

DATED _____ **2012**

(1) **DMC ELEVATION LTD**

(2) _____

**NON-DISCLOSURE
AGREEMENT**

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BETWEEN:

(1) **DMC Elevation Ltd** of Unit 33a, Highview Business Park, Park Road, Toddington, LU5 6AB; and

(2)

("Party")

RECITAL

DMC ELEVATION LTD and Party wish to disclose certain confidential information to each other and this Agreement sets out the terms on which such information is disclosed.

In consideration of the mutual undertakings set out below the parties agree as follows:

1 Definitions:

"Confidential Information" shall mean:

- (a) any and all written, oral or other tangible or intangible form of technical information including, but not limited to, discoveries, ideas, concepts, know-how (whether or not patentable or capable of being protected by copyright or other means available by statute or treaty), research, development, reports, designs, specifications, drawings, blueprints, tracings, graphical works, diagrams, models, samples, flow charts, data, computer programs, disks, diskettes, tapes, algorithms, software programs, trade secrets (which includes but is not limited to any portion or phase of scientific or technical information, design, process, procedure, formula, or improvement that gives the one who uses it an advantage over competitors who do not know of or use it); and

- (b) any and all written, oral or other tangible or intangible form of commercial, financial and business information, including but not limited to information concerning a party's current and future products and services, its clients, customers and contacts, its industry knowledge and expertise, its business plans and strategies, its marketing plans and techniques, whether or not that information could give any potential or actual competitor of the disclosing party any form of commercial or other advantage supplied, disclosed or imparted by one party ("**the disclosing party**") to the other ("**the receiving party**") which relates directly or indirectly to the Product described in the Schedule ("**Product**") but excluding information which:
- (i) was in the possession of the receiving party before such Confidential Information was imparted by the disclosing party or is independently developed by any servant, agent or employee or otherwise on behalf of the receiving party without access to or use or knowledge of the Confidential Information imparted by the disclosing party; or
 - (ii) is in or subsequently comes into the public domain other than by breach by the receiving party of its obligations hereunder or under any other agreement of confidentiality between the parties; or
 - (iii) is received by the receiving party without restriction on disclosure or use from a third party which third party has a lawful right to make such disclosure; or
 - (iv) is disclosed by the receiving party pursuant to operation of law or any rule or requirement of any regulatory authority or government agency with which the receiving party is bound to comply, provided that the receiving party gives the disclosing party a written notice of such requirement as soon as reasonably possible after learning of such requirement and, to the extent reasonably possible, an opportunity to take such steps as may be available to avoid disclosure; or
 - (v) is disclosed by the disclosing party to the receiving party after the disclosing party has received written notice from the receiving party signed

by its duly authorised representative that the receiving party will not accept any further information in confidence; or

- (vi) is disclosed by the receiving party, under obligations of confidentiality giving equivalent protection to those contained in this Confidentiality Agreement, to the receiving party's legal advisers for the purposes of seeking advice relating to the Product.

Information shall be deemed to be Confidential Information if:-

- (i) it is marked as confidential or proprietary; or
- (ii) if disclosed in intangible form it is identified as Confidential or proprietary at the time of disclosure; or
- (iii) the receiving party knew or ought reasonably to have assumed that the information constituted Confidential Information.

“Purpose” shall mean the purpose described in the Schedule to this Agreement.

2 Property Rights

The receiving party shall not, by virtue of this Agreement, obtain any rights in the Confidential Information, other than the limited rights herein.

3 No Warranty

No warranty is given by either party as to the quality or accuracy of any Confidential Information.

4 Obligations of the Parties:

4.1 Each of the parties shall:

- (a) treat all Confidential Information disclosed to it as strictly private and confidential and take all reasonable measures necessary to keep and procure that its employees

keep the Confidential Information confidential including but not limited to not copying the Confidential Information except to the extent to which the disclosing party has given its prior written consent;

(b) use the Confidential Information only for the Purpose;

(c) disclose Confidential Information only to:

(i) those of its officers, agents (other than its auditors) or employees to whom it is strictly necessary for the achievement of the Purpose to disclose it, ensuring that such persons are made and kept fully aware of its confidential nature, are bound by obligations of confidentiality and non-use equivalent to the terms of this Confidentiality Agreement and ensuring that such disclosure is only to the necessary extent;

(ii) the officers or employees of any third party specified in the Schedule only where disclosure is strictly necessary for the achievement of the Purpose. For the avoidance of doubt, DMC Elevation Ltd may disclose Confidential Information to such officers or employees of any specified third party where such disclosure is clearly anticipated in and constitutes the major aim of the Purpose;

(iii) a party other than those identified at (i) and (ii) above (a “**Third Party**”) only where it is strictly necessary for the achievement of the Purpose but subject to first obtaining the disclosing party’s prior written consent to such disclosure, and subject to the Third Party entering into a written agreement with the disclosing party to keep the Confidential Information confidential on terms equivalent to the terms of this Agreement.

4.2 Neither party shall disclose to the other any more Confidential Information than is strictly necessary for the Purpose. For the avoidance of doubt, the parties shall not disclose to each other the source code to any proprietary software.

4.3 The receiving party will immediately notify the disclosing party of any unauthorised use, copying or disclosure of the disclosing party’s Confidential Information of which the receiving party becomes aware and will provide all

reasonable assistance to the disclosing party to terminate such unauthorised use and/or disclosure.

5 Non-Exclusive

Nothing in this Agreement shall preclude either party from dealing with other parties on identical or similar subject matter to that covered in this Agreement.

6 Term

This Agreement shall remain in force for a period of four years from the date hereof. The obligations of this Agreement shall continue to apply irrespective of any expiration or termination of this Agreement from the date of disclosure of any Confidential Information until the expiration of the period set out in the Schedule.

7 Return of Confidential Information

At any time when obligations of confidentiality subsist in relation to any Confidential Information, either party shall immediately on the written request of the other return to the other or procure the return to the other of all such Confidential Information supplied by the other, and shall delete any such Confidential Information from any medium on which it is stored.

8 Injunctive Relief

The parties acknowledge that their Confidential Information constitutes vital business assets and agree that damages will be insufficient to compensate a breach of this Agreement. The parties recognise that any such breach may result in the injured party seeking alternative remedies, including but not limited to injunctive relief.

9 Governing Law

This Agreement shall be governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.

Signed for and on behalf of DMC ELEVATION LTD

Name:

Title:

Date:

Being an authorised representative of DMC ELEVATION LTD for the purposes of signing this Confidentiality Agreement.

Signed for and on behalf of _____

Name:

Title:

Date:

Being an authorised representative of _____ for the purposes of signing this Confidentiality Agreement.

SCHEDULE

Product

ESM Database

Purpose

To share company and financial information.

Parties

Parties to whom the Confidential Information may be disclosed under Clause 4.1(c)(ii):

No other parties.

Period

Length of time from disclosure of Confidential Information that obligations of confidentiality subsist: 3years.