

ANNEX VI

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on • 200•.

PARTIES:

- (1) INSTITUTE OF TECHNOLOGY SLIGO of Ballinode, Sligo, County Sligo (“IT Sligo”); and
- (2) • of • (“Receiving Party” which expression shall be deemed to include those of its employees or advisors to whom any Confidential Information is to be disclosed).

BACKGROUND:

IT Sligo proposes to allow the Receiving Party access to certain information concerning its business to enable the Receiving Party to consider and evaluate a possible commercial relationship between IT Sligo and the Receiving Party (“Project”). The Receiving Party agrees to hold and maintain as confidential all such information provided by IT Sligo for such purposes, on the terms and conditions of this Agreement.

AGREED TERMS:

Now it is hereby agreed as follows consideration of IT Sligo disclosing the Confidential Information (as defined below) to the Receiving Party:

1. Definition

“Confidential Information” means any and all information in whatever form disclosed by IT Sligo to the Receiving Party whether orally or in writing or whether eye readable, machine readable or in any other form including, without limitation, the form, materials and design of any relevant software (including source and object code) or equipment or any part thereof, the methods of operation and the various applications thereof, processes, formulae, plans, business plans, strategies, data, know-how, ideas, designs, photographs, drawings, specifications, technical literature, information relating to employees, customers, subscribers, students, post-doctoral students, contractors registered with IT Sligo, suppliers or content providers and any other material made available by IT Sligo to the Receiving Party or gained by the visit by the Receiving Party to any establishment of IT Sligo whether before or after this Agreement is entered into, for the purpose of considering, advising in relation to or furthering the Project (and any information derived from such information) and provided that such information is by its nature clearly confidential (whether or not that information is marked or designated as confidential or proprietary).

2. Undertakings

The Receiving Party hereby undertakes with IT Sligo:

- (a) to maintain the Confidential Information in strict confidence;
- (b) save as provided in this Agreement, not divulge any of the Confidential Information to any third party or communicate, indicate or suggest to any third party the existence of the Project;
- (c) not to make use of the Confidential Information other than for the purpose of the Project;
- (d) not at any time contest or dispute the ownership of the Confidential Information;
- (e) to restrict access to the Confidential Information only to its own responsible employees or professional advisers who need to have such access for the purposes of the Project and to impose upon such persons obligations of confidentiality equivalent to those contained in this Agreement (and to be responsible for any breach of the terms of this Agreement by its own employees or professional advisers);
- (f) not at any time to reverse engineer, decompile or disassemble any software disclosed to it in the course of the Project and not to remove, overprint or deface any notice of copyright, trademark, logo, legend or other notices of ownership from any originals or copies of Confidential Information;
- (g) to take or to permit to be taken only such copies of any document or other material (in whatsoever medium) embodying any of the Confidential Information as are reasonably necessary for the purposes of the Project;
- (h) if the Receiving Party receives any communication requesting disclosure of any of the Confidential Information or indicating an intention to obtain or the fact that there has been obtained any order which would oblige the Receiving Party in law to disclose any of the Confidential Information, the Receiving Party will (immediately and by the fastest means possible, confirmed in writing) communicate to IT Sligo the fact that the communication has been received and all details of the same with a view to the parties co-operating in taking all reasonable and proper steps to ensure so far as is possible that the Confidential Information and the Project are maintained in the strictest confidence; and
- (i) to confirm to IT Sligo in writing at any time on request that it has complied and continues to comply with the provisions hereof.

3. Acknowledgements and Confirmations

The Receiving Party hereby further acknowledges and confirms to IT Sligo as follows:

- (a) that the Confidential Information is proprietary information of IT Sligo, the disclosure of which could adversely affect the business of IT Sligo and result in economic harm;
- (b) that neither IT Sligo nor any of its advisers nor any of its agents, officers, students, post-doctoral students, contractors registered with IT Sligo, or employees accept responsibility or liability for or make any representation, statement or expression of opinion or warranty, express or implied, with respect to the accuracy or completeness of the Confidential Information or any oral communication in connection therewith unless and save to the extent that such representation, statement or expression of opinion or warranty is expressly incorporated into any legally binding contract executed between the parties;
- (c) that the provisions of this Agreement shall continue in effect notwithstanding any decision by the parties not to proceed with the Project or any return or destruction of the Confidential Information;
- (d) that damages alone would not be an adequate remedy for any breach of the provisions of this Agreement and, accordingly, without prejudice to any and all other rights or remedies that IT Sligo may have against the Receiving Party, IT Sligo shall be entitled without proof of special damage to the remedies of temporary or permanent injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this Agreement;
- (e) that if IT Sligo furnishes or has furnished any confidential information of an affiliated company, the Receiving Party will have the same obligations to such affiliated company with respect to such information as it has to IT Sligo with respect to the Confidential Information as if all references in this Agreement to IT Sligo were references to such affiliated company; and
- (f) that the disclosure of the Confidential Information by IT Sligo shall not be deemed to confer any proprietary rights upon the Receiving Party nor shall such disclosure be construed as granting any license of rights of any intellectual property in the Receiving Party.

4. Exceptions

The undertakings contained in Clause 2 and the confirmations and acknowledgements contained in Clause 3 shall not apply to Confidential Information which:

- (a) is or becomes publicly available, other than as a result of a breach of this Agreement, or becomes lawfully available to the Receiving Party from a third party free from any confidentiality restriction;
- (b) was already in the possession of the Receiving Party (as shown by its pre-existing written records) before it was disclosed to the Receiving Party;
- (c) was independently developed without access to or use of the Confidential Information;
- (d) the Receiving Party is required to disclose:

- (i) by law;
 - (ii) by any rule or regulation of any stock exchange;
 - (iii) by any Court procedure; or
 - (iv) by any rule or regulation of any governmental or other competent authority,
- provided that, so far as is practicable to do so the Receiving Party shall consult with IT Sligo prior to such disclosure with a view to agreeing its timing and content.

5. Return of Confidential Information

The Receiving Party hereby undertakes with IT Sligo:

- (a) upon demand by IT Sligo or its professional advisers, to either return to such person as they may direct, or destroy, at the option of IT Sligo all the Confidential Information (including all printed and electronic copies thereof) in its possession or control; and
- (b) upon the return or destruction (as the case may be) of all the Confidential Information, to provide IT Sligo with a certificate from an authorised officer stating that it has complied with its obligations under this Clause.

6. Indemnity

The Receiving Party agrees to fully indemnify, keep indemnified and hold harmless IT Sligo against all losses, damages, claims, costs, expenses, liabilities, proceedings and demands which IT Sligo may suffer or incur or which may be made against IT Sligo as a result of any unauthorised disclosure or use of the Confidential Information by the Receiving Party, its employees and/or professional advisers.

7. Term

- (a) The Receiving Party agrees that its agreements, covenants and undertakings set out in this Agreement will continue in full force and effect and will apply to the Confidential Information for the period of [3] years from the date of this Agreement.
- (b) The provisions of this Agreement shall continue in force notwithstanding the fact that the Project is not proceeded with or has been terminated and regardless of the reasons for such termination.

8. General

- (a) The laws of Ireland (excluding Northern Ireland) shall govern this Agreement and any disputes, claims or proceedings arising out of or in any way relating to this Agreement.
- (b) The courts of Ireland (excluding Northern Ireland) shall have exclusive jurisdiction for the purpose of any proceedings arising out of or in any way relating to this Agreement.
- (c) This Agreement contains the entire agreement between the parties and supersedes all prior oral, or written representations, understandings, or agreements.

- (d) Both parties must agree any changes to this Agreement in writing.
- (e) Each Clause of this Agreement is severable if deemed void, illegal or unenforceable by a court or competent authority.

Signed for and on behalf of

IT Sligo by its authorised signatory:

Signed for and on behalf of •

by its authorised signatory:
