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**Template****Non-Disclosure Agreement**

between

- (1) [Company], entered in the Commercial Register of the District Court of [●] under [●], with registered office at [address],

(“Company”),

and

- (2) [Company], entered in the Commercial Register of the District Court of [●] under [●], with registered office at [address],

(“Partner”),

Company and Partner individually “Party”  
and together the “Parties”.

**Preamble**

- (A) The Parties intend to cooperate in the field(s) of [●]
- (B) In this context, the parties intend to mutually exchange confidential information.

**Against this background, the Parties agree the following:**

**1. Contractual item, confidential information**

- 1.1 **“Confidential information”** includes all information, e.g. materials, confidential information, know-how, formulas, procedures, algorithms, ideas, strategies, inventions, data, network configurations, system architecture, plans, workflow diagrams, drawings, legally protected information (in particular customer data), business and marketing plans, financial and operational information, as well as all other non-public information, materials or data relating to current, past or future business and transactions, as well as all analyses, compilations, studies, summaries, excerpts or other documentation of the information provider and its affiliates that are marked as confidential.
- 1.2 Information of a Party that is not considered confidential is information
- (a) that was publicly known or generally accessible before it was made available to the Receiver under this Agreement or becomes publicly accessible after the conclusion of this Agreement, without the Receiver being responsible for this;
  - (b) that which, before being made available to the Receiver under this Agreement, was demonstrably already known to the Receiver;
  - (c) that which was discovered or created independently by the Receiver without using the information provided by the Owner;
  - (d) that which has been lawfully made available to the Receiver by a third party who is not bound to secrecy vis-à-vis the Owner.

The above exceptions only apply if the Receiver's acquisition of the information is not based on a breach of statutory or contractual confidentiality obligations.

## **2. Purpose and legitimate use of confidential information**

- 2.1 The Parties agree that the confidential information may be used by the other Party for the following purposes of cooperation [●].
- 2.2 The permitted use also includes the disclosure of the confidential information [●] [to the companies affiliated with a/ Party] [●], but only on condition that the disclosing Party concludes a confidentiality agreement with them before the confidential information is disclosed, the terms of which substantially conform to the terms of this Agreement.
- 2.3 The confidential information exchanged under this Agreement may be used by the Receiver only for the purposes agreed between the Parties. The Receiver undertakes to refrain from any use for other purposes and ensures that its affiliated companies refrain from any use for other purposes.

## **3. Confidentiality obligations**

- 3.1 Each Party will keep the other Party's confidential information secret and will not disclose it to third parties.
- 3.2 Each Party only gives confidential information of the other Parties to its own bodies, representatives or employees [and to affiliated companies and their bodies [A1], representatives or employees], insofar as this is necessary for the permitted use of confidential information according to this Agreement ("need-to-know" principle ).
- 3.3 Each Party shall ensure that the bodies, representatives, members and employees who have access to the other Party's confidential information have been suitably contractually bound to secrecy.
- 3.4 Each Party shall ensure that the confidential information of the other Party shall be marked as such when disclosed within its own company and any markings added by the other Party as "confidential", "secret" or similar markings shall not be removed, altered or obscured.
- 3.5 Each Party is obligated to notify the other Party immediately in writing or electronically as soon as it becomes aware that a third party has gained unauthorised access to the other Party's confidential information or there are indications that this is a threat.

## **4. Rights to confidential information**

- 4.1 Neither Party is required to disclose any confidential information under this Agreement.
- 4.2 The disclosure of information under this Agreement does not constitute a transfer or grant of rights to use the confidential information, nor an intention or aim to do so. In particular, each Party remains the owner of the confidential information to which it or its affiliates are entitled.
- 4.3 The respective owner remains entitled to apply for any proprietary rights relating to his confidential information or parts thereof. The Receiver undertakes not to register any property rights that are wholly or partially based on the confidential information provided by the Owner under this Agreement.
- 4.4 Each Party is entitled to use new confidential information arising from the cooperation under this Agreement for its own purposes and to treat it as its own confidential information; the confidentiality obligations from this Agreement apply accordingly to such new confidential information.

**5. Liability**

- 5.1 All confidential information is provided without any liability (express, implied or otherwise) for defects or any other liability with respect to their accuracy, completeness or usefulness. Liability for intent or gross negligence remains unaffected.
- 5.2 The Parties are mutually liable for the negligence of their bodies, representatives, members and employees as if they were their own.
- 5.3 The liability of the Parties for damages due to breaches of duty under this contract shall be limited to the care which they would apply in their own affairs; liability due to gross negligence shall remain unaffected.
- 5.4 Each Party shall indemnify the other Party (at the initial request) against claims of third parties based on a breach of duty by the Party with respect to the protection of the confidential information of the other Parties disclosed under this Agreement. The Parties are aware that the confidential information exchanged under this Agreement may also include confidential information of third parties lawfully used by a Party.

**6. No reverse engineering**

Each Party undertakes not to reverse engineer [the [items] / [parts] / [components] / [prototypes]<sup>[A2]</sup>] received from the other Party [●] by observing, examining, dismantling, testing the Owner's products or in any other way without the prior written consent of the other Party. The prohibition of reverse engineering applies **also** to products of the respective Party that has put them into circulation or otherwise made them publicly available.

**7. Return, destruction and deletion**

- 7.1 At the request and choice of the other Party, each Party shall, at its own expense, return or destroy the material renderings of the confidential information [for example the controller xyz] received from this other Party (i) after the agreed purpose has been achieved or has ceased to exist or (ii) after termination of the Agreement, irrespective of the legal grounds, unless this is contrary to statutory retention obligations. The statutory retention obligations shall be specified in writing or electronically upon request of the other Party.
- 7.2 Each Party shall, at the request and choice of the other Party, return to the other Party, destroy or permanently delete at its own expense the written, electronic or otherwise existing confidential information of this other Party as well as any copies made (i) after the achievement or discontinuation of the agreed purpose or (ii) after termination of the Agreement, regardless of the legal grounds, unless this is contrary to statutory retention obligations or a permanent deletion is unreasonable due to the associated expense or for other reasons (e.g. the effort of manual deletion in data backups). The statutory retention obligations shall be specified in writing or electronically upon request of the other Party. Insofar as further storage is permitted under the above provisions, the relevant confidential information may be retained solely for this purpose. Every other use is excluded.
- 7.3 Each Party is obliged to confirm in writing at the request of the other Party that it has fully complied with its obligations under the above provisions.
- 7.4 Rights of retention against the aforementioned claims for return or destruction or deletion are excluded.

**8. Contractual penalties<sup>[A3]</sup>**

- 8.1 For each case of a culpable breach of the obligations arising from this agreement and if confidential information of the other Party is thereby disclosed to a third party, the breaching Party shall pay the other Party a contractual penalty, the amount of which will be determined by the

other Party at its reasonable discretion and its appropriateness can be verified by the competent court in the event of a dispute.

- 8.2 The other Party reserves the right to assert further claims, such as for damage compensation or neglect.
- 8.3 The contractual penalty will be applied to any damages to be paid.
- 8.4 The assertion of the contractual penalty shall not affect obligations arising from this Agreement; these shall continue to apply even if a contractual penalty is asserted.

## 9. Term

- 9.1 This Agreement is concluded for a period of [five (5) years] / [ten (10) years[A4]] upon signature by both Parties. [The provisions of this Agreement shall also apply retroactively to all confidential information exchanged prior to the conclusion of the Agreement [on project abc]. During this period, the mutual obligations of confidentiality exist.]

## 10. Annexes[A5]

The following Annexes are an integral part of this Agreement:

Annex [●] - e.g. Project description

## 11. Final provisions

- 11.1 The legal claims of the Parties with regard to the protection of confidential information shall remain unaffected.
- 11.2 The Parties are not entitled to assign, transfer, charge or otherwise dispose of any rights or claims arising out of or in connection with this Agreement without the prior written consent of the other Party.
- 11.3 This Agreement constitutes the entire agreement of the Parties with respect to its subject matter. There are no further written or oral collateral agreements.
- 11.4 If any provision of this Agreement is or becomes invalid or unenforceable, the remaining provisions shall remain unaffected.
- 11.5 This Agreement is subject to [ ] law. In the case of disputes, the Parties agreed on the jurisdiction of [ ] courts. Court of jurisdiction is the registered office of [Company] / [Partner[A6]].

\* \* \*

[Signature page follows]

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Annex [●] – Project Description