
CONFIDENTIALITY AGREEMENT

ADDLESHAW GODDARD

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This Confidentiality Agreement is made on

4 March

2019

Between

- (1) **USS Investment Management Ltd** whose registered office is at Royal Liver Building, Liverpool, Merseyside L3 1PY (care of 6th floor, 60 Threadneedle St, London EC2R 8HP) (**Fury**); and
- (2) **KCOM Group plc** whose registered office is at 37 Carr Lane, Hull, East Yorkshire HU1 3RE (**Koala**).

It is agreed

Fury has indicated that it is considering making an offer for the entire issued and to be issued share capital of Koala (**Proposal**). In this document each of Fury and Koala is (i) a **Party**, (ii) a **Provider** in the context of the provision of Confidential Information relating to itself and its group undertakings to the other and (iii) a **Recipient** in the context of it receiving or holding Confidential Information relating to the other and its group undertakings.

Each Party, by signing this document or a copy of it and:

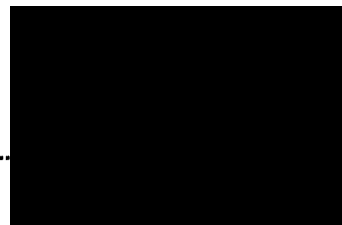
- (in Koala's case) in consideration for Fury agreeing to enter into discussions with Koala in relation to the Proposal and agreeing to pay Koala £1 (one pound only) if demanded by Koala; and
- (in Fury's case) in consideration for Koala agreeing to enter into discussions with Fury in relation to the Proposal and agreeing to pay Fury £1 (one pound only) if demanded by Fury,

confirms its agreement with the other to all the terms in the Schedule to this document.

Signed for Fury and Koala as follows:

For USS Investment Management Ltd

Signed by MICHAEL POWELL)
DIRECTOR



For and on behalf of
USS Investment Management Ltd

For KCOM Group plc

Signed by)

.....

For and on behalf of **KCOM Group plc**

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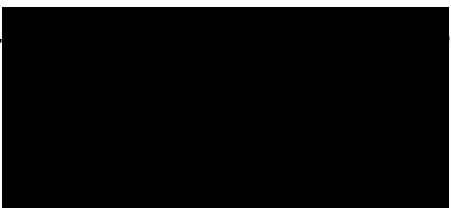
Signed by _____)

.....

For and on behalf of
USS Investment Management Ltd

For KCOM Group plc

Signed by **GRAHAM SUTHERLAND**)
DIRECTOR

.....


For and on behalf of **KCOM Group plc**

The Schedule

1 Confidential Information

Confidential Information means all of the following:

- (a) any information in any form relating to the Provider or any of the group undertakings of the Provider (each a **Provider Entity** and together the **Provider Group**), which is, or prior to the date of this agreement has been, provided to the Recipient in the context of the Proposal by the Provider or by any of the Provider's Connected Persons or by anyone else acting on behalf of the Provider or any such Connected Person, or which is, or prior to the date of this agreement has been, obtained by the Recipient as a consequence of the Recipient's discussions or negotiations or other communications with any such person in relation to the Proposal; and
- (b) analyses, compilations, studies and documents in any form prepared by the Recipient or any of its Connected Persons or by anyone else acting on behalf of the Recipient or any such Connected Person to the extent that they contain or otherwise reflect or are generated from any information referred to in paragraph (a) above;

but excluding any information which:

- (1) is for the time being in the public domain and has come into the public domain other than as a result of a breach by the Recipient or any of its Connected Persons of the agreement recorded by this document (**Agreement**) or of any other obligation or duty owed to any Provider Entity by the Recipient or any of its Connected Persons; or
- (2) subsequently comes into the public domain other than as a result of a breach by the Recipient or any of its Connected Persons of this Agreement or of any other obligation or duty owed to any Provider Entity by the Recipient or any of its Connected Persons; or
- (3) when first disclosed to the Recipient, was lawfully in the Recipient's possession free of any obligation of confidentiality to any person, other than as a consequence of a breach of any obligation or duty owed by any person to any Provider Entity; or
- (4) subsequently lawfully comes into the possession of the Recipient from a third party other than as a consequence of a breach of any obligation or duty owed by such third party to any Provider Entity; or
- (5) is or was independently developed by the Recipient and/or its Connected Persons and advisers without using Confidential Information and without otherwise violating any obligations in this Agreement; or
- (6) the Provider subsequently confirms to the Recipient in writing is no longer to be treated as confidential for the purposes of this Agreement.

2 Use of Confidential Information

- 2.1 The Recipient will treat all Confidential Information as strictly confidential and the Recipient will hold it in the strictest confidence and shall not make it available to any person other than an Authorised Recipient. The Recipient will safeguard all documents and data containing Confidential Information accordingly.

- 2.2 The Recipient will use the Confidential Information only for the purpose of evaluating, developing, negotiating and proceeding with the Proposal and for no other purpose.
- 2.3 No Confidential Information in the Recipient's possession will be copied, duplicated, recorded or reproduced in any form other than as is reasonably necessary to assist the Recipient in connection with the Proposal in accordance with this Agreement (or, in relation only to the Recipient's usual and reasonable IT data back-up procedures).
- 2.4 The Recipient agrees to use the same degree of care to protect the Confidential Information of the Provider from unauthorised disclosure as it uses to protect its own confidential information, but in any event, the Recipient will use a reasonable degree of care.

3 Permitted disclosures

- 3.1 The Recipient and each of its Authorised Recipients may provide Confidential Information to any of its Connected Persons to the extent that such Connected Person reasonably needs access to that Confidential Information for the purpose of evaluating, negotiating, advising upon or implementing the Proposal, provided that:
- (a) such access is given solely for the purpose of such Connected Person evaluating, negotiating, advising upon or implementing the Proposal;
 - (b) before disclosing any Confidential Information to any such Connected Person or providing him with access to any Confidential Information, the Recipient will inform him of its confidential nature and of the Recipient's obligations relating to such information pursuant to this Agreement. The Recipient will then direct such Connected Person:
 - (i) not to disclose any Confidential Information to anyone other than another Authorised Recipient of such Recipient; and
 - (ii) to comply with paragraph 2 (Use of Confidential Information) to paragraph 6 (Personal data and inside information) of this Agreement in all other respects as if such Connected Person had agreed with the Provider to be bound by its terms and as if each reference in those paragraphs to the Recipient (other than at paragraph 3.1) contained an additional and separate reference to such Connected Person.
- 3.2 The Recipient will notify the Provider in writing, within five working days of receiving any written request made by the Provider for a notification pursuant to this paragraph, of the name and address of each Connected Person (on an entity level basis):
- (a) to whom the Recipient has provided Confidential Information or access to Confidential Information; or
 - (b) who has been provided with Confidential Information by any of its Authorised Recipients,

provided that the Recipient's obligation to make such a notification shall not apply in relation to any such Connected Person to whom Confidential Information is supplied through an online data room set up by the Provider.

4 No other disclosure

- 4.1 No Party will make any announcement about the Proposal or disclose Confidential Information relating to the other Party to any person, other than:
- (a) to the extent it is permitted to do in accordance with Rule 2.3(d) of the Code, or to the extent it is required to do so by applicable law or regulation, any order of a court of competent jurisdiction or any competent governmental, judicial or regulatory authority or body (including, without limitation, the Panel, any relevant stock exchange on which such person's securities are admitted to trading); or
 - (b) in accordance with the other provisions of this Agreement.
- 4.2 To the extent that it is (i) not prevented by law from doing so and (ii) reasonably practicable to do so, the Recipient will notify the Provider of any disclosure to which paragraph 4.1(a) applies which the Recipient anticipates it will be required to make as soon as reasonably possible after the Recipient becomes aware that it may be required to do so.
- 4.3 The Recipient will then take all such steps as the Provider reasonably requests to resist or avoid having to make such anticipated disclosure and/or to ensure that the amount and scope of Confidential Information that would have to be disclosed is the minimum necessary. To the extent that it is not prevented by law from doing so, the Recipient will keep the Provider fully and promptly informed of all relevant matters so that the Provider, at its sole cost and expense, may seek a protective order or other appropriate remedy in relation to such anticipated disclosure.
- 4.4 Other than as permitted pursuant to paragraph 4.1, the Recipient will not make any comment to anyone other than an Authorised Recipient about any Confidential Information or the Recipient's views on it. The Recipient will not use (nor, so far as within the Recipient's power or control, allow to be used) any Confidential Information in any way in connection with (or for the purpose of) any business, other than as permitted under this Agreement.
- 4.5 No Party will reveal, confirm or acknowledge to any person, other than in confidence to its stock market regulators or to any of its Authorised Recipients (or other than as required pursuant to paragraph 4.1):
- (a) the fact that the Parties are in discussions or negotiations concerning the Proposal; or
 - (b) the status or progress or termination of any such discussions or negotiations; or
 - (c) the fact (if applicable) that the Parties have entered into any provisional arrangement relating to the Proposal; or
 - (d) any details relating to any such arrangement; or
 - (e) that it has received or expects to receive any information from or on behalf of the other Party that is or may be of a confidential nature,
- or that anything referred above in this paragraph 4.5 has occurred or been done.

5 Return/destruction of Confidential Information

- 5.1 The Recipient will return to the Provider all Confidential Information provided to it in any recorded form by or on behalf of the Provider in connection with the Proposal in the form in which it was provided (or ensure its destruction) promptly on the Provider requesting the

Recipient to do so. The Recipient will ensure the deletion, destruction and erasure of all versions and copies of any analyses, compilations, studies or documents prepared or created or copied by the Recipient or any of its Connected Persons containing or reflecting or generated from or comprising any Confidential Information provided by or on behalf of the Provider promptly on the Provider requesting the Recipient to do so. This will include (unless the Provider specifies otherwise) the deletion and removal of all relevant Confidential Information from any IT or word processing or other data retrieval system held, used or operated by the Recipient or any of its Connected Persons. However, this paragraph does

not require the deletion of routine IT back-up records that are readily accessible only by specialist IT or compliance personnel.

6 Personal data

6.1 For the purposes of this letter, each Party is deemed to be a separate Data Controller, to the extent that any Personal Data is Processed in connection with this Agreement.

6.2 Each Party shall:

- (a) comply with Data Privacy Laws and shall not by its act or omission cause the other party to breach Data Privacy Laws. In particular, neither Party shall Process the Personal Data in a way as to cause the other Party to breach any of its obligations under Data Privacy Laws; and
- (b) having regard to the state of technological development, take all appropriate technical, security, and organisational measures necessary or desirable to ensure that Personal Data is protected against loss, destruction and damage, and against unauthorised access, use, removal, copying, modification, disclosure or other misuse.

7 Compliance with this Agreement

7.1 Each Party shall ensure that each of its Connected Persons complies with all the preceding provisions of this Agreement applicable to that Party as if such Connected Person was an additional party to this Agreement and as if each such provision also applied to such Connected Person. The Recipient will be responsible to the Provider for any non-compliance with such provisions by any of its Connected Persons (without prejudice to that person's responsibility for such non-compliance).

7.2 Each Party confirms that an appropriate remedy for any breach of this Agreement may be injunctive relief, specific performance and other equitable relief in addition to or instead of damages.

8 General

8.1 Either Party may terminate discussions with the other about the Proposal at any time.

8.2 Neither Party has any obligation to reimburse the other Party or any of its Connected Persons or advisers, nor will it be responsible, for any costs, expenses or other items that might be incurred by it or them in connection with any discussions or negotiations in relation to the Proposal or in complying with this Agreement.

8.3 The provision of Confidential Information will not constitute any offer or invitation by or on behalf of the Provider and will not form the basis of any other contract or agreement between the Parties. Neither Party has made or is under any obligation to make any representation or

warranty, express or implied, as to the accuracy, reliability or completeness of any Confidential Information provided to the other Party. Nor is either Party under any obligation to update or correct any such information.

- 8.4 If any term of this Agreement is held to be illegal, invalid or unenforceable (in whole or in part), it shall be deemed not to form part of this Agreement, but the remaining terms shall continue in full force and effect. The Parties agree that, if the Panel determines that any provision of this agreement that requires Koala to take or not take action, whether as a direct obligation or as a condition to any other person's obligation (however expressed), is not permitted by Rule 21.2 of the Code, that provision shall have no effect and shall be disregarded.
- 8.5 This Agreement shall continue in full force and effect in accordance with its terms notwithstanding the completion or termination of discussions between the Parties concerning the Proposal.
- 8.6 This Agreement, and all non-contractual obligations arising under or in connection with it, shall be construed in accordance with, and governed by, English law. The courts of England and Wales have jurisdiction to hear and decide any suit, action or proceedings and to settle any disputes, which may arise out of or in connection with this Agreement, for which purpose each Party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.
- 8.7 The Provider may enforce any term of this Agreement which refers to any other Provider Entity, or is intended to be for its benefit, on behalf of that Provider Entity. A person who is not a party to this Agreement has no right to enforce any of its terms under the Contracts (Rights of Third Parties) Act 1999. Each Party reserves the right to vary the terms of this Agreement by their mutual written agreement at any time without the consent of any other person.
- 8.8 In this document:
- (a) **Authorised Recipients** means each of the Parties' Connected Persons who reasonably need access to Confidential Information for the purposes of evaluating, negotiating, advising upon or implementing the Proposal;
 - (b) **Connected Persons** means, in relation to a Party:
 - (i) each of its group undertakings;
 - (ii) its and each of its group undertakings' directors, officers, employees, professional advisers (which includes lawyers, accountants, financial or other professional advisers) and any other agents or representatives appointed in connection with the Proposal (and any directors, offices, employees and partners of any such advisers, agents and representatives);
 - (iii) any other party deemed to be "acting in concert" with such Party (for the purposes of the Code) and including, but not limited to, any person proposing to provide debt or equity finance for the purpose of financing the Proposal; and
 - (iv) any director, officer, employee, adviser, agent or representative of any person referred to in (iii) above (and any directors, officers, employees or partners of any such adviser, agent or representative);
 - (c) **Code** means City Code on Takeovers and Mergers of the United Kingdom;

- (d) **Data Controller, Processed and Personal Data** have the meanings given under Data Privacy Laws;
- (e) **Data Privacy Laws** means all laws that relate to data protection, privacy, the use of information relating to individuals, and/or the information rights of individuals including, without limitation, the General Data Protection Regulation (EU) 2016/679 and the Data Protection Act 2018, and all laws implementing them, in each case as may be replaced, extended or amended;
- (f) **Fury's Parent** means Universities Superannuation Scheme Limited, whose registered office is at Royal Liver Building, Liverpool, Merseyside, L3 1PY;
- (g) **group undertakings** shall be construed in accordance with section 1161 of the Companies Act 2006 (and, in relation to Fury, includes any entity formed or owned by Fury or any funds managed or advised by Fury) and **parent undertaking** and **subsidiary undertaking** shall be construed in accordance with section 1162 of the Companies Act 2006;
- (h) **interest** in shares or securities shall be construed in accordance with the Code;
- (i) **Panel** means the Panel on Takeovers and Mergers;
- (j) headings are for convenience only and do not affect its interpretation;
- (k) the meaning of general words introduced by "other", "include" or "including" is not restricted as a result of them being preceded by words indicating a particular class of acts, matters or things or being followed by particular examples intended to be embraced by the general words; and
- (l) any reference to any English legal term for any legal concept shall, in respect of any jurisdiction other than England and Wales, be deemed to include an additional and separate reference to the legal concept which in that jurisdiction most nearly corresponds or approximates to that English legal term.

9 Dealings, standstill and non-solicitation

- 9.1 Fury recognises that some of the Confidential Information may be relevant to the price or value of Koala's securities. Fury undertakes that it will not, and shall procure that its Connected Persons will not, do anything that breaches insider trading provisions of any applicable securities laws.
- 9.2 Fury represents and warrants that neither Fury nor Fury's Parent is interested in any shares or other securities of Koala (excluding any interest in Koala's shares held indirectly through any investment in an index fund).
- 9.3 Fury agrees and undertakes that, without the prior written consent of Koala, for a period of 12 months from the date of this Agreement, it will not, and will procure that none of its group undertakings will, directly or indirectly and whether alone or acting in concert with any other person:
 - (a) acquire or offer to acquire, or cause or encourage any other person to acquire or offer to acquire, any interest in any shares or other securities of Koala or enter into any agreement, arrangement or understanding (whether or not legally binding) or do or

omit to do any act as a result of which it or any other person will or may acquire an interest in any shares or other securities of Koala;

- (b) announce or make, or cause any other person to announce or make, an offer to acquire Koala or announce that it, any of its group undertakings or any other person, is interested in acquiring Koala;
- (c) enter into any agreement, arrangement or understanding (whether or not legally binding) or do or omit to do any act as a result of which it or any person may become obliged (under the Code or otherwise) to announce or make an offer to acquire Koala;
- (d) act in concert with or enter into any agreement, arrangement or understanding (whether or not legally binding) with any other person in connection with any offer to acquire Koala to be made or announced by Fury or any of its group undertakings;
- (e) enter into any agreement, arrangement or understanding (whether or not legally binding) with any person with respect of the holding, voting or disposition of any shares or other securities of Koala;
- (f) solicit, or make or participate in any solicitation of, or seek to persuade, shareholders of Koala to vote in a particular manner at any meeting of the shareholders of Koala, or requisition or join in requisitioning any general meeting of Koala, or take any other steps to control or otherwise influence the management and affairs of Koala; or
- (g) save with the prior written consent of Koala, initiate or maintain contact or approach or hold discussions with any of Koala's customers, suppliers or shareholders:
 - (i) regarding Koala's business; or
 - (ii) where reference is made that Fury or one of Fury's group undertakings may be interested in acquiring any interest in Koala or any part of its business or assets.

9.4 The restrictions in clause 9.3 above shall cease to apply to Fury if:

- (a) Fury or any of its group undertakings announces a firm intention to make an offer for the other which is recommended by the board of directors of Koala;
- (b) a third party announces a firm intention to make an offer to acquire Koala (whether such offer is recommended or not); or
- (c) this Agreement (or this clause 9) is terminated by mutual agreement in writing of both Parties.

9.5 For a period of 12 months from the date of this Agreement, each Party will not, and shall procure that none of its group undertakings will, directly or indirectly solicit or entice away from the other Party or any of its group undertakings or employ or offer to employ any officer, manager or senior employee of the other Party or any of its group undertakings whether or not that person would commit a breach of his or her contract of employment by being enticed or accepting employment.

9.6 Clause 9.5 shall not prevent a Party or any of its group undertakings from offering to employ or employing any person who approaches it without solicitation or responds solely to a general advertisement or other general solicitation through a public medium or mass mailing which in each case is made in good faith without the intention of targeting any person who it would otherwise be restricted from employing pursuant to clause 9.5.