

NON-DISCLOSURE AGREEMENT

This non-disclosure agreement has been concluded on [date] by

[insert Business name] a [insert type of organisation] established and existing under the laws of [insert Country], registry code [insert number], located at [insert address], e-mail [insert e-mail] (the **Information Holder**), represented by [insert name]

and

[insert Business name] a [insert type of organisation] established and existing under the laws of [insert Country], registry code [insert number], located at [insert address], e-mail [insert e-mail] (the **Partner**), represented by [insert name]

WHEREAS:

- (a) the Information Holder is developing Business (defined below) and holds Confidential Information (defined below) which is confidential;
- (b) the Parties (defined below) wish to explore cooperation possibilities to implement and/or develop the Business and/or Confidential Information (defined below);
- (c) the Information Holder must disclose certain Confidential information to the Partner in order to discuss the potential cooperation with the Partner. The Information Holder is interested in keeping such Confidential information revealed to the Partner confidential,

THE PARTIES THEREFORE AGREED AS FOLLOWS:

1. Interpretation

The capitalized words and terms listed below shall have the following meaning in this Agreement:

Agreement	this non-disclosure agreement;
Business	[insert description of the business]
Confidential Information	the confidential information stipulated under clause 2 of the Agreement;
Party	the Information Holder or the Partner. Parties means the Information Holder and the Partner together;
Third Party	any person other than the Information Holder or the Partner.

2. Confidential Information

2.1. For the purposes of the Agreement, Confidential Information means any data or information that is proprietary to the Information Holder and not generally known to the public, regardless of the medium in which it is recorded or preserved and whether oral, written or otherwise, whenever and however (before or after the conclusion of the Agreement) disclosed, including, but not limited to:

- (a) any information directly or indirectly related to the Business, including any portion of information that may have no value *per se*, but is a crucial part of the Business;
- (b) all plans, business practices, financial information (incl. turnover), projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of the Information Holder, relating to the Business or any other non-public information about the Information Holder that is proprietary in nature;

- (c) lists of, or information relating to, suppliers and customers, price lists, pricing methodologies, cost data, market share data, marketing plans relating to the Information Holder or Business;
 - (d) information and data of whatever nature disclosed by any visit to property owned, used or occupied by the Information Holder;
 - (e) service process, price of services and price formation, discount percentages and formation thereof;
 - (f) management process, structure and ownership of the Information Holder;
 - (g) any information regarding the potential commercial or non-commercial implementation of the Business;
 - (h) any business proposal (including all information contained in or related to it) made by the Information Holder to the Partner;
 - (i) any concepts, product or service ideas or plans, reports, (technical) data, know-how, research, works-in-progress, databases, software codes and designs, algorithms, developments, inventions, patent applications, licenses, laboratory notebooks, processes, formulas, techniques, mask works, engineering designs and drawings, hardware configuration information, information and trade secrets related to the Business or the Information Holder;
 - (j) agreements with Third Parties and information related thereto, and lists of, or information relating to, employees and consultants of the Information Holder (including, but not limited to, the names, contact information, jobs, compensation, and expertise of such employees and consultants);
 - (k) the existence of the Agreement, the fact that the Confidential Information has been made available to the Partner and that discussions or negotiations are taking place between the Parties.
- 2.2. Notwithstanding anything in the foregoing to the contrary, the Confidential Information shall not include information which:
- (a) is or has become generally available to the public other than as a result of a disclosure by the Partner;
 - (b) becomes rightfully known to the Partner from a Third Party not (after diligent inquiry) under an obligation to the Information Holder to maintain confidentiality; or
 - (c) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by applicable law or regulation, to the extent so required by the law or regulation, although the requirements of clause 4.2 hereof shall apply prior to any disclosure;
- 2.3. All Confidential Information is as is and without any warranty, including but not limited to any warranty regarding its accuracy, completeness, performance or non-infringement of third party rights or fitness for particular purpose and the Partner assumes full responsibility for all conclusions derived from such information.

3. Disclosure of the Confidential Information

- 3.1. Since the disclosure of the Confidential Information by the Information Holder to the Partner is necessary in order to discuss any future cooperation for implementation and/or development of the Business and/or the Confidential Information, the Partner agrees to the perpetuation by the Information Holder of all meetings, conversations (e-mail, phone, etc.) or any other form of communication between the Parties that includes Confidential Information. The form or method of perpetuation is determined by the Information Holder at its sole discretion.

- 3.2. The Partner agrees that any information disclosed at any given time by the Information Holder to the Partner with a reference to this Agreement in whichever form (written, electronic, oral etc.) shall become subject to this Agreement.

4. Confidentiality

- 4.1. Except as required by applicable law, any court of competent jurisdiction, any stock exchange rules or any other rules and regulations (including regulatory requirements) applicable to the Partner, the Partner hereby undertakes:
- (a) to treat the Confidential Information as confidential, as well as to use all necessary steps to preserve such confidentiality and avoid disclosure or use of Confidential Information to prevent it from falling into the public domain or the possession of Third Parties;
 - (b) not to disclose Confidential Information to Third Parties without the prior written consent of the Information Holder. In the event of any disclosure of Confidential Information to Third Parties by the Partner, the Partner shall guarantee that all the obligations provided under this Agreement shall be fulfilled by Third Parties. If the Partner has disclosed (whether it was agreed with the Information Holder or not) Confidential Information to Third Parties and that Third Party has not followed the obligations provided in this Agreement, the Partner is deemed to be in breach with this Agreement and shall be liable according to section 6 of the Agreement;
 - (c) to immediately notify (at least in a format which can be reproduced in writing) the Information Holder upon becoming aware that the Confidential Information has been disclosed to a Third Party in breach of this Agreement;
 - (d) to keep a record of all Confidential Information furnished to or by the Partner and of the location of such Confidential Information, a copy of which record will be made available to the Information Holder at the Information Holder's request;
 - (e) not to use the Confidential Information for any purpose whatsoever other than for the purpose of negotiating potential business relationships with the Information Holder, unless otherwise agreed in writing;
 - (f) to implement measures for the protection of the Confidential Information as it would for its own most confidential business information, but in any event, no less than reasonable measures;
 - (g) not to make any copies or duplicates of the Confidential Information, unless otherwise expressly authorised by the Information Holder in writing;
 - (h) to comply with the Information Holder's internal policies, instructions and regulations at all times.
- 4.2. Should the Partner be required by law, any court of competent jurisdiction, stock exchange rules or any other rules and regulations (including regulatory requirements) to make any disclosures otherwise prohibited under the Agreement, the Partner shall promptly (and, in any event, before complying with any such requirement) notify the Information Holder in writing of the same and of the action which is proposed to be taken in response, and consult with and assist the Information Holder in seeking a protective order or other appropriate remedy, in each case to the extent possible and allowed under applicable law. In any case, the Partner shall disclose only that portion of the Confidential Information that the Partner is required by the applicable law and shall exercise its reasonable best efforts to obtain reliable assurance that confidential treatment shall be accorded such Confidential Information.
- 4.3. The Partner will not acquire any intellectual property rights for the Confidential Information.

5. Return of information

- 5.1. The Partner shall immediately upon a) receiving a written request from the Information Holder, and b) the last day of validity of the Agreement; return and redeliver to the Information Holder

all tangible material embodying Confidential Information and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials (and all copies of any of the foregoing, including “copies” that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval. If such copies cannot be returned, then the Partner must make all actions to ensure its deletion and provide such evidence to the Information Holder.

- 5.2. In case of the termination of this Agreement or upon receiving a written request from the Information Holder, the Partner shall not retain any copies or extracts related to the Confidential Information and shall destroy all Confidential Information (including, but not limited to written documents and/ or digital files).

6. *Validity and liability*

- 6.1. This Agreement shall enter into force when signed by the Parties and shall remain in force for an indefinite period of time.
- 6.2. The Agreement may be terminated or modified by a written agreement between the Parties. The Information Holder has the right to terminate the Agreement at any time without advance notice. Notwithstanding the termination of the Agreement, the obligation to keep Confidential Information confidential and any liability obligations related to it shall remain in force indefinitely.
- 6.3. The Partner agrees to defend, indemnify and hold the Information Holder harmless from and against any and all losses, claims, obligations, demands, assessments, penalties, liabilities, costs, damages suffered, sustained, or incurred by the Information Holder, as a result of, arising or resulting from the Partner’s breach of any provisions or failure to fulfil any covenant of this Agreement. For the purposes of this Agreement, “losses” includes any loss, damage, cost, expense, deficiency, loss of value or profit, liability, or other damage, including expenses of investigation and legal fees.
- 6.4. Each party’s obligations set forth in this Agreement are necessary and reasonable in order to protect the Information Holder and its business. Due to the unique nature of Confidential Information, monetary damages may be inadequate to compensate the Information Holder for any breach by the Partner of its covenants and agreements set forth in this Agreement. Accordingly, the Parties each agree and acknowledge that any such violation or threatened violation may cause irreparable injury to the Information Holder and, in addition to any other remedies that may be available, in law, in equity or otherwise, the Information Holder shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Partner. In the event of breach of this Agreement by the Partner, the Partner agrees to pay the Information Holder a contractual penalty in the amount of **EUR [insert amount]** per each such breach. In case the Partner has been in breach of the Agreement and has duly paid the contractual penalty set forth under this clause, the Partner shall nevertheless be liable for any further breach of the Agreement, including the breaching disclosure of Confidential Information for which the Partner has already paid the contractual penalty and indemnified the loss.
- 6.5. The Partner may not, directly or indirectly, in whole or in part, neither by operation of law or otherwise, assign or transfer the Agreement or delegate any of its obligations under this Agreement without the Information Holder’s prior written consent. This Agreement may be assigned by the Information Holder to a successor of all or substantially all of the business or assets of the Information Holder or to any affiliate, subsidiary, division or part of the Information Holder.
- 6.6. No obligations or liabilities result to the Information Holder from the Agreement, unless expressly stated otherwise. As an example, the Information Holder shall bear no obligation to:
 - (a) enter into any agreement, other than the current, with the Partner;
 - (b) treat any information received by the Partner confidential; or
 - (c) pay any amount of money regarding any of the obligations set forth under this Agreement.

7. ***Non-solicitation***

- 7.1. The Partner acknowledges and agrees that Confidential Information includes information relating to the Information Holder's employees, consultants, customers and others and that the Partner may not use or disclose such Confidential Information except as permitted by this Agreement or authorized by the Information Holder.
- 7.2. For a period of [insert months] months following the date of this Agreement, the Partner shall not use any Confidential Information to directly or indirectly solicit, induce, recruit or encourage any of the Information Holder's employees or consultants to terminate their relationship with the Information Holder, or attempt to solicit, induce, recruit, encourage or take away employees or consultants of the Information Holder, either for itself or for any other person or entity.
- 7.3. For a period of [insert months] months following the date of this Agreement, the Partner shall not use any Confidential Information to negatively influence any of the Information Holder clients, licensors, licensees or customers from purchasing Information Holder's products or services or cooperating with the Information Holder, or to solicit or influence or attempt to influence any client, licensor, licensee, customer or other person either directly or indirectly, to direct any purchase of products and/or services to any person, firm, corporation, institution or other entity in competition with the business of the Information Holder.

8. ***Miscellaneous***

- 8.1. The Agreement represents the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements relating to the subject matter hereof.
- 8.2. If any part of the Agreement or any transaction contemplated herein (partly or in whole) is held invalid or unenforceable, such determination shall not invalidate any other provision of the Agreement or other transactions contemplated herein.
- 8.3. This Agreement shall be governed by the laws of the [insert Country]. Each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the [insert Regional Court], in any action, dispute, controversy, claim or proceeding (which the Parties fail to resolve through amicable negotiations) arising out of or relating to this Agreement.
- 8.4. A failure by any Party at any time or times to require performance of any provisions of this Agreement shall in no manner affect its right to enforce the same, and the waiver by any Party of any breach of any provision of this Agreement shall not be construed to be a waiver by such Party of any succeeding breach of such provision or waiver by such Party of any breach of any other provision hereof.
- 8.5. The Parties agree that the relationship created by this Agreement between the Information Holder and the Partner is that of a contracting party and an independent contractor. The Parties to this Agreement recognise that this Agreement does not create any actual or apparent agency, partnership or relationship of employer and employee between the Parties.

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

The Information Holder:

The Partner: