

Non-Disclosure Agreement

Entry into force: [*]

[*], register code: [*], address: [*], represented by [*] [*] (hereinafter the **Disclosing Party**)
and

[*], register code: [*], address: [*], represented by [*] [*] (hereinafter the **Receiving Party**)
jointly referred to as the Parties and each individually as a Party, have concluded this agreement (hereinafter the **Agreement**) in the following

WHEREAS:

- a. The Parties are planning to start negotiations regarding a potential agreement or project (hereinafter the Transaction). For that purpose the Parties need to disclose confidential information and/or trade secret to each other. The potential Transaction parties are considering is the following: [*]
- b. The Parties wish to disclose such confidential information and trade secret only on the basis that it is kept protected as provided in this Agreement;
- c. This Agreement is intended to set out the terms and conditions on which the Disclosing Party provides such confidential information to the Receiving Party and on which the Receiving Party deals with such confidential information and trade secret,

NOW, THEREFORE, the Parties hereby agree as follows:

1 Confidentiality obligation

1.1 For the purposes of this Agreement the trade secret (hereinafter the Trade Secret) means all information possessed by or developed for the Disclosing Party to which all of the following apply:

1.1.1 the information derives independent economic value from not being generally known and

1.1.2 the Disclosing Party takes reasonable precautions to prevent such information from being disclosed to the public.

1.2 For the purpose of this Agreement confidential information (hereinafter the Confidential Information) means information, to the extent it is not Trade Secret, which is possessed by the Disclosing Party and which relates to the Disclosing Party, including, without limitation, information relating to the Disclosing Party and its present and future business, services, operations, capabilities, assets (incl. used technologies, information regarding intellectual property, data systems etc.) and liabilities, and also any other data and information that should reasonably be recognized as confidential information of the Disclosing Party and which is disclosed or otherwise made available, directly or indirectly, by the Disclosing Party, either in oral, written, electronic or any other form, and provided that the Disclosing Party applies necessary means to keep such

information secret. Furthermore, the Parties hereby agree that Confidential Information includes, specifically:

- 1.3 The Confidential Information need not be unique, novel, patentable or copyrightable in order to be designated as Confidential Information in the meaning of this Agreement.
- 1.4 The Parties apply all means as needed to keep the Trade Secret and Confidential Information secret. For this purpose, amongst others, the Receiving Party:
 - 1.4.1 shall not disclose, directly or indirectly, Confidential Information or Trade Secret to any third parties, without a prior written consent of the Disclosing Party, and shall also not make such disclosure anyhow possible, except for the disclosure as expressly allowed under this Agreement. The Receiving Party shall ensure that it discloses the Confidential Information or Trade Secret only to those of its employees and advisors, to whom, and to the extent of which, such disclosure is necessary for negotiating the Transaction, and it shall also ensure that its employees and advisors, who are granted access to the Confidential Information or Trade Secret, will comply with the confidentiality obligations as defined herein. It is agreed that the Receiving Party shall always treat Confidential Information and Trade Secret at least with the same diligence and care as its own confidential information and trade secret, but in any case not less than with a reasonable degree of diligence and care; and
 - 1.4.2 shall use the Confidential Information or Trade Secret of the Disclosing Party only for deciding whether to continue with the negotiations and enter into the Transaction, and it shall ensure that Confidential Information or Trade Secret will not be used for any other purpose or in a manner which may harm the interests or reputation of the Disclosing Party.
- 1.5 The obligations above shall not extend to any of the following information (but only in the extent that the Receiving Party can prove that such information is within the following exceptions):
 - 1.5.1 information which was in the Receiving Party's possession prior to the disclosure by the Disclosing Party;
 - 1.5.2 information which can be shown to have been independently developed by the Receiving Party without access to the Confidential Information;
 - 1.5.3 information which is at the time of disclosure generally available to the public, or thereafter becomes generally available to the public, by publication or otherwise, through an authorized source and not as a result of any act or failure to act on the part of the Receiving Party; or
 - 1.5.4 information which is required to be disclosed under the applicable law or by court order, provided that the disclosure is strictly limited to the information that is necessary to comply with such law or order and the Disclosing Party is promptly informed of such request and is enabled an opportunity to seek appropriate protective measures or is otherwise consulted with.
- 1.6 If only a portion of the Confidential Information or Trade Secret falls within at least one of the exceptions set forth above, the remainder of the Confidential Information or Trade Secret shall continue to be subject to the confidentiality obligations.
- 1.7 The Receiving Party shall ensure compliance with the confidentiality obligations by any employees and advisers to whom it passes on the Confidential Information or Trade Secret and the Receiving Party shall remain fully liable towards the Disclosing Party for any breach of this Agreement by its employees and advisers.

2 Intellectual Property, no warranty

- 2.1 Except for the limited right to use the Confidential Information and Trade Secret for the purpose described in this Agreement, the Agreement does not grant the Receiving Party any right to such

information, including to use, sell, copy, further develop or create derivative works based on such information. Recipient agrees that:

- 2.1.1 all documents and other materials containing the Confidential Information and/or Trade Secret, and any parts or copies of the Confidential Information and/or Trade Secret, will always remain the property of the Disclosing Party; and
- 2.1.2 Disclosing Party and/or its licensors (as applicable) will retain all intellectual property rights in the Confidential Information and Trade Secret always and for all purposes, including the copyright in any materials produced by Receiving Party relating to the Confidential Information and Trade Secret.
- 2.2 Disclosing Party makes no representation or warranty as to the accuracy, completeness or otherwise of the Confidential Information supplied, and Receiving Party agrees that it is responsible for making its own evaluation of such information. The Receiving Party agrees that unless and until a definitive agreement with respect to the Transaction shall have been executed, neither the Disclosing Party, its shareholders nor any of their affiliates will be under any obligation of any kind with respect to such a transaction by virtue of this agreement.

3 Return of the information

- 3.1 Upon termination of this Agreement and the respective expiry of the confidentiality obligation or upon the respective request submitted by the Disclosing Party for whatever reason, the Receiving Party shall immediately return all Confidential Information and Trade Secrets furnished to it hereunder in writing or in any other tangible form which can be returned; if the Confidential Information or Trade Secret has been provided or stored in electronic, digital or other similar form, it shall be destroyed by the Receiving Party.

4 Liability

- 4.1 The Receiving Party shall be fully liable for any breach of its obligations as set forth in this Agreement, regardless whether the non-performance is excusable.
- 4.2 The Disclosing Party shall have no liability whatsoever to the Receiving Party resulting from the use of the Confidential Information or Trade Secret as defined in sections 1.1 and 1.2 by the Receiving Party.

5 Contractual penalty

- 5.1 For each single case of breach by the Receiving Party of confidentiality obligations as set forth in this Agreement, the Disclosing Party shall be entitled to demand and the Receiving Party shall be obliged to pay the penalty payment in the amount of EUR [*].
- 5.2 Each contractual penalty set forth in this Agreement operates as a measure for achieving the performance and not as a substitute for the performance of the Agreement. Therefore, the payment of any penalty set forth herein shall not release the breaching party from the obligation to perform the relevant obligations set forth in the Agreement. The obligation to pay penalty exists regardless of the actual damage caused by the relevant breach.
- 5.3 In case the Receiving Party breaches this Agreement, the Disclosing Party is entitled to claim, in addition to the contractual penalty, compensation for any damages (including direct patrimonial damage and loss of profit) caused by the breach to the extent not covered by the contractual penalty.

6 Term of validity. Amendments

- 6.1 This Agreement shall enter into force as of signing thereof by both Parties, and shall remain in full force without term as of its conclusion. In case the Parties conclude the letter of intent regarding their further negotiations or enter into the Transaction, the confidentiality obligations either in the letter of intent or in the Transaction document will supersede the respective provisions in this Agreement.
- 6.2 Any amendment to this Agreement must be made in writing and is valid only if signed by duly authorized representatives of both Parties.

7 Governing law and jurisdiction

- 7.1 The document shall be governed by [*], without giving effect to any conflicts of law principles that might refer the governance, construction or interpretation of this document to the laws of another jurisdiction.
- 7.2 Any disputes arising from or related to the document that cannot be resolved by means of negotiations by the Parties, shall be resolved in [*].

8 Miscellaneous

- 8.1 Should any of the provisions contained in this Agreement prove to be inconsistent with law or invalid the Parties shall make their best efforts to replace such invalid provision with a valid one closest in the meaning to the original provision.
- 8.2 The Party may not transfer or otherwise assign any of its rights or obligations arising from this Agreement to third parties without the prior written consent of the other Party.
- 8.3 Nothing in this Agreement or its operation shall constitute an obligation on the Party to enter into a business relationship with the other Party or shall preclude, impair or restrict the Party from continuing to engage in its business.

IN WITNESS WHEREOF, the Parties hereto, acting through their duly authorized representatives, have signed this Agreement.

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