

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on 31 August 2017

BETWEEN:

- (1) Fenner PLC incorporated and registered in England and Wales whose registered office is at Hesslewood Country Office Park, Ferriby Road, Hessle, East Yorkshire, HU13 0PW ("**Fenner**"); and
- (2) Manufacture Francaise des Pneumatiques Michelin incorporated and registered in France whose registered office is at 23, place des Carmes Dechaux, 63040 Clermont Ferrand Cedex 09 ("**Michelin**").

Fenner and Michelin are each a "Party" hereto and collectively referred to herein as the "Parties."

BACKGROUND

The Disclosing Party wishes to disclose to the Recipient, and wishes to ensure that the Recipient maintains the confidentiality of the Disclosing Party's Confidential Information. In consideration of the benefits to the parties of disclosing and receiving the Confidential Information, the parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information.

1. Definitions

Affiliate:

a corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with one of the Parties, but such corporation, company or other entity shall be deemed to be an Affiliate only so long as such ownership or control exists.

For purposes of this definition, "control" of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether:

- (a) through the ownership of voting securities providing for the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority;
- (b) by contract; or
- (c) otherwise.

Confidential Information:

the fact that the Parties are in talks with each other shall constitute confidential information in addition to all information relating to the Purpose, however recorded or preserved, that is disclosed or made available, directly or indirectly, by the Disclosing Party or its Representatives to the Recipient and its Representatives including but not limited to:

- (a) any information relating to:
 - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party or of the Disclosing Party's Affiliates; and
 - (ii) the operations, processes, know-how, product information, designs, trade secrets or software of the Disclosing Party or of the Disclosing Party's Affiliates;
- (b) any information or analysis derived from the Confidential Information;
- (c) all information of a confidential or proprietary nature learned by the Recipient through any observations or sightings made while on the premises of either the Disclosing Party or the premises of the Disclosing Party's Affiliates; and
- (d) any information which is expressly stated as being confidential.

Disclosing Party:

a Party to this Agreement when such party discloses or makes available directly or indirectly Confidential Information.

Purpose:

To evaluate mutual commercial opportunities and explore alternative possible structures between the Parties.

Recipient:

a Party to this Agreement when such party receives or learns directly or indirectly Confidential Information from the Disclosing Party.

Representative:

employees, agents, advisers and other representatives (including financial advisors, lawyers, accountants and other consultants) of a Party or its Affiliate.

2. Confidentiality

- 2.1 Both Parties will keep the fact that they are in talks with each other strictly confidential and not disclose it to anyone other than their advisors who have a need to know such information. The Recipient of any Confidential Information shall keep the Disclosing

Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall, and shall procure that its Representatives shall:

- (a) not use or exploit the Confidential Information in any way except for the Purpose;
- (b) keep and maintain the Confidential Information confidential and not disclose it to any third party, except as expressly permitted by this Agreement;
- (c) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Disclosing Party);
- (d) 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 whatsoever outside its usual place of business;
- (e) keep separate the Confidential Information and all information generated by the Recipient based thereon from all documents and other records of the Recipient; and
- (f) apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing reasonable protection from unauthorised disclosure, copying or use.

2.2 The Recipient may only disclose the Disclosing Party's Confidential Information to those Representatives who need to know the Confidential Information for the Purpose, provided that:

- (a) it informs Representatives of the confidential nature of the Confidential Information before disclosure and ensures that they are made aware that they are subject to an obligation of confidence in respect of such information, to include, where applicable, having such Representative execute a confidentiality or nondisclosure agreement with terms comparable to those in this Agreement; and
- (b) at all times, it is responsible for Representatives' compliance with the obligations set out in this Agreement and liable for any breach of those obligations by its Representatives.

2.3 Subject to clause 3.3, neither Party shall disclose to any person other than its Representatives who need to know for the Purpose the fact that discussions or negotiations are taking place between the parties.

3. Exclusions

3.1 The obligations of the Recipient under clause 2 shall not extend to:

- (a) information which was in the public domain at the time of disclosure by or acquisition from the Disclosing Party or hereafter comes into the public domain other than by the default of the Recipient;
- (b) information which:

- (i) the Recipient can demonstrate, to the reasonable satisfaction of the Disclosing Party, was in the possession of the Recipient prior to disclosure by or acquisition from the Disclosing Party; and
 - (ii) the Recipient is not under an obligation of confidence in respect thereof;
 - (c) information the Recipient hereafter learns from a third party acting in good faith who does not derive the same directly or indirectly from the Disclosing Party, is not otherwise subject to confidentiality obligations with respect to such information, and who does not require the Recipient to keep it confidential; or
 - (d) information which is approved for release in writing by an authorised representative of the Disclosing Party prior to the release of that information.
- 3.2 Confidential Information shall not be deemed to be within the exclusions set out in clause 3.1 merely because it is contained in more general information which is in the public domain or is learned by the Recipient or is in the Recipient's prior possession, and the combination of two or more portions of the Confidential Information shall not be deemed to be within the exceptions set out in clause 3.1 merely because each separate portion is within the said exception.
- 3.3 The Recipient may disclose Confidential Information if required by:
- (a) any order of any court of competent jurisdiction or any competent judicial, governmental or regulatory body;
 - (b) the rules of any stock exchange on which shares in which the Recipient or any of its Affiliates is listed; or
 - (c) the laws or regulations of any country with jurisdiction over the affairs of the Recipient.
- 3.4 Before disclosing any Confidential Information under Clause 3.3, the Recipient shall use reasonable endeavours, including any steps Recipient would take to protect its own Confidential Information, to:
- (a) inform the Disclosing Party of the circumstances of the disclosure and the information that will be disclosed, and where reasonably possible, sufficiently in advance of such disclosure to allow Disclosing Party to file any motions for protection or otherwise object to such disclosure;
 - (b) consult with the Disclosing Party as to possible steps to limit disclosure;
 - (c) gain assurances of confidentiality from the person or organisation to whom the Confidential Information is to be disclosed; and
 - (d) where the disclosure is a stock exchange announcement, agree the wording with the Disclosing Party.

4. Return of information

At the request of the Disclosing Party, and upon termination of this Agreement or termination of the Purpose, the Recipient shall promptly:

- (a) destroy or return to the Disclosing Party all documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information;

- (b) erase all the Disclosing Party's Confidential Information from its computer systems to the extent reasonably possible; and
- (c) certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority, and to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this Agreement. The provisions of this Agreement shall continue to apply to any such documents and materials retained by the Recipient.

5. Reservation of Rights and Acknowledgements

- 5.1 The Disclosing Party reserves all rights in its Confidential Information. No rights in respect of the Disclosing Party's Confidential Information, including but not limited to any intellectual property rights in the Confidential Information or information based on or incorporating such information, are granted to the Recipient and no obligations are imposed on the Disclosing Party other than those expressly stated in this Agreement. In particular, nothing in this Agreement shall be construed or implied as obliging the Disclosing Party to disclose any specific type of information under this Agreement, whether Confidential Information or not.
- 5.2 Except as expressly stated in this Agreement, the Disclosing Party does not make any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information. Notwithstanding the foregoing, nothing in this Agreement shall operate to exclude or limit any liability of the Disclosing Party for fraud, intentional misconduct or intentional misrepresentation.
- 5.3 The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of the Disclosing Party to enter into any further agreement.
- 5.4 The Recipient acknowledges that damages alone may not be an adequate remedy for the breach of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement.
- 5.5 The Recipient shall be liable to the Disclosing Party for the actions or omissions of its Representatives in relation to the Confidential Information as if they were the actions or omissions of the Recipient.

6. Warranty and Indemnity

- 6.1 The Disclosing Party warrants that it has the right to disclose its Confidential Information to the Recipient and to authorise the Recipient to use such Confidential Information for the Purpose.

- 6.2 The Recipient shall indemnify and keep fully indemnified the Disclosing Party and its Affiliates at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (excluding any loss of profit, loss of reputation or any indirect and consequential losses) and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Disclosing Party arising from any material breach of this Agreement by the Recipient and from the actions or omissions of any Representative of the Recipient.

7. Non-Solicitation

- 7.1 Subject to clause 7.2, the parties shall not, and shall procure that their Affiliates shall not for a period of 12 months from the date of this Agreement:
- (a) employ or enter into a contract for the services of an employee of the other Party that they have had direct contact with or become aware of due to negotiations relating to the Purpose;
 - (b) entice, solicit or procure any such qualifying person under clause 7.1(a) to leave their employment (or attempt to do so) whether or not that person would commit any breach of contract in leaving such employment; or
 - (c) procure or facilitate the making of any such offer or attempt by any other person.
- 7.2 Notwithstanding the remainder of clause 7, the Parties and their respective Affiliates are not restricted from making any general solicitation for employment by way of an advertisement or similar publicly accessible job posting (including through corporate recruiters working on a Party's behalf) that is not specifically directed at the other Party's employees, nor will they be restricted from offering employment to any employees of the other Party who respond to such indirect solicitation.

8. Duration

The terms of this Agreement shall continue for a period of 24 months from the date of this Agreement. However, for the avoidance of doubt, the obligations of Clause 2 shall survive termination of the Agreement.

9. Inside Information

- 9.1 Both Parties acknowledges that the Confidential Information may (in whole or in part) constitute inside information for the purposes of Part V of the Criminal Justice Act 1993 (CJA) and/or the Market Abuse Regulation (Regulation 596/2014) (MAR) and that any officers, employees, advisers or agents of the Parties and any of its Representatives who are in, or acquire, possession of any Confidential Information may have information as an insider for the purposes of the CJA and inside information for the purposes of MAR. Both Parties consent to receiving such information.
- 9.2 Each Party acknowledges and confirms that it is aware of its obligations under all applicable laws and regulations (including, without limitation, MAR and the CJA) in relation to unpublished, price-sensitive information and undertakes to the other that it shall:

- (a) ensure that its Representatives who are in or acquire possession of Confidential Information are aware of the confidential nature of such information and the legal and regulatory duties entailed as referred to in this paragraph and are aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information;
- (b) not (and shall procure that none of its employees, officers or agents shall) make any use of the Confidential Information for the purposes of dealing or encouraging another person to deal in any securities of the other Party; and
- (c) not (and shall procure that none of its employees, officers or agents shall) engage in insider dealing (within the meaning of the CJA or MAR) or any other behaviour amounting to market abuse within the meaning of MAR based on any Confidential Information.

10. Assignment

Neither Party shall be entitled to assign its rights or sub-contract its obligations under this Agreement without the prior written consent of the other Party.

11. Entire Agreement

This Agreement is the entire agreement between the Parties and supersedes any arrangement, understanding or previous agreement between them relating to its subject matter.

12. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by duly authorised representatives of the parties.

13. Further Agreement

Nothing in this Agreement shall obligate either Party to enter into any further agreement.

14. No Partnership

Nothing in this Agreement is intended to, or shall be deemed to establish any partnership or joint venture between the parties, constitute either Party an agent of the other Party, nor authorise a Party to make or enter into any commitments for or on behalf of the other Party.

15. Waiver

No failure or delay in exercising any right under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise of any right hereunder.



16. Severability

If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

17. Third Party Rights

This Agreement is made for the benefit of the parties to it and their successors and permitted assigns and is not intended to benefit, or be enforceable by anyone else.

18. Counterparts

This Agreement may be executed via facsimile or ".pdf" file and in counterparts, each of which shall be deemed an original, but both of which together shall constitute one and the same instrument.

19. Jurisdiction and Choice of Law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the State of New York without giving effect to the principles of conflict of laws thereof. The parties submit to the exclusive jurisdiction of a federal or state court sitting in New York, New York.

AS WITNESS this Agreement has been signed for and on behalf of each Party by its duly authorised representative on the day and year written above

Signed by

SIGNATURE: 

NAME: **MARK ABRAHAMS**
Director
for and on behalf of
Fenner PLC

Signed by

SIGNATURE: 

NAME: **LUC MINGUET**
Director
for and on behalf of
Manufacture Francaise des Pneumatiques
Michelin

Luc MINGUET
Senior Vice President
Chief Procurement Officer

