

THIS AGREEMENT is made on

30<sup>th</sup> NOVEMBER

2022

**BETWEEN**

- (1) ECSC Group plc incorporated and registered in England and Wales with company number 03964848 whose registered office is at 28 Campus Road, Listerhills Science Park, Bradford, West Yorkshire, BD7 1HR (“**ECSC**”).
- (2) Daisy Intermediate Holdings Limited incorporated and registered in England and Wales with company number 08384981 whose registered office is at Lindred House, 20 Lindred Road, Brierfield, Nelson, BB9 5SR(the “**Bidder**”).<sup>1</sup>

**BACKGROUND**

- (A) The parties intend to enter into discussions relating to the Purpose which will involve the disclosure of confidential information from ECSC to the Bidder.
- (B) The parties have agreed to comply with this Agreement in connection with the disclosure and use of Confidential Information.

**OPERATIVE PROVISIONS**

**1. INTERPRETATION**

**1.1. Definitions:**

Business Day	a day other than a Saturday, Sunday or public holiday in England on which dealings in domestic securities may take place on.
Confidential Information	has the meaning given in clause 2.
Data Room	the online data room called ‘Project Escalate’;
Group	in relation to a company, that company, any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is a member of the Group.
Group Company	in relation to a company, any member of its Group.
Holding company	has the meaning give in clause 1.2.5.
Purpose	considering, evaluating, negotiating or advancing a

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- potential acquisition of the entire issued and to be issued share capital of ECSC.
- Representative(s) in relation to each party and any member of its Group:
- (a) its officers and employees that need to know the Confidential Information for the Purpose;
  - (b) its professional advisers or consultants who are engaged to advise that party in connection with the Purpose;
  - (c) its contractors and sub-contractors engaged by that party in connection with the Purpose; and
  - (d) any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.
- Subsidiary has the meaning given in clause 1.2.5.

1.2. **Interpretation**

- 1.2.1. A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time. A reference to legislation or a legislative provision includes all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.2.2. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.3. A reference to **writing** or **written** includes email.
- 1.2.4. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.5. A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in section 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of:

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- 1.2.5.1. another person (or its nominee) by way of security or in connection with the taking of security; or
- 1.2.5.2. its nominee.
- 1.2.6. Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

**2. CONFIDENTIAL INFORMATION**

2.1. **Confidential Information** means all confidential information relating to the Purpose which ECSC or its Representatives or any of its Group Companies, or their Representatives directly or indirectly discloses, or makes available, to the Bidder or its Representatives or any of its Group Companies, or their Representatives, before, on or after the date of this Agreement. This includes:

- 2.1.1. any information provided in the Data Room;
- 2.1.2. the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
- 2.1.3. the existence and terms of this Agreement;
- 2.1.4. all confidential or proprietary information relating to:
  - 2.1.4.1. the business, assets, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of ECSC or of any of ECSC's Group Companies; and
  - 2.1.4.2. the operations, processes, product information, know-how, technical information, designs, trade secrets or software of ECSC, or of any of ECSC's Group Companies;
- 2.1.5. any information, findings, data or analysis derived from Confidential Information; and
- 2.1.6. any other information that is identified as being of a confidential or proprietary nature

but excludes any information referred to in clause 2.2.

2.2. Information is not Confidential Information if:

- 2.2.1. it is, or becomes, generally available to the public other than as a direct or indirect result of the information being disclosed by the Bidder or its Representatives or by any of the Bidder's Group Companies or their Representatives in breach of this Agreement (except that any compilation of otherwise public information in a form not publicly known shall still be treated as Confidential Information);

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- 2.2.2. it was available to the Bidder on a non-confidential basis prior to disclosure by ECSC;
- 2.2.3. it was, is, or becomes available to the Bidder on a non-confidential basis from a person who, to the Bidder's knowledge, is not under any confidentiality obligation in respect of that information;
- 2.2.4. it was lawfully in the possession of the Bidder before the information was disclosed by ECSC; and
- 2.2.5. the parties agree in writing that the information is not confidential.

### **3. CONFIDENTIALITY OBLIGATIONS**

- 3.1. In return for ECSC making Confidential Information available to the Bidder, the Bidder undertakes to ECSC that it shall:
  - 3.1.1. keep the Confidential Information strictly secret and confidential;
  - 3.1.2. not use or exploit the Confidential Information in any way except for the Purpose;
  - 3.1.3. not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except for disclosure to any member of its Group for the Purpose or as expressly permitted by, and in accordance with this Agreement;
  - 3.1.4. not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be the property of ECSC;
  - 3.1.5. not use, reproduce, transform or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside its usual place of business; and
  - 3.1.6. apply the same security measures and degree of care to the Confidential Information as the Bidder applies to its own confidential information, which the Bidder warrants as providing adequate protection from unauthorised disclosure, copying or use.
- 3.2. The Bidder shall establish and maintain adequate security measures to safeguard the Confidential Information from unauthorised access or use.

**4. PERMITTED DISCLOSURE**

- 4.1. The Bidder may disclose the Confidential Information to its Representatives on the basis that it:
- 4.1.1. informs those Representative of the confidential nature of the Confidential Information before it is disclosed; and
  - 4.1.2. procures that those Representatives comply with the confidentiality obligations in clause 3.1 as if they were the Bidder and ensures that those Representatives are under a written, contractual obligation of confidentiality in relation to such Confidential Information; and
  - 4.1.3. keeps a written record of those persons.
- 4.2. the Bidder shall be liable for the actions or omissions of the Representatives in relation to the Confidential Information as if they were the actions or omissions of the Bidder.

**5. MANDATORY DISCLOSURE**

- 5.1. Subject to the provisions of this clause 5, the Bidder may disclose Confidential Information to the minimum extent required by:
- 5.1.1. an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
  - 5.1.2. the rules of any listing authority or stock exchange on which its shares are listed or traded; or
  - 5.1.3. the laws or regulations of any country to which its affairs are subject.
- 5.2. Before the Bidder discloses any Confidential Information pursuant to clause 5.1 it shall, to the extent permitted by law, give ECSC as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with clause 5.2, the Bidder shall take into account ECSC's requests in relation to the content of this disclosure.
- 5.3. If the Bidder is unable to inform ECSC before Confidential Information is disclosed pursuant to clause 5.1 it shall, to the extent permitted by law, inform ECSC of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

**6. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**

- 6.1. If so requested by ECSC at any time by notice in writing to the Bidder, the Bidder shall promptly:

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- 6.1.1. destroy or return to ECSC all documents and materials (and any copies) containing, reflecting, incorporating or based on ECSC's Confidential Information;
    - 6.1.2. erase all the Confidential Information from its computer and communications systems and devices used by it, or which is stored in electronic form; and
    - 6.1.3. to the extent technically and legally practicable, erase all the Confidential Information which is stored in electronic form on systems and data storage services provided by third parties; and
    - 6.1.4. certify in writing to ECSC that it has complied with the requirements of this clause 6.1.
  - 6.2. Nothing in clause 6.1 shall require the Bidder to return or destroy any documents and materials containing or based on the Confidential Information that the Bidder is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it is subject. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Bidder pursuant to this clause 6.2.
7. Reservation of rights and acknowledgement
- 7.1. ECSC reserves all rights in its Confidential Information. The disclosure of Confidential Information by ECSC to the Bidder does not give the Bidder or any other person any licence or other right in respect of any Confidential Information beyond the rights expressly set out in this Agreement.
  - 7.2. Except as expressly stated in this Agreement, ECSC makes no express or implied warranty or representation concerning its Confidential Information, including but not limited to the accuracy or completeness of the Confidential Information.
  - 7.3. The disclosure of Confidential Information by ECSC shall not form any offer by, or representation or warranty on the part of, ECSC to enter into any further agreement with the Bidder in relation to the Purpose.
8. Inadequacy of damages
- Without prejudice to any other rights or remedies that ECSC may have, the Bidder acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement. Accordingly, ECSC shall be entitled to the remedies of injunctions, specific performance or other equitable relief for any threatened or actual breach of this Agreement by the Bidder.

9. **NO OBLIGATION TO CONTINUE DISCUSSIONS**

Nothing in this Agreement shall impose an obligation on ECSC to continue discussions or negotiations in connection with the Purpose, or an obligation on ECSC, or any of its Group Companies, to disclose any information (whether Confidential Information or otherwise) to the Bidder.

10. **ENDING DISCUSSIONS AND DURATION OF CONFIDENTIALITY OBLIGATIONS**

10.1. The obligations and undertakings contained in this letter will terminate upon the earlier of:

10.1.1. completion of the transaction contemplated by the Purpose; or

10.1.2. three years from the date of this Agreement.

10.2. The parties' respective obligations under this letter will not be affected by any termination of the negotiations or discussions between them in relation to the Purpose.

10.3. The end of discussions relating to the Purpose shall not affect any accrued rights or remedies to which either party is entitled.

11. **NO PARTNERSHIP OR AGENCY**

11.1. 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, or authorise any party to make or enter into any commitments for or on behalf of any other party.

11.2. Each party confirms it is acting on its own behalf and not for the benefit of any other person.

12. **GENERAL**

12.1. **Assignment and other dealings.** Neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.

12.2. **Entire agreement.**

12.2.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

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- 12.2.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 12.3. **Variation.** No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.4. **Waiver.** No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.5. **Severance**
- 12.5.1. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 12.5.2. If any provision or part-provision of this Agreement is deemed deleted under clause 12.5.1, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 12.6. **Notices**
- 12.6.1. Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- 12.6.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 12.6.1.2. delivered by email.
- 12.6.2. Any notice shall be deemed to have been received:
- 12.6.2.1. if delivered by hand, at the time the notice is left at the proper address;
- 12.6.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or



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- 12.6.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 12.6.2.3, business hours means 9.00 am to 5.00 pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 12.6.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 12.7. **Third party rights.**
- 12.7.1. Except as expressly provided at clause 12.7.3, this Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 12.7.2. This Agreement is made for the benefit of each of ECSC but also under the Contracts (Rights of Third Parties) Act 1999 by the members of the ECSC Group and your undertakings and obligations in this letter will be enforceable by each of them to the fullest extent permitted by law as if they were a party to this letter.
- 12.7.3. ECSC's rights to to rescind or vary this Agreement are not subject to the consent of any other person.
- 12.8. **Governing law.** This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 12.9. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

This Agreement has been entered into on the date stated at the beginning of it

Signed by

for and on behalf of



Signed by



.....

[REDACTED] for and on  
behalf of [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]