, the Receiving Party shall be responsible for any breach of any of the provisions of this agreement by any of its Agents to whom Confidential Information is disclosed).

3. Permitted Disclosure

3.1. The undertaking at clause 2.1 shall not apply to any part of the Confidential Information which;

- a) is in the public domain at the time of its disclosure or subsequently comes into the public domain (other than as result of disclosure by the Receiving Party or its Agents contrary to the terms of this Agreement); or
- b) was lawfully in the possession of the Receiving Party or its Agents (as can be demonstrated by written records or other reasonable evidence) free of any restriction as to its use or disclosure prior to its being so disclosed under this Agreement; or
- c) following its disclosure, comes lawfully into the possession of the Receiving Party or its Agents (as can be demonstrated by written records or other reasonable evidence) from a source other than the Disclosing Party or its Agents, which source is not bound by any duty of confidentiality owed, directly or indirectly, to the Disclosing Party in relation to such information; or
- d) either Party is required to disclose by any applicable law, or order of court of competent jurisdiction or by any recognised stock exchange or other regulatory body whose rules the Party disclosing under this clause is obliged to comply or to which it is subject, provided that the Party from whom disclosure is required under this sub-clause 3.1 d) shall give reasonable notice to the other Party and shall, if practicable, consult with the other Party on the form, content and timing of any disclosure.

4. Return of Information

4.1. The Receiving Party will, within seven (7) days of receipt of a written demand from the Disclosing Party or of its ceasing to be interested in the Proposal:

- a) to the extent reasonably practicable, return, or delete / destroy at the Receiving Party's option, all Confidential Information and all materials containing or generated from such Confidential Information (including all copies in whatever form) that is in the custody or control of the Receiving Party or its Agents; and
- b) ensure that where any Confidential Information or any materials containing or generated from such Confidential Information has not been returned or deleted / destroyed under clause 4.1 a) above, no step will be taken to access or recover such information or materials from any computer, word processor or other device containing or storing such information or materials and that such information or materials will continued to be held subject to the terms of this Agreement.

4.2. The obligations in clause 4.1 shall not apply to the extent that any Confidential Information is contained, reflected or referred to in any board minutes or other documents which the Receiving Party is required to retain under any applicable law or regulation or to comply with the rules of any regulatory body or authority to which it is subject, provided that such board minutes or other documents will continue to be held subject to the terms of this Agreement.

- 4.3. The Receiving Party shall on request supply to the Disclosing Party a written confirmation signed by a duly authorised representative certifying its full compliance with the requirements of clause 4.1 above.

5. Continuing Obligations

- 5.1. The return or destruction of any of the Confidential Information referred to in clause 4.1(a), does not relieve the Recipient from any of its obligations under this Agreement.

6. No Announcement

- 6.1. Neither of the Parties will make nor permit to be made any announcement or disclosure of:
- a) its prospective interest in the Proposal; or
 - b) the existence of this Agreement; or
 - c) the existence of discussions between the Parties and/or its Agents in relation to the Proposal;

without the prior written consent of the other Party, provided that such consent cannot be unreasonably withheld.

7. Non-solicitation

- 7.1. In consideration of the Confidential Information being furnished to the Receiving Party, the Receiving Party undertakes that, for a period of six months from the date of this Agreement, neither it nor any of its Group will, without obtaining the prior written consent of the Disclosing Party, solicit to employ or entice away any of the Agents of the Disclosing Party with whom the Receiving Party has had contact, or who may be specifically identified to the Receiving Party, during its evaluation, negotiation or discussion of the Proposal, so long as they are employed by the Disclosing Party without obtaining the prior written consent of the Disclosing Party.
- 7.2. For the avoidance of doubt, the restriction in clause 6.1 above does not apply to any offer made to Agents of the Disclosing Party where such offer is in response to a direct approach by an individual to the Receiving Party and/or as a result of a general advertising campaign placed by or on behalf of the Receiving Party and/or where such individual has in the past six months been in discussions with the Receiving Party concerning employment. The restriction in clause 6.1 shall only apply to those Agents of the Receiving Party who have reviewed the Confidential Information or have otherwise been involved in evaluating the Project.

8. Duration

8.1 The obligations set out in this Agreement will survive the termination of any discussions or negotiations between the Parties concerning the Proposal and will, unless otherwise specified, continue in full force and effect for a period of three (3) years after the date of this Agreement regardless of whether the Proposal is implemented or not.

9. Principal

9.1. Each Party confirms that it is acting as principal and not as nominee, agent or broker for any other person and that it will be responsible for any costs incurred by it or its professional advisers in considering or pursuing the Proposal and in complying with the terms of this Agreement.

10. No Offer or Licence

10.1. Any Information made available to the Receiving Party and or its Agents before or during the course of negotiations or discussions will not form the basis of any contract and will not constitute an offer or invitation for the sale or purchase of securities or assets.

10.2. Each Party agrees that no right or licence is granted to a Receiving Party and/or its Agents in respect of the Confidential Information except as expressly provided in this Agreement.

11. No Warranty or Waiver

11.1. Except as expressly stated herein, no representation, undertaking or warranty, express or implied, is or will be made, and no responsibility or liability, express or implied, is or will be accepted by the Disclosing Party, as to, or in relation to, any Information (or its accuracy, reliability or completeness) made available to the Receiving Party and/or its Agents or any other matter whatsoever and the Receiving Party releases the Disclosing Party from any liability in respect of any information or any other matter whatsoever.

11.2. No failure by either of the Parties in exercising any right, power or privilege to which it is entitled shall operate as a waiver, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise; the terms of this Agreement and the Parties' obligations, acknowledgements and confirmations hereunder may only be waived or modified by an agreement in writing between the Parties.

12. Remedies

12.1. The Parties agree that damages would not be an adequate remedy for breach of this Agreement and that each Party shall be entitled to seek equitable relief (whether injunctive relief or specific performance) to the maximum extent available under any applicable law in respect of any breach or anticipated breach of this Agreement. Each Party agrees that it will not oppose or object to any application for any such equitable relief. Such remedies shall not be deemed to be the exclusive remedies for breach of this Agreement, but shall be in addition to all other remedies available at law or equity.

13. Assignment

13.1. This Agreement may not be assigned or transferred by a Party to a third party without the prior written consent of the other Party to this Agreement.

14. Third Party Rights

14.1. The provisions of this Agreement confer benefits on the persons specifically referred to in clause 1.2 (each a “Third Party”) and subject to clause 14.2 below, are intended to be enforceable by each Third Party by virtue of the Contracts (Rights of Third Parties) Act.

14.2. This letter may be rescinded or varied at any time by agreement between the Parties without the consent of any Third Party.

14.3. Subject to clause 14.1 above, no terms of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

15. Counterparts

15.1. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. Governing Law

16.1. This Agreement, and any claim, matter, dispute arising out of, or in connection with this Agreement, shall be governed by and construed in accordance with English law. Both Parties submit to the jurisdiction of the English courts for all purposes relating to this Agreement.

16.2. Nothing in this Agreement shall limit any right of either of the Parties to bring proceedings against the other Party in any other jurisdiction.

For and on behalf of _____

Signed _____

Print Name _____

For and on behalf of Kite Distribution Limited

Signed _____

Print Name _____