



## **NON-DISCLOSURE AND RESTRICTED USE AGREEMENT**

by and between

Morpho B.V., Oudeweg 32, 2031 CC Haarlem, the Netherland  
and

Atos IT Solutions and Services GmbH, Otto-Hahn-Ring 6, 81739 Munich, Germany,

- hereinafter referred to as "Party" or "Parties" respectively -

Whereas, the Parties intend to engage in discussions concerning the smart card operating system CardOS V5 ("Purpose");

Whereas, in the course of such activities it is anticipated that the Parties will disclose to each other proprietary information for the Purpose, which information the Parties regard as confidential;

Now therefore, the Parties enter into the following agreement ("Agreement"):

### **Article 1 - Definitions**

"Confidential Information" shall mean any information and data, including, but not limited to, any kind of business, commercial or technical information and data disclosed between the Parties in connection with the Purpose, irrespective of the medium in which such information or data is embedded, which is - when disclosed in tangible form or via electronic communication, including internet based provision of information - marked "Confidential" or similarly legended by the disclosing Party or which is - when disclosed orally or visually - identified as such prior to disclosure and summarized in writing by the disclosing Party and said summary is given to the receiving Party marked "Confidential" or similarly legended within thirty (30) days after such disclosure. In case of disagreement relating to the summary, the receiving Party must present its objections to the summary in writing within thirty (30) days of receipt. Confidential Information shall include any copies or abstracts made thereof as well as any apparatus, modules, samples, prototypes or parts thereof.

"Affiliate" shall mean a corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with by one of the Parties, but such corporation, company or other entity shall be deemed to be an Affiliate only so long as such ownership or control exists. For purposes of this definition "control" of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities entitling to the right to elect

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or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise.

## **Article 2 - Confidentiality; Restricted Use**

### All Confidential Information

- (i) shall be used by the receiving Party exclusively for the Purpose, unless otherwise expressly agreed to in writing by the disclosing Party;
- (ii) shall not be distributed or disclosed in any way or form by the receiving Party to anyone except to the employees of the receiving Party or those employees of its Affiliate and except to consultants, advisers or bankers advising the receiving Party and/or advising its Affiliate with regard to the Purpose ("Advisers"), who each of them reasonably need to know such Confidential Information for the Purpose and who are bound to confidentiality either by their employment agreement or otherwise in writing to an extent not less stringent than the obligations imposed on the receiving Party under this Agreement. Prior to any disclosure to an Affiliate or to an Adviser, the receiving Party must have in place a written agreement with such Affiliate or such Adviser imposing on such Affiliate or on such Adviser confidentiality obligations in respect of the Confidential Information not less stringent than the obligations imposed on the receiving Party under this Agreement;
- (iii) shall be kept confidential by the receiving Party with the same degree of care as is used with respect to the receiving Party's own equally important confidential information to avoid disclosure to any third party, but at least with reasonable care; and
- (iv) shall remain the property of the disclosing Party.

## **Article 3 - Exceptions**

The obligations under Article 2 shall not apply, however, to any information which:

- (i) was in the receiving Party's possession without an obligation to confidentiality prior to receipt from the disclosing Party;
- (ii) is at the time of disclosure already in the public domain or subsequently becomes available to the public through no breach of this Agreement by the receiving Party or the breach of the corresponding obligations of any Affiliate and/or of the Advisers;
- (iii) is lawfully obtained by the receiving Party from a third party without an obligation to confidentiality, provided such third party is not, to the receiving Party's knowledge, in breach of any obligation to confidentiality relating to such information;

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- (iv) is developed by the receiving Party or its Affiliates independently of any Confidential Information or under the exceptions as set out in Article 3 lit. i) - iii) or v); or
- (v) is approved for release by written agreement of the disclosing Party.

The Party seeking the benefit of such exception shall bear the burden of proving its existence.

The receiving Party may disclose Confidential Information of the disclosing Party if the receiving Party is required to do so by any ruling of a governmental or regulatory authority or court or by mandatory law, provided that written notice of such ruling is given without undue delay to the disclosing Party so as to give the disclosing Party an opportunity to intervene and provided further that the receiving Party uses reasonable efforts to obtain assurance that the Confidential Information will be treated confidentially. Confidential Information which is disclosed in such way must be marked "Confidential".

## **Article 4 - Refusal**

Each Party shall have the right to refuse to accept any information under this Agreement prior to any disclosure; information disclosed despite such a refusal is not covered by the confidentiality obligation under this Agreement. Nothing herein shall obligate either Party to disclose any particular information.

## **Article 5 - No license**

Licenses or any other rights such as, but not limited to, patents, utility models, trademarks or tradenames, are neither granted nor conveyed by this Agreement, nor does this Agreement constitute any obligation of the disclosing Party to grant or convey such rights to the receiving Party. The receiving Party shall not be entitled to file for patents or other statutory protection in any country based on or using any Confidential Information received hereunder, and any such patent or statutory protection must be transferred to the disclosing Party upon its request and without any charge. The disclosure of Confidential Information does not constitute any right of prior use for the receiving Party.

## **Article 6 - No remuneration; warranty/liability**

The Parties shall not be obligated to pay any remuneration for disclosure of any information under this Agreement and agree that any information is made available "as is" and no warranties are given or liabilities of any kind are assumed with respect to the quality of such in-



formation, including, but not limited, to its fitness for the Purpose, non-infringement of third party rights, or its correctness.

#### **Article 7 - Termination; other contracts**

This Agreement shall come into force upon execution by both Parties and shall automatically terminate two (2) years later. It may be prematurely terminated with thirty (30) days' prior written notice. The rights and obligations of the Parties which have accrued prior to termination shall, however, survive the termination of this Agreement for a period of four (4) years. The Parties shall be legally under no obligation to conclude any other contract with regard to the Purpose.

#### **Article 8 - Return**

Within ninety (90) days after termination of this Agreement the disclosing Party may request in writing from the receiving Party that the receiving Party at its discretion either returns or destroys all Confidential Information received from the disclosing Party and stored electronically and/or on record-bearing media as well as any copies thereof. The receiving Party shall confirm in writing such destruction or return the Confidential Information as well as any copies thereof to the disclosing Party within fourteen (14) days after receipt of the disclosing Party's request.

The provisions of Article 8 para. 1 hereof shall not apply to copies of electronically exchanged Confidential Information made as a matter of routine information technology backup and to Confidential Information or copies thereof which must be stored by the receiving Party, its Affiliates or its Advisers according to provisions of mandatory law or to the receiving Party's and its Affiliates' internal compliance guidelines, provided that such Confidential Information or copies thereof shall be subject to an indefinite confidentiality obligation according to the terms and conditions set forth herein until returned and/or destroyed, as the case may be.

#### **Article 9 - Liability for Affiliates and Advisers**

If one Party discloses or distributes Confidential Information to any of its Affiliates or its Affiliates' employees or its Advisers, such Party shall be liable for acts or omissions of its Affiliates or by Affiliates' employees - even where such Affiliate ceases to be an Affiliate - or by any Party's Advisers resulting in unauthorized distribution, use and/or disclosure of such Confidential Information as if such acts or omissions had been its own acts or omissions.

## **Article 10 - Dispute Resolution**

If any dispute arises in connection with this Agreement, the responsible representatives of the Parties shall attempt, in fair dealing and in good faith, to settle such dispute. Each Party can request from the other Party that on both sides a senior representative becomes involved in the negotiations. Each Party is at any time entitled to terminate the settlement negotiations and to have recourse to an ADR proceeding set forth in the following paragraph through written notification to the other Party.

If the Parties are not able to reach an amicable settlement pursuant to the preceding paragraph they shall try to agree on an appropriate alternative dispute resolution (ADR) proceeding (for example mediation, conciliation, expert determination, dispute board, adjudication). If they do not reach agreement on the appropriate ADR proceeding within fourteen (14) days after failure of the settlement negotiations or if the dispute is not settled through an ADR proceeding within a period of two (2) months after initiation of the ADR proceeding each Party may initiate an arbitration proceeding pursuant to the following paragraph.

All disputes arising out of or in connection with the present Agreement, including any question regarding its existence, validity or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Munich, Germany. The procedural law of this seat applicable to international arbitration proceedings shall apply where the Rules are silent. The language to be used in the arbitration proceedings shall be English.

Any Party to this contract shall have the right to have recourse to and shall be bound by the Pre-arbitral Referee Procedure of the International Chamber of Commerce in accordance with its respective rules.

Each Party may seek provisional measures from any court of competent jurisdiction, including without limitation provisional injunctive relief, provided that the final resolution of the dispute is through the arbitral tribunal appointed in accordance with this Article 10.

## **Article 11 - Governing law**

This Agreement shall be subject to the substantive law in force in Germany without reference to any of its conflict of law rules.

## **Article 12 - Assignment**

Neither this Agreement nor any rights and obligations under this Agreement may be assigned or delegated by either Party without the prior written consent of the other Party.



However, either Party may, without the consent of the other Party, while remaining entitled and obligated under this Agreement, assign and transfer the same rights and obligations under this Agreement to a successor in business or an acquirer of all or a substantial part of the business (whether by way of a share deal, asset deal or otherwise) to which this Agreement pertains. The assigning Party shall inform the other Party in writing if the successor in business or the acquirer is not an Affiliate. The assigning Party and the other Party shall themselves continue to bear all of their rights and obligations originating under this Agreement until and up to the assignment.

#### **Article 13 - Written form**

This Agreement may not be modified or amended except by written amendments duly executed by the Parties. This requirement of written form can only be waived in writing.

#### **Article 14 - Export regulations**

The Parties shall abide by the applicable export license regulations of the respective country(ies) and, if required, the disclosing Party shall apply for an export license grant prior to any transmission of Confidential Information and to inform the receiving Party sufficiently of any existing limitation.

#### **Article 15 - Third parties**

A person who is not a party to this Agreement may not enforce any of its terms.



**Morpho B.V**

**Atos IT Solutions and Services GmbH**

Place, Date:

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Place, Date:

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Name:

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Name:

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Name:

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