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NON-DISCLOSURE, NON-COMPETITION & NON-SOLICITATION AGREEMENT¹

[day] [month] 202[]

[Company's name] («Disclosing Party»), represented by its [position] [full name], acting according to the [title of the document], on the one part, and

[Full name or company's name] («Receiving Party»), [represented by its [position] [full name] acting according to the [title of the document], on the other part, hereinafter collectively referred to as «the Parties» and severally as «the Party»:

¹ **Note to draft:** this agreement is not a mutual NDA. Consider signing two NDAs (with interchanged parties) if mutual non-disclosure obligations are needed.

WHEREAS:


- (1) The Parties, for their mutual benefit, may already have exchanged and wish further to exchange certain information of a confidential nature and wish to protect such information in the manner set out in this Agreement;
- (2) The Parties agreed that the performance of this Agreement applies to all information of a confidential nature that was already provided by the Disclosing Party and/or would be provided to the Receiving Party,

and have entered into this Agreement as follows:

1. INTERPRETATION

1.1. In this Agreement the following words and expressions shall, where the context admits so, be deemed to have the following meanings:

«**Confidential Information**» shall mean:

- 1.1.1. any information or data whether oral, written or otherwise recorded, regarding the affairs, business plans, or operations of the Disclosing Party;
- 1.1.2. any discussions or negotiations between representatives of the Parties in connection with the subjects of other agreements between the Parties;
- 1.1.3. any information that was disclosed or instructed to be processed by the Disclosing Party to the Receiving Party and relates to one or more identified or identifiable natural persons, either directly or indirectly, including information such as health data, biometric data, genetic data, online and offline behaviour of a person, an identification number, location data, an online identifier or one or more characteristics specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person («**Personal Data**»)²;
- 1.1.4. any information, data discussion, or negotiation with any third party involved at the request of the Disclosing Party; and/or
- 1.1.5. ³.

1.2. Except for Personal Data, any publicly available information and/or information legally received from the third parties shall not be considered as confidential.

2. UNDERTAKING

2.1. In consideration of the disclosure of Confidential Information, the Receiving Party undertakes to:

- 2.1.1. keep secret and confidential all Confidential Information of the Disclosing Party disclosed under the present Agreement;
- 2.1.2. use or apply the Confidential Information of the Disclosing Party solely to fulfil obligations under other agreements between the Parties and so as to determine whether or not and on what terms the Parties might wish to proceed;
- 2.1.3. not use, copy, adapt, alter, disclose in full or in part or apply the Confidential Information of the Disclosing Party for any other purpose or its own purposes other than as described in clause 2.1.2;
- 2.1.4. not, at any time, whether the negotiations proceed or not, copy, disclose or otherwise make available to any third party without the prior written consent of the Disclosing Party, any of the Confidential Information of the other Party other than to:
 - 2.1.4.1. those of its directors, officers, employees, customers, partners and/or subcontractors, who are required to receive and consider the Confidential Information under other agreements between the Parties, and the Receiving Party agrees that any of its directors, officers, employees, partners and/or subcontractors shall be made aware of and accept the provisions of this undertaking; and/or
 - 2.1.4.2. its legal, financial, or taxation advisers provided that the Receiving Party ensures that they and their staff are made aware of and accept the provisions of this undertaking;
- 2.1.5. provide proper and secure storage for each and every part of the Confidential Information received by it in tangible form whilst it is in its custody, power, or control;

² **Note to draft:** remove if Personal Data protection is regulated by another agreement.

³ **Note to draft:** add additional information that shall be considered confidential.

2.1.6. return or destroy at its own expense any material containing any of the Confidential Information of the Disclosing Party together with any copies in its possession or in the possession of its directors, officers, employees, subcontractors, and professional advisers at the request of the Disclosing Party; and

2.1.7. notify the Disclosing Party of any breach of Confidential Information received under the present Agreement as soon as practicable upon discovering such breach.

2.2. If the Disclosing Party provides the Receiving Party with access to information or information communication systems, including but not limited to CRM, task management systems, cloud services and databases, the Receiving Party shall apply all necessary organisational and technical measures to keep access to such systems and their content secure, including but not limited to using updated software, firewalls, double authentication, frequent password updates, where applicable.

2.3. The Receiving Party shall not announce or otherwise make available to other persons the existence of its collaboration with the Disclosing Party, nor publish any press releases or otherwise, without a prior written consent of the Disclosing Party.

2.4. ⁴ In addition to the obligations specified in clause 2.1, the Receiving Party undertakes to ensure that the Personal Data is:

2.4.1. processed only according to the instructions received by the Disclosing Party and, in any case, according to the applicable legislation;

2.4.2. disclosed to any third party, including data subject and any government bodies and/or supervisory authorities only upon prior written notification of and consent from the Disclosing Party;

2.4.3. processed only if and to the extent required to fulfil the purposes of the processing;

2.4.4. always accurate and, where necessary, kept up to date;

2.4.5. kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the Personal Data are processed; and

2.4.6. processed in a manner that ensures appropriate security of the Personal Data, including protection against unauthorised or unlawful access or processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures.

2.5. The Disclosing Party shall have the right to request from the Receiving Party deletion, return, rectification and/or temporary or permanent suspension of processing of the Personal Data.

2.6. Should the Receiving Party encounter Confidential Information breach, including, but not limited to a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Confidential Information transmitted, stored or otherwise processed, the Receiving Party must inform the Disclosing Party about it, where feasible, within twenty-four (24) hours after revealing the event, but in any case, without undue delay. In particular, the Receiving Party shall provide the information about the nature of the Confidential Information breach including where possible, the types of Confidential Information, the categories and an approximate number of data subjects concerned and the categories and an approximate number of Personal Data records concerned (for Personal Data breaches), the likely consequences of the Confidential Information breach, as well as the measures taken or proposed to be taken to address the Confidential Information breach, including, where appropriate, measures to mitigate its possible adverse effects. After informing, the Receiving Party shall act based on the further instructions from the Disclosing Party with regards to mitigating consequences of the Confidential Information breach.

3. LIMITATIONS

3.1. The undertakings Section 2 above shall not apply to any Confidential Information:

3.1.1. disclosure of which is necessary to satisfy the rules, requirements and/or regulations of any foreign, national, or local governmental authority;

3.1.2. that is otherwise obliged to be disclosed by law;

3.1.3. disclosure of which is necessary for any legal proceeding establishing rights and obligations under this Agreement; and/or

3.1.4. that is disclosed to a Party's accountants, auditors, and attorneys, provided that they are bound by the same confidentiality obligations set forth herein.

4. RIGHTS AND WARRANTIES

⁴ **Note to draft:** remove if Personal Data protection is regulated by another agreement.

4.1. The Receiving Party acknowledges and agrees that it shall not acquire any right to any Confidential Information communicated by or acquired from the Disclosing Party unless otherwise agreed by the Parties.

4.2. Unless otherwise agreed by the Parties, nothing in this Agreement shall require any Party to disclose Confidential Information to the other Party or limit either Party's right to conduct discussions with third parties as long as such discussions do not breach the terms of this Agreement.

5. NON-COMPETITION & NON-SOLICITATION⁵

5.1. The Receiving Party is under an obligation independently on its own behalf or on behalf of the third persons during the period of the collaboration of the Parties under the present Agreement, and two (2) years after the end of the collaboration between the Parties not to:

5.1.1. enter into business or partner relationships with clients and contractors of the Disclosing Party as well as with business partners and employees of the Disclosing Party, who worked on the basis of a labour contract, as well as with persons, who collaborate with the Disclosing Party on a contractual basis, on the matter on which they collaborate with the Disclosing Party, about whose cooperation with the Disclosing Party the Receiving Party became acquainted during the course of its cooperation with the Disclosing Party;

5.1.2. offer to the contractors and clients of the Disclosing Party the services or services of the third persons that compete with services, provided by the Disclosing Party, about whose cooperation with the Disclosing Party the Receiving Party became acquainted during the course of its cooperation with the Disclosing Party;

5.1.3. initiate contractors, partners, and employees of the Disclosing Party to the collaboration on matters of their collaboration with the Disclosing Party, about whose cooperation with Disclosing Party the Receiving Party became acquainted during the course of its cooperation with the Disclosing Party; and/or

5.1.4. be a competitor to the Disclosing Party in business relationships with contractors and clients of the Disclosing Party, about whose cooperation with the Disclosing Party the Receiving Party became acquainted during the course of its cooperation with the Disclosing Party.

6. DURATION

6.1. This Agreement shall remain in force until the end of the collaboration between the Parties.

Notwithstanding the foregoing, confidentiality obligations under this Agreement shall remain in force for the period of three (3) years after other agreements between the Parties, according to which the Parties have exchanged Confidential Information, are terminated; the non-competition and non-solicitation obligations under this Agreement shall remain in force for the period set forth afore.

7. TRANSFER OF RIGHTS AND OBLIGATIONS

7.1. Neither Party shall assign or otherwise transfer any rights or obligations under this Agreement to a third party without the prior written consent of the other Party.

8. LIABILITY

8.1. This Agreement shall be governed by and construed in accordance with laws of [jurisdiction of your business].

The Receiving Party shall be liable for each breach of Confidential Information in an amount of [currency]⁶.

The Receiving Party shall not be liable for disclosure of Confidential Information if it cures the negative consequences of such breach within the term given for such curing by the Disclosing Party, which shall not be longer than thirty (30) days.

8.2. Any dispute arising out of or in connection with this Agreement or its interpretation, execution or termination shall, if practicable, be settled by means of negotiation between the Parties.

8.3. If the Parties cannot settle any such dispute within thirty (30) days after first conferring, then such dispute shall be settled by the competent judicial authorities of [jurisdiction of your business].

⁵ Note to draft: remove if not applicable.

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[Signatures of the Parties follow]

9. DETAILS AND SIGNATURES OF THE PARTIES

Disclosing Party

[Company name]

Company Number: []

Registered Address: []

E-mail: []

[], [position]

Receiving Party

[Full name]

[Company Number / ID]: []

[Registered] Address: []

E-mail: []

[]

[End of the page with signatures of the Parties]

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