

Microkerf Limited

and

NON DISCLOSURE AGREEMENT

Microkerf Limited
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Birstall Industrial Estate
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LE4 3BY

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THIS CONFIDENTIALITY AGREEMENT is made on _____

BETWEEN:

(1) **Microkerf Limited**, a company registered in the UK with registered number 04654281, and whose registered office is located at 1 Coal Cart Road, Birstall Industrial Estate, Leicester, LE4 3BY (**“Microkerf”**)

and

(2) _____

Microkerf Limited and _____ are hereinafter referred to as the **“Parties”** or either one thereof as **“Party”**.

IT IS HEREBY AGREED AS FOLLOWS:

1. In this Agreement:

1.1 **“Confidential Information”** means:

(a) all and any information, documents, data and opinions disclosed by a Party to the other Party (or otherwise acquired by one Party pursuant to this Agreement) including without limitation commercial, financial or proprietary material, pricing information, data, know-how, formulae, processes, operating methods and procedures, results, designs, drawings, specifications, industrial and or intellectual property, computer programmes or other software and any other information relating to the technology of either Party and the Discussions whether in written, electronic, pictorial, visual or oral form; magnetic, electronic, graphic or digitised format; or disclosed pursuant to

discussions with any of the Affiliates, officers, employees, agents, advisors or consultants of a Party and whether or not marked or indicated as confidential;

(b) information of whatever nature relating to the technology or business or properties of a Party obtained by observation during visits to its premises or those of its Affiliates or those of any third party instructed, engaged, or retained in any way whatsoever by a Party;

(c) analyses, compilations, studies and other documents prepared by the Parties, their officers, employees, agents, advisors or consultants which contain or otherwise reflect or are generated from the information specified in paragraphs (a) and (b) above; and samples, prototypes or models relating to the technology of a Party.

1.2 **“Disclosing Party”** means the party disclosing the Confidential Information to the Receiving Party under this Agreement.

1.3 **“Permitted Purpose”** means the use of Confidential Information in relation to the Discussions.

1.4 **“Receiving Party”** means the Party to whom the Confidential Information is disclosed.

2 The Receiving Party hereby agrees with and undertakes to the Disclosing Party, on behalf of itself and all persons to whom disclosure by it is permitted within the terms of this Agreement, that, subject as herein described, all Confidential Information, howsoever acquired or received by the Receiving Party:

2.1 shall not be used for any purpose other than the Permitted Purpose; and

2.2 shall be held strictly confidential, using commercially reasonable methods, and shall not be divulged directly or

indirectly or otherwise made available in whole or in part to any third party without the prior written consent of the Disclosing Party provided that the Receiving Party may without such approval disclose such Confidential Information;

- (a) to an Affiliate of the Receiving Party directly concerned with the Permitted Purpose and whose knowledge of the Confidential Information is essential for the Permitted Purpose. For the purposes of this Agreement “**Affiliate**” shall mean any holding company or subsidiary company of the holding company and “**subsidiary**” shall have the meanings respectively ascribed thereto by Section 736 of the Companies Act 1985 (and includes a subsidiary undertaking as defined in Section 258 of the Companies Act 1985); or
- (b) to any governmental or regulatory authority having a right to require the same or to any recognised Stock Exchange, in compliance with the rules and regulations thereof or to the extent required by law (provided that the Receiving Party shall prior to such disclosure inform the Disclosing Party in writing of such requirement (including a confirmation that the Disclosing Party’s legal advisers’ opinion is that such disclosure is required) and shall disclose only such Confidential Information as is necessary to comply therewith); or
- (c) to its employees and officers and to its outside professional advisers or the employees, officers or outside professional advisers of its Affiliates directly concerned with the Permitted Purpose and whose knowledge of the Confidential Information is essential for the Permitted Purpose provided that prior to any disclosure of Confidential Information under the paragraphs (a) to (c) above, the Receiving Party shall ensure that each recipient thereof is made

aware of the confidential nature of the Confidential Information and the Receiving Party shall assume full responsibility for the actions of its Affiliates, employees and officers and professional advisors.

- 3 The undertakings contained in Clause 2 of this Agreement shall not apply to such of the Confidential Information as:
 - 3.1 is at the time of being obtained by the Receiving Party within the public domain other than as a result of breach of this Agreement; or
 - 3.2 is proved by documentary evidence as being at the time of the Agreement already lawfully in the possession of the Receiving Party; or
 - 3.3 after being obtained by the Receiving Party comes within the public domain other than by reason of a breach by any Party of the undertakings contained in this Agreement; or
 - 3.4 is properly received by the Receiving Party from a third party who is rightfully in possession of such Confidential Information and who is not bound by any obligation of confidence or secrecy; or
 - 3.5 proved by documentary evidence as having been independently developed by the Receiving Party or its Affiliates with no knowledge of the Confidential Information.
- 4 All Confidential Information shall remain the property of the Disclosing Party and the disclosure of Confidential Information hereunder does not amount to the grant of a licence or similar right, any patent, copyright or design licence in favour of the Receiving Party. The Disclosing Party confirms that the Confidential Information is given by it in good faith but does not represent, warrant, arrange or undertake that the Confidential Information is accurate, up to date, exhaustive or complete on the subject matter concerned.

5 The Receiving Party hereby acknowledges that any breach by it of any of the provisions of this Agreement may cause serious damage to the Disclosing Party. In particular (but without limitation) it is recognised that parts of the Confidential Information may be patent able or capable of being the subject of registered design rights or similar protection and that premature disclosure thereof may prejudice the ability of the disclosing party to obtain such protection. The Receiving Party undertakes fully and effectively to indemnify and keep so indemnified the Disclosing Party for and against all loss, damage, costs and liabilities suffered or incurred by it arising from:-

5.1 the unauthorised disclosure of Confidential Information by the Receiving Party and any person to whom disclosure of such Confidential Information is permitted under Clause 2 of this Agreement; or

5.2 a breach by the Receiving Party of its obligations under this Agreement.

The Parties acknowledge that damages will not normally be an adequate remedy for breach of any of the terms set out in this Agreement and that the Disclosing Party should be entitled to equitable relief including injunctions in respect of any breach by the Receiving Party.

Any failure by the Disclosing Party in exercising any right, power or privilege hereunder shall not, nor shall any single or partial exercise thereof, preclude any exercise of any other right, power or privilege.

6 The Receiving Party undertakes that the Confidential Information supplied to it under the terms of this Agreement shall only be copied or duplicated to the extent strictly necessary for the Permitted Purpose and that a restrictive legend shall be placed on each copy prohibiting further reproduction or transfers. Furthermore, any of the Confidential Information and copies, and any extracts, summaries or analyses thereof, shall be returned to the Disclosing Party or destroyed or expunged from any electronic storage device (with written confirmation of the same to the

Disclosing Party) within five (5) working days upon written notice to do so from such Disclosing Party.

- 7 The Parties acknowledge that the purpose of this Agreement is to facilitate confidential discussions for the purpose of evaluating their interest in collaboration and that nothing in this Agreement shall be construed as obliging either Party to disclose any Confidential Information to any other or to oblige either party to enter into any further agreement.
- 8 The construction, validity and performance of this Agreement shall be governed by English Law and the Parties submit to the exclusive jurisdiction of the courts of England.
- 9 This Agreement shall become effective on the date first written above.
- 10 The Parties obligations under this Agreement shall remain in full force and effect for a period of five (5) years from the date hereof, save that the obligations of the parties as receiving parties under Clause 6 of this Agreement shall continue thereafter until fully discharged by performance.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed by their duly authorised representatives as of the day and year first written above.

Date: _____

Date: _____

Signed for and on behalf of
Microkerf Limited

Signed for and on behalf of
