

DATED _____

(1) **PDFENERGY LIMITED**

(2)

**CONFIDENTIALITY AND NON-
DISCLOSURE AGREEMENT**

THIS AGREEMENT is dated

PARTIES

- (1) **PDFENERGY LIMITED** (company number 09252768) whose registered address is Oak Accountancy Services, Alston Oak House, Sawbridgeworth, CM21 0AJ ("**PDFENERGY**"); and
- (2)

(the "**Recipient**")

BACKGROUND

- (A) PDFENERGY is engaged in the creation, development, design, manufacture, licensing and supply of fuel efficient, environmentally friendly technologies and products.
- (B) PDFENERGY is either the owner or licensee of certain confidential information relating to its business.
- (C) It is envisaged that PDFENERGY may decide (at its absolute discretion) to make available (including via its directors, employees, advisers, servants and/or agents) to the Recipient and/or its officers, employees, advisers and/or servants, information relating to PDFENERGY's business (whether in written, oral and/or electronic form and/or which can be observed and/or otherwise howsoever made available or recorded) for the sole purpose of "**DEVELOPMENT AND/OR SUPPLY OF DEVICES WHICH IMPROVE THE FUEL EFFICIENCY OF AND REDUCES THE AMOUNT OF GASEOUS EMISSIONS CAUSED BY INTERNAL COMBUSTION ENGINES**" ("the Purpose"), such information may include (but is not limited to) documents, drawings, data, results, know-how, show-how, methodologies, processes, strategies, techniques, trade secrets, designs, formulae, software, technical data, ideas and inventions, plans, forecasts, analyses, evaluations, research, prototypes, performance and technical information, marketing and manufacturing information, business and financial information, actual and potential customer and supplier lists and contact details, business plans, marketing plans, equipment and/or analyses, compilations, studies and/or minutes of meetings (the "Information").

AGREED TERMS

Obligations of the Recipient

1. In consideration of £1 (one pound sterling), receipt of which the Recipient hereby acknowledges, the Recipient agrees as follows:
 - 1.1. to (and to procure that its officers, employees, advisers and/or servants will) keep confidential and secure any Information made available to it, and/or its officers, employees, advisers and/or servants on its behalf and/or for its benefit, by PDFENERGY (including via its directors, employees, advisers, servants and/or

agents on its behalf) and shall (and procure that its officers, employees, advisers and/or servants will) treat all such Information in strict confidence. Further it undertakes not to remove, obscure, deface or amend any confidentiality notice or notice of ownership or origin on or contained in the Information (or any copies thereof);

- 1.2. to use (and to ensure that its officers, employees, advisers and/or servants only use) such Information only in connection with and for the sole purpose of the Purpose and to allow access to/make available such Information only to its officers, employees, advisers and/or servants who have a specific need to know the Information in connection with and for the sole purpose of the Purpose and only under conditions of confidence and security that are no less strict, effective and legally binding than the provisions of this agreement, and which the Recipient will enforce at all times. For the avoidance of any doubt, any breach of such conditions of confidence and security by the Recipient's officers, employees, advisers and/or servants shall constitute a breach of this agreement by the Recipient;
- 1.3. to neither (and to procure that its officers, employees, advisers and/or servants do not) use and/or exploit for its/their own benefit and/or for the benefit of any third party, nor make available to third parties (save as provided in sub-clause 1.2 and/or clause 4 of this agreement), any such Information (in whole or part) without first obtaining the prior written consent of PDFENERGY;
- 1.4. to (and to ensure that its officers, employees, advisers and/or servants) make copies of, reduce to writing or otherwise record such Information only to the extent that such copies and/or written or otherwise recorded versions are strictly required in connection with the Purpose and when doing so marking the same with the words "CONFIDENTIAL INFORMATION";
- 1.5. at the request of PDFENERGY, to destroy or return to PDFENERGY forthwith any such Information in its and/or its officers, employees, advisers and/or servants possession, custody, power and/or control, including all copies thereof and all documents containing or referring to any such Information or extracts thereof (including permanently removing all such Information held in electronic form), save that the Recipient may keep one copy (which is to be retained in a confidential and secure central file) in circumstances where the Recipient is required to do so according to mandatory law (but such Information shall be subject to an indefinite confidentiality obligation according to the terms and conditions set out herein); and
- 1.6. if required by PDFENERGY, to certify in writing to PDFENERGY that the Recipient has complied with the requirements of clause 1.5.

Indemnity

2. The Recipient acknowledges that in the event of a breach or threatened breach of this agreement PDFENERGY may suffer loss, damage, costs and/or expense and the Recipient indemnifies PDFENERGY from all losses, liabilities, costs (whether direct, indirect, or consequential) (including legal costs) and expenses incurred as a result of such breach or threatened breach.

Exclusions

3. The provisions of clauses 1 and 2 shall not apply to any Information that and to the extent that the Information:
 - 3.1. was generally and freely accessible and publicly known prior to the date of this agreement or subsequently becomes so through no wrongful act, omission or fault of the Recipient;
 - 3.2. is at the time of disclosure already known by the Recipient, unless such knowledge is subject to a restriction as to use or disclosure; or
 - 3.3. is lawfully acquired from a third party who is lawfully in possession of such Information in good faith and without an obligation of confidence being owed by that third party (whether to the Recipient or otherwise) in respect thereof.

Permitted Acts

4. The Recipient is permitted to disclose PDFENERGY's Information:
 - 4.1. to a Court of law in connection with a dispute concerning this agreement; or
 - 4.2. if the Information is required to be disclosed by law or regulation or by the order of a Court of competent jurisdiction or an appropriate governmental, public or regulatory authority and it is disclosed in compliance therewith,

provided that in each case the Recipient must (to the extent permitted by law) give PDFENERGY prompt notice in advance of the intended disclosure, so as to allow PDFENERGY a reasonable opportunity to seek a protective order and/or to take legally available steps to resist or narrow such disclosure.

No Obligation to Contract

5. The parties agree that nothing contained in this agreement and no Information made available to the Recipient (and/or its officers, employees, advisers and/or servants) by and/or on behalf of PDFENERGY shall oblige either party to enter into any further agreement or negotiation with the other (and no promise, assurance or representation is given to the effect that either party will) or to refrain from entering into an agreement or negotiation with any third party provided that in doing so it will not violate such party's obligations hereunder. No right of license, either express or implied, with respect to the Information is granted hereunder and the Information shall at all times remain the property of PDFENERGY.

Exclusion of Implied Warranties

6. All Information is supplied "as is" and without any warranties, representations and/or assurances (in each case, whether express or implied), including as to its accuracy, completeness and/or usefulness. PDFENERGY has no liability (under any legal basis whatsoever (other than fraud), including in contract, negligence and/or misrepresentation) for any loss or damage incurred or suffered by the Recipient as a result of receiving and/or relying on any Information, including in respect of any allegations that the Information is not accurate and/or complete. In particular, PDFENERGY shall not be liable for any loss of profits or revenue, loss of goodwill or reputation, loss of anticipated savings, loss of business, loss of contracts or loss of business opportunity, loss or corruption of data or information, wasted management

and/or staff time and/or office time. PDFENERGY shall, at its absolute discretion, decide what Information it is willing to make available and shall be under no obligation whatsoever to make available any particular piece of Information.

Retention of Title

7. PDFENERGY retains all right, title and interest in the Information and all intellectual property rights therein at all times and for all purposes. Any documents, files, copies made or other items containing or comprising any Information shall remain the absolute property of PDFENERGY and/or its licensor(s).
8. The Recipient acknowledges that neither in entering into this agreement or in performing under it has it (and/or its officers, employees, advisers and/or servants) acquired (and shall not acquire) any interest in any copyright, patent, product license, trade mark, design, or any other intellectual property right of any kind or nature which may exist or come to exist in or relating to any Information.

Remedies

9. The Recipient acknowledges that a breach of this agreement by the Recipient may result in irreparable damage to PDFENERGY, the extent of which may be difficult, if not impossible, to ascertain and money damages could be inadequate in the event of such a breach. Accordingly, the Recipient agrees that in the event of a breach, or threatened breach, of this agreement by the Recipient, PDFENERGY shall be entitled to specific performance and/or injunctive and/or other equitable relief as a Court may deem appropriate, and such remedies shall not be deemed to be the exclusive remedy for a breach and/or threatened breach, of this agreement, but shall be in addition to all other remedies available at law and/or in equity and/or as otherwise provided for in this agreement.

Duration

10. The terms of this agreement shall apply to all Information whether received prior to the date of this agreement or subsequently and shall survive the expiry of any other existing or subsequent agreement between the parties.

General

11. **Alienation.** The Recipient may not assign, delegate, licence or otherwise deal in any manner whatsoever in its rights or obligations hereunder without the express prior written consent of PDFENERGY, which it may withhold at its absolute discretion.
12. **Warranty of Authority.** Each party represents and warrants that it has the right, power and authority to enter into this agreement, and that it is not a party to any other agreement or under any obligation to any third party that would prevent it from entering into or performing this agreement.
13. **Variation.** No variation of this agreement shall be effective unless it is in writing and signed by or on behalf of all parties to this agreement.
14. **Waiver.** Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under

this agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.

15. **No Partnership.** Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
16. **Counterpart.** This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this agreement, but all the counterparts shall together constitute the same agreement.
17. **Severance.**
 - 17.1. If any court or competent authority finds that any provision of this agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this agreement shall not be affected.
 - 17.2. If any invalid, unenforceable or illegal provision of this agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
18. **Rights of third parties.** No person, other than a party to this agreement shall have any rights under or in connection with it.
19. **Entire Agreement.** This agreement contains and constitutes the entire understanding and agreement between the parties in connection with and about the subject matter and supersedes all earlier and other agreements, arrangements and understandings between them and all earlier representations by any party about such subject matter, whether written or oral. Any prior representations, warranties, statements and assurances which are not expressly set out in this agreement will not be of any effect. Each party warrants that there is no representation, warranty, promise, term, condition, obligation or statement upon which they have relied in entering into this agreement which is not expressly set out in this agreement and no such representation, warranty, promise, obligation, statement or any other term or condition is to be implied in it whether by virtue of any usage or course of dealing or otherwise except as expressly set out in this agreement and/or except where in law it is not possible to exclude or restrict an implied term. If a party has given any representation, warranty, promise or statement then (except to the extent that it has been set out in this agreement) the party to whom it is given waives any rights or remedies which it may have in respect of it. Notwithstanding any other provision in this agreement, nothing in this agreement shall exclude the liability of a party for fraud or fraudulent misrepresentation or concealment or any resulting right to rescind this agreement and (notwithstanding any other provision in this agreement) nothing in this document shall exclude or restrict a party's liability that at law it cannot exclude or restrict.

Governing Law

20. This agreement and any dispute, legal action or proceedings arising out of or in connection with this agreement or its subject matter or its formation (including non-contractual disputes or claims) shall be governed by, interpreted and construed in accordance with the laws of England and Wales.

21. The parties irrevocably agree that the Courts of England and Wales shall have exclusive jurisdiction to settle any dispute, legal action, claim or proceedings arising out of or in connection with this agreement or its subject matter or its formation (including non-contractual disputes or claims).

This agreement has been entered into on the date first written above.

Signed by:)
For and on behalf of)
PDFENERGY LIMITED) _____

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For and on behalf of)
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