

**BY PARTICIPATING IN THE USER FEEDBACK INTERVIEWS CONDUCTED ON RESPONDENT.IO BOTH PARTIES AGREE TO BE BOUND BY THE BELOW CONFIDENTIALITY AGREEMENT.**

## **CONFIDENTIALITY AGREEMENT**

**THIS AGREEMENT** is made

**BETWEEN**

- (1) You, as a participant in Emarsys eMarketing Systems GmbH's user feedback interviews conducted on respondent.io, and
- (2) Emarsys eMarketing Systems GmbH, Lassallestrasse 7b, 1020 Vienna, Austria.

**RECITALS**

- (A) The parties hereto wish to disclose Confidential Information to one another for the purpose of user feedback interviews conducted on respondent.io.
- (B) The parties wish to regulate how Confidential Information is to be treated while in the possession or control of the Receiving Party so as to protect the proper interests of the Disclosing Party.

IT IS **AGREED** as follows:

### **1 DEFINITIONS**

In this Agreement including the Recitals the following words and phrases shall have the following meanings:

#### **"Information"**

shall include information provided directly or indirectly by the Disclosing Party to the Receiving Party in oral or documentary form or by way of models or other tangible form or by demonstrations/presentations and whether before, on or after the date of this Agreement.

#### **"Confidential Information"**

shall mean all information disclosed to the Receiving Party which is identified as "Confidential" or "Proprietary" by the Disclosing Party or which reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. It includes in particular all information relating to the Disclosing Party's past, present or future research, development or business activities or the fact that discussions are taking place between the parties.

#### **"Disclosing Party"**

shall mean the party hereto that imparts the Information to the other.

#### **"Receiving Party"**

shall mean the party hereto to which Information is imparted by the other.

**“Proper Use”**

shall mean the use of Confidential Information wholly necessarily and exclusively for the purpose set out in the Recitals hereto.

- 2 In consideration of the provision of Confidential Information by the Disclosing Party to the Receiving Party, each party in respect of Confidential Information for which it is the Receiving Party shall:

- 2.1 hold such Confidential Information in strict confidence;

- 2.2 not disclose such Confidential Information:

- 2.2.1 save as required to be disclosed by law or a Court of competent jurisdiction (and then only after prior notification to and consultation with the Disclosing Party if reasonably practical with a view to restricting such disclosure and maintaining the confidentiality of the Information); or

- 2.2.2 save to such of the Receiving Party’s officers, employees, representatives, professional advisers as are directly concerned with the Proper Use and who have been made aware of and are bound by like obligations to the confidentiality obligations in this Agreement prior to such disclosure and the Receiving Party shall procure that each such recipient adheres to the same confidentiality obligations as the Receiving Party.

- 2.3 use such Confidential Information only for the Proper Use; and

- 2.4 not copy or reproduce or permit the copying or reproduction of any of the Confidential Information other than for its own use as above.

- 3 Without prejudice to the generality of Clause 2, the Receiving Party shall exercise no less a degree of care in protecting the confidentiality of Confidential Information as that which it uses to protect its own information of like sensitivity and importance.

- 4 The obligations of confidentiality herein shall not apply to any Confidential Information which the Receiving Party can show (and it shall be for the Receiving Party to show):

- 4.1 was already in possession of the Receiving Party free from any confidentiality obligation when such Information was imparted by the Disclosing Party;

- 4.2 is in or subsequently comes into the public domain other than by breach by the Receiving Party of its obligations hereunder or any other agreement on confidentiality between the parties;

- 4.3 is received by the Receiving Party without restriction on disclosure or use from a third party which the Receiving Party reasonably believes is free to make such disclosure on such terms;

- 4.4 was independently developed by and for the Receiving Party by individuals who had no access to Confidential Information of the Disclosing Party, provided the Receiving Party can adequately document such independent development; and/or

- 4.5 is disclosed after either party has given the other written notice that it will no longer accept Confidential Information under this Agreement.
- 5 If any portion of the Confidential Information falls within any one of the above exceptions, the remainder shall continue to be subject to the restrictions of this Agreement.
  - 6 Any Confidential Information imparted hereunder shall remain the property of the Disclosing Party and must be applied for the Proper Use only. No license is granted to the Receiving Party hereunder, and no provision in this Agreement, nor the disclosure of any Confidential Information hereunder, shall be construed as the granting of a license of any copyright, patent or trade mark, or a license to use, manufacture or sell any process or product relating to the Confidential Information disclosed hereunder.
  - 7 Forthwith following the earlier of:
    - 7.1 the date on which the Proper Use has been completed; or
    - 7.2 the written request of either party;

the Receiving Party shall return all Confidential Information to the Disclosing Party or, at the Disclosing Party's option, destroy all such Confidential Information and provide to the Disclosing Party a certificate of such destruction signed by a responsible officer of the Receiving Party. The parties further agree that the Receiving Party shall expunge and destroy any Confidential Information from any computer, word processor or other device in its possession or custody or control containing such information.
  - 8 The Receiving Party also agrees that neither it nor its officers, employees, or representatives will disclose to any person other than the Receiving Party's professional advisers the fact of this Agreement or that discussions between the parties are continuing or have taken place or the intended purpose of those discussions as set out in the Recitals hereto.
  - 9 Neither the Disclosing Party nor any of its officers, employees or representatives accept responsibility for or make any representation or warranty, express or implied, with regard to the accuracy or completeness of any Confidential Information disclosed to the Receiving Party.
  - 10 The parties acknowledge that the Disclosing Party shall be entitled to injunctive relief in any Court of competent jurisdiction restraining the Receiving Party from committing a breach of the terms of this Agreement or continuing to disclose any Confidential Information to any person. The Receiving Party will reimburse the Disclosing Party for any costs, demands or liabilities of whatsoever nature arising directly or indirectly out of a breach or the relevant breach of the Receiving Party's obligations under this Agreement. Nothing contained in this Agreement shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it, either in law or in equity, for such breach or threatened breach including specific performance and recovery of monetary damages.
  - 11 In addition to any other rights or remedies of the Disclosing Party, the Receiving Party agrees to indemnify the Disclosing Party in respect of any losses, damages, costs and expenses suffered or incurred by the Disclosing Party as a result of any breach by the Receiving Party of this Agreement.

- 12 This Agreement shall not be assigned by either party without the written consent of the other party.
- 13 This Agreement shall enter into force when signed by both parties and shall remain in force until terminated by mutual consent or by either party giving to the other party not less than one month's prior written notice. The provisions of clauses 1, 2, 7, 8, 9, 10, 11 and 18 shall survive any such termination.
- 14 All notices under this Agreement shall be in writing and sent by facsimile or first class registered or recorded delivery post to the party being served at its address specified above or at such other address as may be notified in writing to the other party from time to time and marked for the attention of that party's signatory of the Agreement. The date of service shall be deemed to be the day following the day on which the notice was transmitted or posted as the case may be.
- 15 If any provision of this Agreement is held to be invalid or unenforceable, then such provision shall so far as it is invalid or unenforceable be severed from this Agreement and the validity and enforceability of the remaining provisions of this Agreement shall not be affected by such severance.
- 16 The foregoing clauses comprise the entire agreement between the parties and supersede any prior oral or written agreements, and commitments, understandings, or communications with respect to the subject matter of this Agreement. This Agreement shall not be amended unless agreed to in writing by duly authorized representatives of the parties.
- 17 This Agreement may be executed in two counterparts, each of which shall be deemed an original for all purposes, but both of which shall constitute one and the same instrument.
- 18 This Agreement, including its construction, enforcement and any disputes arising out of or in connection with it, shall be governed by the applicable laws and regulations of Austria, with the exception of conflict-of-law rules and the UN Convention on the International Sale of Goods. Any disputes arising out of or in connection with this Agreement shall be exclusively settled by the competent courts of Vienna, Austria.