

This **Mutual Non-Disclosure Agreement** (the "Agreement") is made as of [DATE] (the "Effective Date"), by and between:

The Aftersales Network Limited whose registered office is at 10, Deer Park Way, Waltham Abbey, Essex EN9 3YL ("TAN").

And

xxxxx Limited whose registered office is at ("xxxx")

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 Definitions

- 1.1 **"Confidential Information"** shall mean information of any kind that is not Non-Confidential Information that is disclosed in any form whatsoever which is marked as "CONFIDENTIAL" and which if verbal communication is summarised in writing, clearly marked with the disclosing party's name and confirmed as Confidential Information and delivered to the receiving party within 30 (thirty) days of its initial disclosure, or material which either party might reasonably expect the other to regard as information of a confidential nature, including but not limited to verbal communication which is not subsequently summarised in writing.
- 1.2 **"Non-Confidential Information"** shall mean information that is:
 - 1.2.1 Already known to the receiving party, other than under a subsisting obligation of confidentiality or restricted use, before the time of disclosure by the disclosing party, as can be demonstrated from the receiving party's records; or
 - 1.2.2 Generally available to the public or subsequently becomes so without breach of this Agreement by the receiving party; or
 - 1.2.3 Made public by the disclosing party; or
 - 1.2.4 Independently developed by employees or agents of the receiving party who were not aware of the content of the Confidential Information disclosed by the disclosing party; or
 - 1.2.5 Lawfully received from a third party independent of the disclosing party without breaching an obligation of confidentiality; or
 - 1.2.6 Required to be disclosed by operation of law.
- 1.3 **"Purpose"** shall mean the provision of a file of client companies for an initial data audit, potentially leading to a profiling exercise to establish a point of sale finance marketing strategy and proposal.
- 1.4 **"Sample"** shall mean any sample, prototype or other such article received from or on behalf of the disclosing party in connection with the Purpose.

2 Confidentiality

- 2.1 The receiving party will:
 - 2.1.1 use the Confidential Information exclusively for the Purpose, with its business associates and partners;
 - 2.1.2 not without the prior written consent of the disclosing party at any time divulge or make accessible to any third party, other than as set forth below or appropriate to the Purpose, any Confidential Information disclosed to or obtained by the receiving party; and
 - 2.1.3 limit access to the Confidential Information to those of its employees, contractors, agents or representatives actually involved in the process of evaluating the Confidential Information and will ensure that such third parties comply with the terms of this Agreement; and
 - 2.1.4 not dismantle, decompile, analyse or reverse engineer any Sample without the prior written consent of the disclosing party and any information derived there from shall be deemed to be Confidential Information.

- 2.2 Each party will take all reasonably prudent measures necessary to protect the confidential nature of the other's Confidential Information
- 2.3 Neither party will make any announcement concerning, or otherwise publicise, the Purpose or any other arrangement in any way relating to the Purpose; and
The obligations of the receiving party under this Agreement shall continue without limit in point of time.

3 Ownership of Information

- 3.1 All information furnished to the receiving party by the disclosing party shall, unless otherwise specified in writing by the disclosing party, remain the property of the disclosing party.
- 3.2 At the disclosing party's option and upon its written request all Confidential Information and any copies thereof shall either be promptly returned to the disclosing party or shall be destroyed, or deleted if held electronically.
- 3.3 The receiving party shall provide the disclosing party with a certificate confirming that it has complied with the provisions of clause 3.2.

4 No Licence or Patent Rights

- 4.1 Nothing contained in this Agreement shall be construed as granting any licence or rights to the receiving party by the disclosing party under any patent of any country.

5 Dispute Resolution

- 5.1 If the receiving party becomes aware of any unauthorised copying, disclosure or use of any Confidential Information of the disclosing party, the receiving party shall notify the disclosing party forthwith and if requested by the disclosing party shall take such steps as shall be necessary to prevent further unauthorised copying, disclosure or use.
- 5.2 In the event of disagreement with respect to any aspect of this Agreement, the parties agree, prior to taking any unilateral action or instigating any legal proceedings, to discuss in good faith to reach an amicable resolution, and to escalate such resolution process to the appropriate members of their respective management organisation who have the power and authority to achieve a successful resolution.
- 5.3 Both parties accept that any breach of this Agreement could cause serious damage to the other and that monetary damages would not be an adequate remedy. In the event of a breach or threatened breach by either party the other shall be entitled to injunctive relief in any court of competent jurisdiction and the party in breach shall reimburse the other for any costs, claims, demands or liabilities arising directly or indirectly out of a breach. Nothing contained in this Agreement shall be construed as prohibiting either party from pursuing any other remedies available to it for a breach or threatened breach.

6 Modifications

- 6.1 No modification of this Agreement will be binding on either party unless in writing and signed by an authorised representative of each party.

7 Waiver

- 7.1 Neither party's failure or delay in exercising any of its rights hereunder shall constitute or be deemed a waiver or forfeiture of any such rights.

8 Assignment

- 8.1 The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties, provided that Confidential Information of Powwow may not be assigned without Powwow's prior written consent.

9 Enforceability

- 9.1 If any part of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such validity or unenforceability shall not affect the remaining parts, which shall remain in full force and effect.

10 Notices

10.1 Notices under this Agreement shall be in writing and shall be deemed validly given if delivered by hand, fax (supported by positive transmission report) or post (recorded delivery, with proof of posting) to the above address of either party, and shall be deemed served on the date of despatch.

11 Third Parties

11.1 Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assignees any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

11.2 A person who is not a party to this Agreement shall not have or acquire any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

12 Headings

12.1 The headings used in this Agreement are for reference only and are not to be construed in any way as material terms or to be used to interpret the provisions of this Agreement.

13 Entire Agreement

13.1 This document represents the entire agreement between the parties as to the matters set forth herein and supersedes all prior discussions, understandings and agreements between them.

13.2 Each of the parties acknowledges that in entering into this Agreement it has not relied on any warranty, undertaking or representation otherwise than as expressly set out herein.

14 Governing law

14.1 This Agreement is to be governed by and construed in accordance with the laws of England and Wales and both parties submit to the exclusive jurisdiction of the courts thereof.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

For and on behalf of
The Aftersales Network Limited

Signature

Name

Curtis Goring

Title

Managing Director

For and on behalf of
xxxxxx Limited

Signature

Name

Title
