



# Textile Exchange Non-Disclosure Agreement

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This non-disclosure agreement (this "Agreement") is made and entered into on [redacted] the "**Effective Date**") between:

**Textile Exchange**, which has its registered office at **511 S 1st St, Lamesa, TX 79331-6245, the USA** hereinafter called "**Textile Exchange**",

and

[redacted] with its principal address at

[redacted]  
hereinafter called the "**Company**".

Textile Exchange and the Company, hereinafter collectively called the "**Parties**".

## WHEREAS:

- The Parties are discussing a proposed business arrangement and/or data sharing relationship (the "**Transaction**") with respect to **the Corporate Fiber and Materials Benchmark, CFMB** (the "**Project**");
- in connection with the Parties' consideration of the Project, each party, their respective affiliates and their respective directors, officers, employees, consultants, contractors, agents or advisors (collectively, "**Representatives**") may provide or gain access to certain confidential and proprietary information; and
- in consideration for and as a condition to providing certain information to each other pursuant to the Project, Parties agree that all Confidential Information (as defined herein) in whatever form furnished by the Parties (as appropriate, the "**Disclosing Party**") to the other (as appropriate, the "**Receiving Party**") shall be held and kept in accordance with the provisions of this agreement.

In consideration of the mutual agreements contained herein, the Parties, hereby agree as follows:

## 1. Definitions

### 1.1. Confidential Information

The term "Confidential Information" as used in this Agreement shall mean any data or information that is non-public, confidential and/or proprietary in nature and transferred or transmitted in writing, orally, visually, electronically or by any other means, on or after the Effective Date, including without limitation: (a) the interest of the Receiving Party in the collaboration; (b) the existence and content of this agreement; (c) the collaboration itself and the fact that information has been provided and discussions and/or negotiations are taking place in that respect; (d) Any information obtained by the Receiving Party or its Representatives from the Disclosing Party in writing, electronic form, orally or otherwise, through discussions with the management, employees and/or advisors of any member of ; and (e) any memoranda, reports, analyses, extracts, notes compilations, studies or other documents prepared by you or on your behalf which contain or otherwise reflect any information described in (a), (b), (c) and (d) above.

## 1.2. Exclusions from Confidential Information

The obligation of confidentiality with respect to Confidential Information will not apply to any information:

- (a) If the information is used by the Receiving Party in an aggregated format for public reporting purposes.
- (b) If the information is or becomes publicly known and available other than as a result of prior unauthorized disclosure by Receiving Party or any of its Representatives;
- (c) If the information is already known to the Receiving Party or its Representatives prior to the date hereof as evidenced by the Receiving Party or its Representatives' written records;
- (d) If the information is or was received by Receiving Party from a third party source which, to the best knowledge of Receiving Party or its Representatives, is or was not under a confidentiality obligation to Disclosing Party with regard to such information;
- (e) If the information is disclosed by Receiving Party with the Disclosing Party's prior written permission and approval;
- (f) If the information is independently developed by Receiving Party prior to disclosure by Disclosing Party and without the use and benefit of any of the Disclosing Party's Confidential Information; or
- (g) If Receiving Party or any of its Representatives is legally compelled by applicable law, by any court, governmental agency or regulatory authority or by subpoena or discovery request in pending litigation but only if, to the extent lawful, Receiving Party or its Representatives give prompt written notice of that fact to Disclosing Party prior to disclosure so that Disclosing Party may request a protective order or other remedy to prevent or limit such disclosure and in the absence of such protective order or other remedy, Receiving Party or its Representatives may disclose only such portion of the Confidential Information which it is legally obligated to disclose.

## 1.3. Intellectual Property Rights

The term "Intellectual Property Rights" as used in this Agreement shall mean all copyright rights (including, without limitation, the exclusive right to use, make recordings of, reproduce, modify, adapt, edit, enhance, maintain, support, market, sell, rent, sell for rental, sublicense, distribute copies of, publicly and privately display and publicly and privately perform, exploit, exhibit, the copyrighted work and to prepare derivative works), copyright registrations and applications, trademark rights (including, without limitation, trade names, trademarks, service marks and trade dress) trademark and service mark registrations and applications, patent rights (including without limitation the exclusive right to make, use and sell), patent registrations and applications, mask-work rights, trade secrets, moral rights, author's rights, right of publicity, contract and licensing rights, rights in packaging, goodwill and other intellectual property rights, as may exist now and/or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of any country, state or jurisdiction.

## 2. Obligation to Maintain Confidentiality

With respect to Confidential Information:

- 2.1. Receiving Party and its Representatives agree to retain the Confidential Information of the Disclosing Party in strict confidence, to protect the security, integrity and confidentiality of such information and to not permit unauthorized access to or unauthorized use, disclosure, publication or dissemination of Confidential Information except in conformity with this Agreement;

- 2.2. Receiving Party and its Representatives shall adopt and/or maintain security processes and procedures to safeguard the confidentiality of all Confidential Information received by Disclosing Party using a reasonable degree of care, but not less than that degree of care used in safeguarding its own similar information or material;
- 2.3. Receiving Party and its Representatives will use Confidential Information solely for the purposes of evaluating, negotiating or advising on the Project and not for any other purpose;
- 2.4. Receiving Party and its Representatives may only retain Confidential Information that is required to be retained by the Applicable Laws. If the Receiving Party is under legal obligations to disclose any Confidential Information, the Receiving Party shall, as soon as reasonably practicable and to the extent permitted by applicable laws, communicate to the Disclosing Party the fact and details of the same, discuss the contents of the information required to disclose and how it will be disclosed, co-operate in a commercially reasonable manner with the Disclosing Party in taking steps to minimize such disclosure and only make any such disclosure to the extent actually required;
- 2.5. All provided information to the Receiving Party (in writing, orally, visually, electronically or by any other means) shall be considered Confidential Information, unless explicitly agreed otherwise;
- 2.6. Upon the termination of this Agreement, Receiving Party will ensure that all documents, memoranda, notes and other writings or electronic records prepared by it that include or reflect any Confidential Information are returned or destroyed as directed by Disclosing Party;
- 2.7. In the event that the Disclosing Party requests so in writing, the Receiving party shall return, destroy and/or permanently erase all copies of Confidential Information supplied by the Disclosing Party and the Receiving party shall use all reasonable endeavours to ensure that anyone to whom Confidential Information was disclosed to shall return, destroy and/or permanently erase all copies of Confidential Information as well, in each case save (i) to the extent that Parties are required to retain any such Confidential Information by any Applicable Law, rule or regulation or by any competent judicial, governmental, banking, taxation, supervisory, other regulatory or similar body; or (ii) in accordance with a Parties' internal policy; or (iii) where the Confidential Information has been disclosed under this agreement.
- 2.8. If there is an unauthorized disclosure or loss of any of the Confidential Information by Receiving Party or any of its Representatives, Receiving Party will promptly, at its own expense, notify Disclosing Party in writing and take all actions as may be necessary or reasonably requested by Disclosing Party to minimize any damage to the Disclosing Party or a third party as a result of the disclosure or loss;
- 2.9. The obligation not to disclose Confidential Information shall survive the termination of this Agreement, and at no time will Receiving Party or any of its Representatives be permitted to disclose Confidential Information, except to the extent that such Confidential Information is excluded from the obligations of confidentiality under this Agreement pursuant to Section 1.2; and
- 2.10. Receiving Party will also, if applicable, comply with the EU General Data Protection Regulation ('GDPR').

### **3. Non-Disclosure of Transaction**

Without Disclosing Party's prior written consent, neither Receiving Party nor its Representatives shall disclose to any other person, except to the extent, the provisions of Section 1.2 apply: (a) the fact that Confidential Information has been made available to it or that it has inspected any portion of the Confidential Information; (b) the fact that Disclosing Party and Receiving Party are having discussions or negotiation concerning the Transaction; or (c) any of the terms, conditions or other facts with respect to the Transaction.

#### **4. Ownership and Intellectual Property Rights**

- 4.1 All Confidential Information shall remain the exclusive property of the Disclosing Party, and the Receiving Party shall have no right to use Confidential Information except as provided herein
- 4.2 Nothing contained in this agreement shall be construed as granting to or conferring on the Receiving Party any Intellectual Property Rights by license or otherwise in any Confidential Information disclosed by the Disclosing Party. Nothing contained in this agreement and no disclosure of Confidential Information hereunder by the Disclosing Party shall be construed as granting to or conferring on the Receiving Party any rights, by license or otherwise, for any product, invention, discovery or improvement made, conceived or acquired by the Disclosing Party prior to or after the date hereof. No application that may hereafter be made, and no claim to any trade secret or other protection, shall be prejudiced by any disclosure made hereunder. Each party expressly agrees that all Confidential Information disclosed to it by the other party hereto shall remain the exclusive property of the Disclosing Party.

#### **5. Independent Development**

The Disclosing Party understands that the Receiving Party may currently or in the future be developing information internally, or receiving information from other parties that may be similar to the Disclosing Party's Confidential Information. Accordingly, nothing in this agreement shall be construed as a representation or inference that the Receiving Party will not develop products, or have products developed for it, that compete with the products or systems contemplated by the Disclosing Party's Confidential Information.

#### **6. Disclaimer**

There is no representation or warranty, express or implied, made by Disclosing Party as to the accuracy or completeness of any of its Confidential Information. Except for the matters set forth in this Agreement, neither party will be under any obligation with regard to the Transaction. Either party may, in its sole discretion: (a) reject any proposals made by the other party or its Representatives with respect to the Transaction; (b) terminate discussions and negotiations with the other party or its Representatives at any time and for any reason or for no reason; and (c) change the procedures relating to the consideration of the Transaction at any time without prior notice to the other party.

#### **7. Remedies**

Each party agrees that use or disclosure of any Confidential Information in a manner inconsistent with this Agreement will give rise to irreparable injury for which: (a) money damages may not be a sufficient remedy for any breach of this Agreement by such party; (b) the other party may be entitled to specific performance and injunction and other equitable relief with respect to any such breach; (c) such remedies will not be the exclusive remedies for any such breach, but will be in addition to all other remedies available at law or in equity; and (d) in the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final non-appealable order that one party, or any of its Representatives, has breached this Agreement, such party will be liable for reasonable legal fees and expenses incurred by the other party in connection with such litigation, including, but not limited to, any appeals.

#### **8. Notices**

All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be sent via email.

#### **9. Termination**

This Agreement will terminate on the earlier of: (a) the written agreement of the parties to terminate this Agreement; or (b) the consummation of the Transaction.

**10. Amendment**

This Agreement may be amended or modified only by a written agreement signed by both of the parties.

**11. Jurisdiction**

This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to the principles of conflict of laws. Each party consents to the exclusive jurisdiction of the courts located in the State of Texas for any legal action, suit or proceeding arising out of or in connection with this Agreement. Each party further waives any objection to the laying of venue for any such suit, action or proceeding in such courts.

**12. Miscellaneous**

This Agreement will be binding upon and for the benefit of the undersigned Parties and their respective successors and permitted assigns of the parties. Neither party may assign its rights or delegate its duties under this Agreement without the other party's prior written consent. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement. This agreement constitutes the entire agreement between the Parties hereto with respect to the non-disclosure matter hereof, and supersedes any prior agreements, understandings and representations made by the Parties with respect to the non-disclosure matter hereof. Neither party will be charged with any waiver of any provision of this Agreement, unless such waiver is evidenced by a writing signed by the party and any such waiver will be limited to the terms of such writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

By:



Liesl Truscott  
European and Material Strategy Director  
Textile Exchange

1 July 2020

By:

