

NON DISCLOSURE AGREEMENT

This NON-DISCLOSURE AGREEMENT is made on ___ day of _____ (hereafter referred to as “this **Agreement**”) by and between

[_____], a company incorporated under [_____] and having its registered office at [_____] (hereinafter referred to as “YYY/ the **Disclosing Party**” which expression shall, unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors in title);

And

[_____], a company incorporated under the laws of Japan and having its registered office at _____, Japan (hereinafter referred to as “the **Receiving Party**” (which expression shall, unless it be repugnant to the context or meaning thereof be deemed to mean and include its successors in title)

The Disclosing Party and the Receiving Party are hereinafter collectively referred to as “the **Parties**” and individually as “the **Party**”.

WHEREAS, the Parties intend to engage in discussions and negotiations for a possible investment [Intern: Possible investment は直訳すると「可能な投資」ですが「可能な投資」とは何かよくわかりません。] (the “**Transaction**”) in YYY’s subsidiaries/affiliates, [Intern: subsidiaries : 子会社 affiliates : 関連会社。違いは?] a company incorporated in [_____] (the “**Company**”) (such company together with its subsidiaries, including the Company, and their associated companies, the “**Group**”). In connection with the Transaction, the Disclosing Party or any of its subsidiaries or its affiliates will be furnishing to the Receiving Party or its Representatives with certain financial and other information about the Company, the Group and/or the business which is either not in public domain, confidential or proprietary [Intern: 財産的価値?] in nature and which may be disclosed either in written or electronic form and shall mean any and all information of any kind in written form or in any other tangibly reduced form and disclosed/furnished for and in relation to the Transaction, to the Receiving Party by the Company viz. business, technical, financial, operational, marketing and economic information and certain data of a secret and proprietary nature including any memorandum, reports and valuations prepared by the Company in written form together with analyses, compilations, forecasts, studies or other documents prepared by the Company, its’ agents, representatives (including, but not limited to, lawyers, accountants, consultants and financial advisers) or employees which contain or otherwise reflect such information or review of, or interest in, the Company, Group or the business is hereinafter referred to as the “**Confidential Information**”.

WHEREAS, in this connection, the Receiving Party is willing to accept the Confidential Information regarding the Transaction as described and limited herein.

NOW THEREFORE, in consideration [Intern: 約因] of the premises and mutual covenants contained herein, the Disclosing Party and the Receiving Party severally agree as follows:

1. For the purposes of this Agreement “**Confidential Information**” shall have the meaning given to the term under the recital [Intern: 前文] above.

Confidential Information shall however not include information that:

- i. was in the lawful [Intern: 適法に] possession of a Receiving Party at the time of disclosure by the Disclosing Party without an obligation to keep the same confidential and/or breach of this Agreement by a Receiving Party;
 - ii. was in the public domain at the time of receipt or disclosure or subsequently becomes so (through no fault of a Receiving Party);
 - iii. was originally considered as Confidential Information under this Agreement but which subsequently becomes part of the public knowledge or literature through no fault of a Receiving Party; or
 - iv. has been or hereafter may be lawfully obtained from a Receiving Party who lawfully possesses such information and which (i) has not been obtained in breach of a duty of confidence owed to the disclosing party by any person and (ii) is obtained without any obligation to keep the same confidential.
2. Unless otherwise expressly authorised by the Company, the Receiving Party agrees not to disclose the Confidential Information to any third party save and except to its group members, directors, officers, affiliates, employees, committee members, managers and professional advisors and external auditors, agents [Intern: 受領者のグループメンバー、取締役、執行役、会員(affiliates)、従業員、委員、役員、アドバイザー、監査役など] (“**Representatives**”) to the extent necessary and who have a need to know of such Confidential Information for the Transaction and have been informed of the confidential nature of the Confidential Information and the obligations of the Receiving Party in respect hereof and shall not use the Confidential Information for any other purpose other than the Transaction specified in this Agreement and shall severally be responsible to the Disclosing Party for any breach of this Agreement by its Representatives.
 3. The Receiving Party agrees, at its sole expense, to take all reasonable measures to restrain its Representatives from unauthorized disclosure or use of the Confidential Information. The Receiving Party shall procure that all of its Representatives to whom such disclosure is made will act in accordance with the terms of this Agreement as if each of them were a party hereto.
 4. The Receiving Party and its Representatives will not, directly or indirectly, disclose to any person or entity the fact that the Confidential Information has been made available, that discussions or negotiations are taking place or have taken place concerning a possible Transaction involving the Receiving Party and the Company

and/or the business or any of the terms, conditions or other facts with respect to any such possible Transaction, including the status thereof nor will either Party make any announcement of any of the matters referred to above or of the possible interest in the business.

5. All Confidential Information disclosed by the Company shall be and shall remain the property of the Company. Within five days after being so requested by the Company in writing, **except to the extent that** [Intern: ~を除いて] such destruction or return is prohibited by any law, rules (including internal rules) or regulation, the Receiving Party shall return to the Company or destroy all copies of the Confidential Information furnished by the Company and no copy thereof will be retained by the Receiving Party, except for that portion of the Confidential Information which consists of analyses, compilations, forecasts, studies or other documents prepared by the Receiving Party and its Representatives. That portion of the Confidential Information which consists of analyses, compilations, forecasts, studies or other documents prepared by the Receiving Party and its Representatives, will be held by it and kept confidential and subject to the terms of this Agreement.
6. The Receiving Party acknowledges that neither the Company nor its associated companies/subsidiaries/affiliates nor their representatives makes any express or implied representation or warranty as to the accuracy or completeness of the Confidential Information and each of the Disclosing Party and its respective subsidiaries, associated companies and representatives expressly disclaim any and all liability that may be based on the Confidential Information, errors therein or omissions therefrom. The Receiving Party further acknowledges that they are not entitled to rely on the accuracy or completeness of the Confidential Information and shall be entitled to rely solely on the representations and warranties made to the Receiving Party by the Company in any final Transaction agreement.
7. The Receiving Party agrees that unless and until a definitive agreement regarding the Transaction between the Receiving Party and the Disclosing Party has been executed, neither the Receiving Party, nor the Company will be under any legal obligation of any kind whatsoever with respect to such a Transaction by virtue of this Agreement except for the matters specifically agreed to herein. The Receiving Party further acknowledge and agree that the Disclosing Party reserves the right, in its sole discretion, to reject any or all proposals made by the Receiving Party or any of its Representatives with regard to a Transaction between the Receiving Party and the Disclosing Party and to terminate discussions and negotiations with us at any time.
8. In the event the Receiving Party becomes compelled (pursuant to any law or regulation or the requirements of any stock exchange or other regulatory organisation, with whose rules that are required to comply) to disclose any part of the Confidential Information, the fact that Confidential Information has been made available, that discussions or negotiations are taking place or have taken place concerning the Transaction or any of the terms, conditions or other facts with respect to the Transaction, including the status thereof, the Receiving Party shall, to the extent

practicable and permitted by law, promptly (and, in any event, before complying with any such requirement) notify the Disclosing Party in writing of the same and of the action which is proposed to be taken in response, so that the Company may seek an appropriate protective order. If, failing the entry of a protective order, the Receiving Party is compelled to disclose the Confidential Information **than** [Intern: この than の使い方がよくわかりませんでした。] it shall only disclose Confidential Information to the extent that is advised by written opinion of its in-house legal counsel that Receiving Party it is so compelled to disclose and shall exercise reasonable efforts to ensure that to the maximum extent possible in the circumstances confidential treatment is accorded to the Confidential Information. In any event, the Receiving Party shall not oppose action by the Company to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information or such facts.

9. The Receiving Party acknowledges that they are aware and will advise its Representatives that applicable securities laws prohibit any person who has or is deemed to have or is reasonably expected to have access to material, non-public information about a company from purchasing or selling securities of such a company or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities. The Receiving Party will also comply with and ensure that its Representatives comply with all applicable securities laws.
10. **The Disclosing Party warrants that it has the legal right and authority to make the disclosures under this Agreement.** [開示者は、開示者が本契約に従って開示を行う法的権利があることを保証する。この条文がどうしても必要なのか理由がわかりませんでした。]
11. No failure or delay by the Disclosing Party in exercising any right under this Agreement shall operate as a waiver thereof, and no variation or amendment of this Agreement shall be effective, unless the same is in writing and signed by both Parties. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect.
12. A person who is not a party to this Agreement shall have no right to enforce any of its terms.
13. The Receiving Party acknowledge that remedies at law may be inadequate to protect against breach of this Agreement, and the Receiving Party in advance agree that the Disclosing Party shall be entitled to **specific performance and injunctive or other equitable relief** as a remedy for any such breach. Such remedy shall not be deemed to be the exclusive remedy for breach of this Agreement but shall be in addition to all other remedies available at **law or equity** to the Disclosing Party. [Intern: このよう

な救済は、本契約の違反に対する排他的な救済ではなく、他の法的又は衡平法上可能な救済に加えて認められるものとする。]

14. In the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final, non-appealable order that a party has breached this Agreement, then such party shall be liable and pay to the non-breaching party the reasonable legal fees such non-breaching party has incurred in connection with such litigation, including any appeal therefrom
15. This Agreement shall be governed by, and construed in accordance with, the laws of [], without regard to **conflict of laws principles**[Intern: 抵触法の原則に関する限り、と訳文は調べましたが、その意味はよくわかりません。]. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination which cannot be resolved by the Parties through discussions in good faith shall be referred to and finally resolved by the Singapore International Arbitration Centre (“SIAC”) pursuant to SIAC Rules for the time being in force. The tribunal shall consist of one (1) arbitrator. The language of the arbitration shall be English.[Intern: 仲裁を行う場所の記載も必要となりますか?]
16. This Agreement shall cease to apply two (2) years from the date hereof or as mutually agreed between the parties.
17. The rights and obligations of the Parties under this Agreement are several and in no circumstance shall one Party be liable for a breach by the other Party of the terms of this Agreement.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorised signatories as of the date first above written.