Unilateral Confidentiality{#nonCompetition}and Non-Competition{/nonCompetition} Agreement

# Identification of the Parties

This unilateral confidentiality{#nonCompetition} and non-competition{/nonCompetition} agreement (hereinafter the "**Agreement**") is entered into between:

on the one hand:{#party1}

* **{name}**,a {legal\_form}, incorporated under the laws of {country}, domiciled {registered\_address}, registered in the Trade and Companies Register of {city} under number {registration\_number}, represented by {civilty} {first\_name} {last\_name}, duly authorised in his capacity as {title}, hereinafter “**{shortname}**”, {/party1}

{#party1multiple}acting jointly and severally, collectively {/party1multiple}{^party1multiple}also {/party1multiple} referred to as the "**Disclosing Party**",

and on the other hand:{#party2}

* {#business}**{name}**,a {legal\_form}, incorporated under the laws of {country}, domiciled {registered\_address}, registered in the Trade and Companies Register of {city} under number {registration\_number}, represented by **{civilty} {first\_name} {last\_name}**, duly authorised in his capacity as {title}, hereinafter "**{shortname}**",{/business}{^business}**{civilty} {first\_name} {last\_name}**, of {nationality} born on {birth\_date} in {birth\_city}, residing at {address}, hereinafter "**{shortname}**",{/business}{/party2}

{#party2multiple}acting jointly and severally, collectively {/party2multiple}{^party2multiple}also {/party2multiple} referred to as the "**Recipient**",

The Disclosing Party and the Recipient are hereinafter collectively referred to as the "**Parties**" and individually as the "**Party**".

# Preamble

1. **ABC** is a xxx.
2. Cosys owns and develops the **FlexUp** project ("**FlexUp**") which includes:

### The "**FlexUp economic model**", which includes a set of innovative principles and mechanisms for structuring and financing business and projects, and for the contractual arrangements between the participants in a business or project, including the allocation of risks and financial flows.

### A range of tools and services to help individuals and organisations to manage their business, both using the FlexUp economic model and/or the classic economic model, notably (but not exclusively) including:

#### "**Management Tool**": a computer platform allowing users to easily set up and manage their business and make transactions with other users,

#### "**Market Place**": a computer platform allowing users to buy and sell any products and services and manage these transactions via the Management Tool.

#### "**Advisory**": a range of advisory and support services relating to the creation and management of business, particularly in the context of adopting the FlexUp economic model and related tools.

1. **XYZ** is axxx.
2. The Parties wish to enter into discussions regarding a possible collaboration in the framework of ("**Scope**"):

* {description of the scope}.

1. In order to carry out the Scope it may be necessary for ABC and XYZ to disclose to one another (directly, or through their respective Representatives, as defined below) certain Confidential Information.
2. For each such **Confidential Information** disclosed by a Disclosing Party, the Parties wish to maintain the confidentiality of this Confidential Information and to ensure that it will be used by the Recipient only for the Scope.
3. The Parties have therefore agreed on the terms and conditions for the communication of Confidential Information by the Disclosing Party to the Recipient and for its use by the Recipient.

# Definitions

For the purposes of this Agreement:

"**Defined Terms**" shall mean terms that have the meaning given to them in the definitions contained in this Agreement, whether they are capitalized, infinitive or plural. Defined Terms are designated in bold and quotation marks. Their definition is generally given immediately before or after their designation but may be given or specified elsewhere in the Agreement, as appropriate.

## "**Confidential Information**" shall mean:

### any and all information that is disclosed by or on behalf of one Party (the "**Disclosing Party**") and/or its Representatives, to the other Party (the "**Recipient**") and/or its Representatives,

### in connection with the Scope,

### at any time, whether before or after the signature of this Agreement,

### which is of a non-public, proprietary, or confidential nature,

### including, without limitation, any document and information relating to their business such as their business plan, strategy, operations, products, technology, manufacturing, marketing, distribution activities, or any other content,

### by any means, whether in tangible form, by electronic means, by visual display, orally or by observation at any facility.

## "**Representative**" shall mean any director, officer, employee, agent, contractor or advisor (including, without limitation, lawyers, accountants, consultants, bankers, financial advisors and credit institutions) of a Party and its affiliates.

# Non-disclosure

## The Recipient undertakes on behalf of itself and its Representatives to:

### Take all necessary measures to preserve the confidentiality of the Confidential Information. These measures shall not be less than those taken by the Recipient for the protection of its own Confidential Information.

### Disclose the Confidential Information to its Representatives only if they have a reasonable need to do so for the Scope, if they are directly or indirectly involved in the discussions and are bound by a confidentiality agreement substantially similar to the provisions hereof prior to any disclosure by the Recipient of the Confidential Information to such Representatives.

### Restrict to a minimum the number of persons who will have access to the Confidential Information and inform them that the information is confidential.

### Not disclose to any third party, other than its Representatives, without the prior written consent of the Disclosing Party:

#### The Recipient's participation in the review of the Confidential Information,

#### The existence of exchanges between the Parties,

#### The nature or content of the Confidential Information received, directly or indirectly concerning the Parties.

### To use the Confidential Information only for the Scope;

### Not to use the Confidential Information for commercial (competing or otherwise), academic or literary purposes, nor to attempt to obtain any rights or prerogatives therefrom, such as, in particular, by filing patents, trademarks or copyrights, or by publishing articles or books containing or based on such Confidential Information.

## Confidential Information does not include information which the Recipient can demonstrate by means of documents, writings or other evidence that:

### It has fallen into the public domain before being disclosed by the Disclosing Party or its Representatives or after being disclosed through no act or omission of the Recipient or its Representatives;

### They were already in the possession of the Recipient or its Representatives at the time they were communicated by the Disclosing Party or its Representatives;

### It has been obtained by the Recipient or its Representatives from a third party without breach of confidentiality by the third party or the Recipient;

### That they have been developed independently by the Recipient without the use of or reference to the Disclosing Party's Confidential Information.

## If, as a result of a legal obligation or court order, the Recipient or its Representatives are required to disclose all or part of the Confidential Information, it shall, to the extent permitted by law, immediately notify the Disclosing Party of the existence of such obligation so that the Disclosing Party may immediately take appropriate steps to prevent such disclosure or to waive the application of this Agreement. This duty to notify shall not prejudice the right to subsequently disclose all or part of the Confidential Information if necessary for the purposes of compliance with any law or regulation.

# Relations between the Parties

## Nothing in this Agreement grants Recipient any license, patent right or other intellectual property right.

## Nothing in this Agreement shall oblige either Party to enter any transaction or relationship between them concerning the Scope, and each Party reserves the right, in its sole discretion, to terminate any discussions contemplated by this Agreement.

## The Parties agree that no document or other notification, whether or not containing Confidential Information, provided to the Recipient or its Representatives in the course of or in connection with the negotiations or conversations shall constitute an offer to enter into a contract or an offer to incorporate or participate in any joint venture on behalf of or for the account of the Disclosing Party. Any business relationship, if any, between the Parties shall be defined in a separate contract.

# Non-guarantee

## The Recipient acknowledges that neither the Disclosing Party nor its Representatives can guarantee the accuracy or completeness of the Confidential Information.

# Return of materials

## All documents and other tangible objects containing or displaying the Confidential Information, and all copies thereof, as well as any analyses, compilations, studies, or other documents whatsoever prepared by the Disclosing Party, or any of its Representatives, which disclose any of the Confidential Information, shall be and remain the exclusive property of the Disclosing Party.

## The aforementioned documents or tangible items shall, upon written request of the Disclosing Party, be returned to it or destroyed within 30 days of such written request. In any event, upon termination of this Agreement, the Recipient shall be obligated within thirty (30) business days from the date of termination or expiration of this Agreement to return or destroy all such documents and tangible items. {#nonPoaching}

# Non-poaching

## Each Party undertakes not to offer employment, directly or indirectly, to employees or partners of the other Party, except with the written consent of the other Party, for the duration of the Agreement. {/nonPoaching}{#nonCircumvention}

# Non-circumvention

## The Recipient agrees not to contact or enter into any negotiations or transactions with any contacts disclosed to it by the Disclosing Party in the course of dealings between the Parties (the "**Contacts**") without the Disclosing Party's prior written consent.

## The Recipient agrees to deal with Contacts only through the Disclosing Party unless agreed in writing by the Disclosing Party and agrees that Recipient it will not attempt to circumvent the Disclosing Party in any way by dealing with Contacts.

## The Recipient may contact, deal with, negotiate or participate in any discussion or transaction with Contacts with whom it has already signed an agreement prior to receiving the Contact's information from the Disclosing Party, provided that Recipient it proves the existence of such agreement within 15 days of receiving the Contact's information from the Disclosing Party.

## The Disclosing Party shall be entitled to receive compensation from the Recipient for the full amount of the damage suffered in the event of a breach of this non-circumvention clause by the Recipient directly or indirectly.

## For each Contact, the provisions of this Article shall apply for a period of three (3) years following the date of disclosure of the Contact by the Disclosing Party to the Recipient, even if this period extends beyond the expiry of this Agreement. {/nonCircumvention}{#nonCompetition}

# Non-competition

## Each Party acknowledges that it had no intention of developing or participating in activities similar to those of the other Party as described in the preamble of the Agreement (the "**Other Party's Business**"), before entering into a relationship with the other Party.

## Each Party undertakes, for the duration of the Agreement, not to develop or participate in activities competing with those of the other Party without the written consent of the Disclosing Party. {/nonCompetition}{#duration}

# Duration

## This Agreement is concluded for a period of five (5) years from the date of its signature. {/duration}

# Independence of the provisions of the agreement

## In the event that one or more provisions of this Agreement are held to be invalid, illegal or unenforceable, the remaining provisions of this Agreement shall not be affected and shall remain enforceable.

## Any provision of this Agreement which is held to be invalid, illegal or unenforceable shall, to the extent permitted by law, be replaced by a valid, legal and enforceable provision which is as similar in effect as possible to the provision which it replaces.

# Applicable law and disputes

## This Agreement is governed by French law.

## The Parties shall endeavour to resolve amicably, in a spirit of cooperation and good faith, any difficulties which may arise in the performance of this Agreement.

## Any dispute that cannot be settled amicably will be submitted to the jurisdiction of the Commercial Court of Paris.

# Signatures:

For the Disclosing Party:

|  |  |
| --- | --- |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name :  Function : | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name :  Function : |

For the Recipient