

Confidentiality Agreement



THIS AGREEMENT is made on the _____ day of _____

BETWEEN:

1) **Persimmon PLC** of Persimmon House, Fulford, York, YO19 4FE ("**Persimmon**");
and

Registered Company Name: (the "**Recipient**")

2) _____ of

Registered Address:

(each a "**Party**" and collectively, the "**Parties**").

WHEREAS:

- 1) Persimmon possesses or controls certain information which it considers confidential and proprietary;
- 2) Persimmon wishes to share this information and supporting materials which Persimmon considers proprietary, secret and confidential for the express purpose of the Recipient considering entering into an agreement to purchase wholesale telecommunication services from the Persimmon Group (the "**Proposed Agreement**"), and in the process thereof, to permit the Recipient and its Representatives to evaluate the information and supporting materials in order to consider entering into the Proposed Agreement;
- 3) Persimmon requires the Recipient to treat this information in a secret and confidential manner, as proprietary information consistent with the terms and conditions of this Agreement; and
- 4) In consideration of Persimmon allowing the disclosure of this information to the Recipient, the Recipient agrees to keep the information confidential, subject to the terms and conditions of this Agreement.

IT IS AGREED AS FOLLOWS:

1. Interpretation

1.1. In this Agreement the following expressions shall (except when the context otherwise requires) have the following meanings:

"**Agreement**" means this confidentiality agreement entered into between the Parties;

"**Persimmon Group**" means Persimmon and any other subsidiary Company within the Persimmon Plc Group of Companies

"**Confidential Information**" means any information regardless of its form (including but not limited to any information communicated orally), including but not limited to any information about the Persimmon Group and its business and operations, its business plans, development activities, operating procedures and processes, pricing and pricing methods, contractual terms offered, commercial details of any products or services it offers or is developing to offer, marketing strategies, future plans, in connection with the business of the Persimmon Group and disclosed to the Recipient or the Representatives, of which the Recipient becomes aware, which the Recipient is, or the Representatives are, able to observe or which comes into the possession of the

Recipient or the Representatives at any time (whether before or after the date of this Agreement) to enable the Recipient or its Representatives to consider the Proposed Agreement (including its existence and any discussions or negotiations with regard to it) and which is either expressly designated as confidential or should reasonably be regarded as such in view of its nature;

"Recipient" means '**Registered Company Name**' and includes each of the Recipient's holding companies and subsidiaries and each subsidiary of each of the Recipient's holding companies (as each such term is defined in the Companies Act 2006).

"Representative" means any director, officer, employee, professional adviser, Recipient or finance provider of the Recipient.

- 1.2. References in this Agreement to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.
- 1.3. Where the context so requires, in this Agreement:
 - 1.3.1. the singular includes the plural and vice versa;
 - 1.3.2. the masculine includes the feminine and vice versa, and the neuter includes the masculine or the feminine and vice versa;
 - 1.3.3. references to persons shall include individuals, bodies corporate, unincorporated associations, partnerships, governments, governmental bodies, authorities and agencies and any other person having legal capacity; and
 - 1.3.4. references to any law are to be construed as references to that law as from time to time amended or to any law for the time being replacing, extending, consolidating or amending the same.
- 1.4. The headings in this Agreement shall be deemed not to be part of this Agreement and shall not be taken into consideration in the interpretation of this Agreement.
- 1.5. References in this Agreement to clauses, save where expressly provided otherwise, are references to clauses of this Agreement.

2. Disclosure of Confidential Information

Subject to the terms of this Agreement, Persimmon agrees to the disclosure of the Confidential Information to the Recipient.

3. Obligations of Confidence

- 3.1. In consideration of Persimmon disclosing or authorising the disclosure of the Confidential Information to the Recipient, the Recipient agrees that it shall:
 - 3.1.1. keep the Confidential Information strictly confidential;
 - 3.1.2. not disclose the Confidential Information to or in the presence of any person other than a Representative as may be necessary (on a "need to know" basis) for the purpose of considering the Proposed Agreement;
 - 3.1.3. not make any copies of the Confidential Information or reproduce it in any form except for the purpose of supplying the same to those to whom disclosure is permitted in accordance with this Agreement;
 - 3.1.4. advise Representatives of their obligations with respect to the Confidential Information and ensure and procure their compliance with such obligations;
 - 3.1.5. use the Confidential Information only for the purposes of considering the Proposed Agreement;
 - 3.1.6. take all action reasonably necessary to secure the Confidential Information and any copies thereof against reproduction (other than in accordance with clause 3.1.3), theft, loss or unauthorised disclosure;

- 3.1.7. inform Persimmon promptly after it becomes aware that Confidential Information has been disclosed to an unauthorised third party; and
- 3.1.8. not use any Confidential Information so as to procure any commercial advantage over the Persimmon Group or any part of it, or to attract any director, officer, manager, employee, customer or client of the Persimmon Group away from the Persimmon Group for any purpose.
- 3.2. For the purposes of this Agreement, Confidential Information shall not include information that is proven by the Recipient to be information:
 - 3.2.1. which is in or falls into the public domain other than as a result of the Recipient breaching the terms of this Agreement; or
 - 3.2.2. which is in the possession of the Recipient without restriction before receipt from or on behalf of Persimmon; or
 - 3.2.3. which is required by law to be disclosed to a competent court or regulatory body.
- 3.3. To the extent permitted by law, the Recipient shall notify Persimmon promptly if any Confidential Information is required to be disclosed under Clause 3.2.3 and shall, before it is disclosed:
 - 3.3.1. provide to Persimmon any notice served upon the Recipient requiring disclosure in accordance with clause 3.2.3;
 - 3.3.2. if the Recipient is unable to provide Persimmon with a notice in accordance with clause 3.3.1, confirm to Persimmon the specific law or regulation requiring disclosure; and
 - 3.3.3. shall co-operate with Persimmon regarding the manner, scope or timing of such disclosure or any action which the Recipient may take to challenge the validity of such requirement.

4. Authorised Contact

Neither the Recipient nor the Representatives will contact or communicate with any officers, directors, employees, consultants, advisers, landlords, tenants, bankers, or suppliers of the Persimmon Group in connection with the Proposed Agreement unless Persimmon has given written consent. All communications from the Recipient in connection with the Proposed Agreement should be addressed to:

Liam Ronan
Persimmon House
Fulford
York, YO19 4FE

or by email to wholesale@fibrenest.com or by telephone on 01904 642199 unless specifically directed otherwise in writing by Persimmon.

5. Return of Confidential Information

- 5.1. As soon as reasonably practicable following Persimmon's written request, the Recipient shall at its expense return to Persimmon or destroy the original and all copies of all media comprising or containing Confidential Information and delete any Confidential Information stored on the Recipient's computer systems (to the extent technically possible) and confirm that such destruction and deletion has been effected, in either case save as required for the Recipient to comply with its legal, regulatory or mandatory compliance obligations.
- 5.2. The return, deletion or destruction of the media referred to in Clause 5.1 shall not release the Recipient from its obligations under this Agreement.

6. No Representation

None of the Confidential Information has been subject to verification, and neither Persimmon or the Persimmon Group accepts responsibility for or makes any representation, express or implied, or gives any warranty with respect to the accuracy or completeness of the Confidential Information or any oral communication in connection with the Confidential Information and the Recipient undertakes to Persimmon (for itself and its Representatives) to waive any liability which Persimmon or its Persimmon Group may incur by reason of the Recipient's use of, or reliance upon, any of the Confidential Information.

7. Data Protection Legislation

- 7.1. The Recipient warrants and undertakes that it is properly notified under applicable law in respect of the processing of personal data, including (without limitation) the retained version of the General Data Protection Regulation and the Data Protection 2018 ("Data Protection Legislation") in respect of the processing of any personal data comprised in the Confidential Information and, where necessary, the Recipient will comply with the terms of the Data Protection Legislation.
- 7.2. To the extent the Recipient is provided with personal data the Recipient will comply with Persimmon's reasonable instructions in respect of that data, implement appropriate measures to ensure the security and confidentiality of the personal data and allow Persimmon to audit the Recipient's compliance with this clause on reasonable request.

8. No Rights Granted

The Recipient shall not obtain any rights in or to the Confidential Information (including any intellectual property rights) pursuant to this Agreement, except the limited right to review or use such Confidential Information solely for the purposes of considering the Proposed Agreement, and all such rights subsisting in the Confidential Information shall at all times remain the property of Persimmon.

9. Non-Circumvention

The Recipient shall not:

- 9.1. to any extent, whether directly or indirectly, circumvent, attempt to circumvent, avoid or by-pass the obligations contained in, and the intentions of, this Agreement; or
- 9.2. enter into any business transaction(s) with any third party by making use of any Confidential Information.

10. Remedies

Without prejudice to any other rights or remedies either party may have, the Recipient expressly agrees that damages would be inadequate to compensate Persimmon for any breach of Clause 3 of this Agreement. Accordingly, the Recipient agrees and acknowledges that, in addition to any other remedies that may be available, in law, equity or otherwise, Persimmon shall be entitled to obtain remedies of injunction, specific performance and other equitable relief in relation to any breach or threatened breach of Clause 3 of this Agreement without the necessity of proving actual damages.

11. Waiver

No failure by Persimmon to enforce, and no delay by Persimmon in enforcing, any of the provisions of this Agreement shall operate as or be deemed to be a waiver of such provision or provisions, nor shall any single or partial exercise preclude any other or further exercise of such provisions.

12. Amendment

No amendment to this Agreement will be effective unless it is in writing, expressly purports to amend this Agreement and is signed on behalf of each Party by a person duly authorised by that Party.

13. Severance

- 13.1. If a provision or any part of this Agreement is void or voidable by either Party or unenforceable or illegal that would not be so void, voidable, unenforceable or illegal if it were interpreted restrictively and it is capable of being so interpreted, it shall be interpreted accordingly.
- 13.2. Subject to Clause 13.1, if a provision or any part of this Agreement is held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.

14. Entire Agreement

This Agreement supersedes any previous agreement between the Parties in relation to the matters dealt with herein and represents the entire understanding between the Parties in relation hereto.

15. Benefit of this Agreement

For the avoidance of doubt, all rights and remedies available to Persimmon under the terms of this Agreement and

otherwise in respect of the enforcement of the Recipient’s obligations pursuant to this Agreement shall also be available to, and enforceable by a Persimmon Group subsidiary. Accordingly, all references in this Agreement to Persimmon shall also be construed so as to include the Persimmon Group wherever appropriate and shall apply mutatis mutandis.

16. Third Party Rights

Save for the Persimmon Group subsidiaries who may enforce the terms of this Agreement, a person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 (the “Act”) to enforce any terms of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

17. Duration

This Agreement shall continue until the earlier of:

- 17.1. its termination in writing by mutual consent of both Parties to the Agreement;
- 17.2. Five years from the date of this Agreement; and
- 17.3. the date upon which binding contracts are entered into with the Recipient in respect of the Proposed Agreement.

18. Notices

Any notice, claim or demand in connection with this Agreement shall be given in writing to the relevant Party at the registered office address stated in this Agreement (or such other address as it shall previously have notified to the other Party in writing).

19. Governing Law

This Agreement and any non-contractual obligations arising in connection with it shall be governed by and construed in accordance with the laws of England and the Parties hereby submit to the non-exclusive jurisdiction of the English Courts.

Signed for and on behalf of Persimmon PLC	Signed for and on behalf of The Recipient
Signed:	Signed:
Name:	Name:
Position:	Position:
Date:	Date:

Please return completed form by email to: wholesale@fibrenest.com