



**CONFIDENTIALITY AND NON DISCLOSURE AGREEMENT BETWEEN PATENTES  
TALGO, S.L.U. AND**

, on ,

**BY and BETWEEN**

“Patentes Talgo, S.L.U.”, a limited liability partnership, organized and existing under the laws of Spain and having its registered office at Las Matas, Paseo del Tren Talgo nº 2, Madrid, with Tax ID number B-84528553 and duly represented herein by Mr. Jose Ignacio García Buendía, with Tax Identity number 01932238P according to the powers granted in his favour by virtue of public deed granted before the Notary of Madrid Mr. José María Suárez Sánchez Ventura on August, 7<sup>th</sup>, 2015 and under number 2887 of his files (hereinafter referred to as “TALGO”).

**and**

“  
 , a company, having  
 its registered office at  
  
 , with company number , duly  
 represented by ,  
 (hereinafter referred to  
 as or “**Receiving Party**”).

Both parties (hereinafter referred to individually as “**Party**” and jointly as “**Parties**”) represent and acknowledge their mutual capacity, right and authority to enter into this Agreement,

**WHEREAS**

- I. That both TALGO and are interested in studying the possibility of entering into negotiations in order to (hereinafter, “**Project**”).
- II. That in order to carry out of such possible Project, TALGO will provide to the Receiving Party a wide range of information which may be either confidential or subjected to property rights.
- III. That TALGO is interested in ensuring the confidentiality of any document and/or information to which the Receiving Party may have access while negotiations between the two Parties are being carried out and while the duration of any contract or agreement which the Parties may come into force.
- IV. That, for the above purposes, both Parties show their interest to govern the confidentiality of such information’s exchange. Therefore, they have agreed to subscribe the present confidentiality agreement (hereinafter, the “**Agreement**”) subjected to the following:

**PROVISIONS**

**1. OBJECT**

- 1.1. The object of this Agreement is to set forth the terms and conditions under which the Parties shall maintain the confidentiality of the exchanged information related to their Project.
- 1.2. This Agreement does not create either an association nor a society between the Parties, it is not a licence agreement, development contract or similar and does not commit the Parties beyond its content, and specifically, it does not oblige them so as to hold any other contract neither to establish a professional relationship.

**2. CONFIDENTIAL DOCUMENTS AND INFORMATION**

- 2.1. To these Agreement’s purposes, it shall be considered as confidential information (hereinafter “**Confidential Information**”) the following:
  - a) Any information, no matter its nature (technical, financial, operational, commercial, related to employment or management, or of any other kind) disclosed in connection with the Project, by the Providing Party to the Receiving Party not only in word, but also in writing or by any other means or media, including, but not limited to, the one related to products, strategic planning, marketing planning, projects, financial information, operations, customer relations, business plans, personal data and internal reporting in connection with TALGO’s business activities, as well as any kind of information produced from Confidential Information by the Receiving Party.
  - b) Any scientific or technical information, design, process, procedure, formula or improvement, with commercial value and of secret nature being or not patentable or registrable.
  - c) Any kind of confidential material, documents, reports, data, specifications, computer software, base codes, inventions, information, know-how, show-how and commercial secrets, of confidential and private nature, being or not patentable or registrable, including, but not limited to any kind of documents, inventions, substances, laboratory and engineering notebooks, drawings, designs, diagrams, computer programs, data, plans, procedures, manuals, specifications, material’s lists, equipments, models and prototypes, and any other tangible manifestation



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(including all kind of information contained within the computers or in any other digital media) of the above, that currently exist or may exist in the future.

- d) The mere fact of having already begun negotiations or contacts, as well as the mere existence and content of this Agreement.

**3. CONFIDENTIALITY OBLIGATIONS**

3.1. The Receiving Party commits itself to ensure the strictest confidentiality over any Parties' negotiation in connection with the Project as well as over its content and every related fact. Furthermore, Receiving Party obliges itself to ensure, in the same way, the strictest confidentiality over the confidential information to which it may have already accessed or may access in the future.

3.2. As a consequence of the above, the Receiving Party:

- a) Shall limit the access to Confidential Information to only those administrators, directors, employees, representatives, shareholders or counsels (including the administrators, directors, employees, representatives, shareholders or counsels working for a company of the same corporate group), that according to the appropriate assessment of the Project may reasonably need to have access to it (in relation to this Agreement, these individuals are not considered as third parties) and limiting their knowledge to only the necessary parts of the Confidential Information;
- b) Shall warn these administrators, directors, employees, representatives, shareholders or counsels, with access to Confidential Information, of its confidential nature and the obligations they are bound to by virtue of this Agreement;
- c) Shall adopt the reasonable measures, through agreements or other means in order to keep these administrators, directors, employees, representatives, shareholders or counsels aware of their obligations when accessing Confidential Information. Written recognitions of such terms by all receivers shall be provided to TALGO whenever requested to do so.

Consequently, the Receiving Party shall be unlimitedly liable toward TALGO for all damages inflicted to it and attributable to any of the Receiving Party's subsidiaries, investees, and/or any person connected to them as consequence of the breach, by these Receiving Party's representatives, of any of the confidentiality obligations contained in this Agreement.

- d) Shall protect the Confidential Information provided with the highest degree of care, being, in any case, no less than the degree of care taken by TALGO when protecting its own confidential information or material;
- e) Shall use the Confidential Information solely to the appropriate assessment of the Project;
- f) Shall not reveal nor transfer the Confidential Information to third parties without the previous written consent TALGO and only when such third party has already granted a non-disclosure commitment covering in full this Agreement;
- g) Shall not reveal to third parties the existence of conversations between the Parties in connection with the Project;
- h) Shall not use reverse engineering, decompile or disassemble the Confidential Information;
- i) Shall not use Confidential Information in order to develop, prepare and/or to file any application under any patent, brand, copyright, technology or other commercial secrets, using, in full or in part, the Confidential Information provided or transmitted by TALGO;
- j) Shall not copy, reproduce or summarize the Confidential Information in any manner not in accordance with this Agreement.

**4. EXCEPTIONS TO THE CONFIDENTIALITY OBLIGATION**

4.1. The obligations undertaken in this Agreement, and especially those mentioned in Clause 3 above, shall not apply to the information that:

- a) Was already publicly known before the date of this Agreement or becomes publicly available for any reason other than failure to comply with the commitments undertaken in this Agreement;
- b) Is legally received by the Receiving Party from a third party with a right to give such information freely and without restrictions as to confidentiality or use;
- c) Was legally held by the Receiving Party, prior to its receipt from TALGO, along with the right to transfer



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such information freely and without restrictions as to confidentiality or use (such prior possession must be proved through written records, existing at the time of disclosure); or

- d) Must necessarily be provided under a legal provision or by a judgment duly issued by any competent administrative authority, tribunal or court, with legal authority to oblige the Receiving Party to disclose any Confidential Information. However, such communications (i) shall be limited to that information which is strictly necessary to meet any legal obligations, (ii) shall be notified to TALGO prior to its disclosure, and (iii) the Parties shall agree, in advance, the content of the disclosure.
- 4.2. In all of these cases, the burden of proof shall rely on the party claiming the exception.

**5. INDUSTRIAL AND INTELLECTUAL PROPERTY**

- 5.1 The Parties undertake not to claim any intellectual and/or industrial property rights regarding the Confidential Information exchanged between them as a consequence of this Agreement, and not to request, directly or indirectly, any patents, trademarks, models or any others intellectual and/or industrial property rights, based on such information.
- 5.2 All those possible rights that could arise while carrying out the Project, and are not related to patents and/or intellectual or industrial property rights that belonged to the Receiving Party before signing this document, shall be exclusively owned by TALGO.
- 5.3 If during the execution of the Project any product from which intellectual and/or industrial property may arise, the Receiving Party shall immediately inform TALGO of the content of such rights. These rights shall belong exclusively to TALGO, being able the latter to register in the corresponding Registers as the owner of such rights.

**6. PERSONAL DATA**

- 6.1 Notwithstanding the provisions of this Agreement, the Parties hereby state that the Confidential Information does not contain personal data. In this sense, if after the signature of this Agreement the disclosure of personal data becomes necessary for purposes directly connected with the legitimate activities of the parties, in accordance with the Law 15/1999 (Law of Personal Data Protection) and other applicable legislation, the Parties undertake to subscribe the corresponding agreements which provide access to data as well as the measures to be taken from a legal, technical and

organizational point of view, before providing access to such information.

- 6.2 Personal data regarding the signatories of this Agreement shall be included in the files of the Parties involved, in order to manage and comply with the relationship established between them.
- 6.3 The exercise of any access, rectification, cancellation or opposition rights, shall be done through a written letter, which shall be sent to the addresses listed in the heading, with the identification reference "Data Protection", specifying the corresponding request and accompanying photocopy of the National Identity Card of the interested party.

**7. PROPERTY RIGHTS**

- 7.1. The Confidential Information provided is solely owned by TALGO. The Receiving Party shall refrain from using the Confidential Information for its own use or interest and/or in the interest of third parties different from TALGO.

**8. DURATION**

- 8.1. This Agreement shall enter into force since the signature of this Agreement and shall remain valid and effective for a period of 10 (ten) years

In case of Confidential Information containing Personal Data, the confidentiality's obligation shall remain valid even after the term determined in the previous paragraph.

- 8.2. In case any of the Parties decides to cease the Project, the Receiving Party shall:
- a) Whenever the TALGO deems so, and free of charge, restore and return all Confidential Information that have accessed to in the same manner and conditions it was once received, including all copies, or to destroy the aforementioned Confidential Information, except when TALGO expressly instructs the Receiving Party to destroy a kind of information. In the latter case, the confidentiality obligation as stated in this Agreement shall be valid until such information is destroyed.



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Confidential Information's destruction or return shall not relieve the Receiving Party from its duty to treat it as strictly confidential.

- b) Certify, by written notice, to TALGO, that the Confidential Information, including its copies, has been returned or completely destroyed.
- c) Cease using the Confidential Information.

**9. CONFIDENTIALITY**

9.1 TALGO hereby declares that it provides the Confidential Information as it is and makes no representation or warranty regarding the adequacy, accuracy, reliability, integrity or completeness of the Confidential Information provided.

**10. DAMAGES**

10.1 The Receiving Party acknowledges that the Confidential Information that it shall receive from TALGO is valuable and that its disclosure, contrary to the provisions of this Agreement, can irreparably prejudice TALGO, therefore it shall compensate TALGO for all damages caused to this company as a consequence of the breach of any of the obligations and/or compromises assumed by the Receiving Party in this Agreement, without any limitation, as long as TALGO proves such breach. In addition, the Receiving Party shall make its best efforts to initiate or continue any action which may be necessary to remedy or limit the consequences derived from any breach and to immediately cease in the same.

10.2 The Parties undertake that the noncompliance with the agreed confidentiality obligation may correspondingly constitute a breach of the Law 3/1991, of January 10th, regarding Unfair Competition.

**11. APPLICABLE LAW AND JURISDICTION**

- 11.1 This Agreement shall be governed by the Spanish Law.
- 11.2 The Parties agree that any discrepancy or disputes that may arise between them regarding the validity, effectiveness, interpretation or performance of this Agreement, shall be submitted to the jurisdiction of the Courts of the city of Madrid. Therefore, the parties expressly waive their right to apply for any other jurisdiction which may correspond them.

**12. MISCELLANEOUS**

- 12.1 The disclosure by TALGO of any Confidential Information does not include and shall not, under any circumstances, be interpreted as a concession or grant of any implicit or explicit right or license in favour of the Receiving Party over any patent, brand, copyrights, trade secrets, patent applications, copyrights, trade secrets, know-how, inventions, ideas, algorithms, processes, operations, techniques, designs, drawings, sketches, trademarks, trade names or any other intellectual property right.
- 12.2 No delay or failure to exercise any right, Proxy or remedy granted by law or by this Agreement shall constitute a waiver of such right, proxy or remedy or shall prevent any future exercise in whole or in part thereof.
- 12.3 The Rights, proxies and remedies covered by this Agreement shall be cumulative and shall not exclude any other right, Proxy or remedy granted by Law.
- 12.4 If at any moment , any provision of the present Agreement is held to be illegal, invalid or unenforceable at any end, this shall not affect the legality, validity or enforceability of any of the remaining provisions of the Agreement nor void such legality, validity or enforceability.

In witness whereof, the parties sign two copies of the present document and for a sole purpose, at the place and on the date aforementioned.

Signed:

Mr. José Ignacio García Buendía  
PATENTES TALGO S.L.U.

Signed: