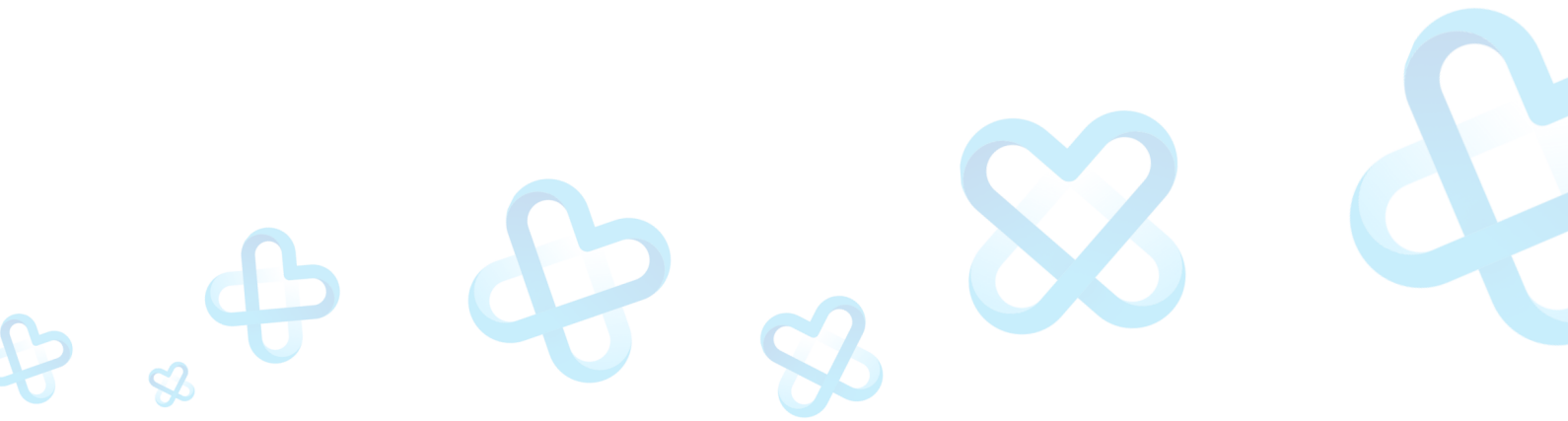




Non-Disclosure Agreement





Preamble

- (A) The Parties and capitalized terms shall have the meaning as defined in the General Terms and Conditions (“GTC”).

1. Confidential Information

- 1.1. For the purposes of this Agreement, "**Confidential Information**" means any data, technical and commercial information, facts, or circumstances in any form whatsoever provided by one of the Parties to the other, their representatives, advisors, or their assigned third parties irrespective of whether the Party obtained such Confidential Information in writing, orally, visually or electronically, after the signing of this Agreement. Confidential Information includes, without limitation, all information, such as company and business secrets, intellectual property rights, know-how, other technical and non-technical information, hereby achieved knowledge and results, written documents, drawings, blueprints, specifications, methods, formulas and programmable logic and software algorithms.
- 1.2. The provisions of this Agreement shall not apply to information for which the Receiving Party will be able to demonstrate that the information
- a. was in the public domain at the time of disclosure;
 - b. after disclosure becomes generally available to the public, other than through any act or omission by the Receiving Party;
 - c. was lawfully possessed by the Receiving Party at the time of disclosure;
 - d. was received from a third party without any obligation of secrecy and authorized to disclose it;
 - e. any information that is independently developed by personnel of the Receiving Party that did not have access to the Disclosing Party's Confidential Information;
 - f. has been excluded from confidentiality; or
 - g. is required by mandatory law, court order, administrative orders or any other legal obligation.
- 1.3. If only a portion of the Confidential Information falls under any of the above sections, then only that portion of the Confidential Information shall be excluded from the use and disclosure restrictions of this Agreement.

2. Maintenance of Confidentiality

- 2.1. Except as expressly provided otherwise herein, the Parties shall keep strictly confidential any and all Confidential Information that has come to the Receiving Party's attention in whatever form. Further, the Receiving Party shall use such Confidential Information exclusively for the purposes of the Project and in accordance with the instructions of the Disclosing Party.



- 2.2. The Receiving Party shall not disclose Confidential Information to third parties or publish Confidential Information at any time, whether directly or indirectly, except
 - a. if expressly permitted under this Agreement;
 - b. with the written prior consent of the Disclosing Party; or
 - c. if requested or required by applicable mandatory law or other applicable mandatory judicial or governmental order.
- 2.3. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information strictly on a need-to-know basis to its directors, officers, employees, agents, or Affiliates ("**Permitted Recipients**") who have a confidentiality obligation towards the Receiving Party for all received information, in each case only for the purposes of the Project. An "**Affiliate**" of either Party means any entity directly or indirectly, through one or more intermediaries, controlling, or controlled by, or under common control with that Party. The Receiving Party may only disclose Confidential Information to an Affiliate in the case that this Affiliate is not a competitor of the Disclosing Party.
- 2.4. Prior to disclosure of Confidential Information to Permitted Recipients, the Receiving Party shall (i) advise such Permitted Recipients of the confidential nature of such information and (ii) direct them to treat such information confidentially and to abide by the terms of this Agreement.
- 2.5. If the Receiving Party or any of its Permitted Recipients becomes legally compelled to disclose any of the Confidential Information, the Receiving Party will, to the extent legally permitted, provide the Disclosing Party with prompt prior written notice so that the Disclosing Party may seek (at its sole expense) a protective order or other appropriate remedy. In the event the Disclosing Party determines to seek such protective order or other remedy, the Receiving Party will exercise commercially reasonable efforts to cooperate with the Disclosing Party to obtain an appropriate protective order or other appropriate remedy or reliable assurance that confidential treatment will be accorded regarding the Confidential Information. In the event that such protective order or remedy is not obtained or if prior written notice is not legally permitted, the Receiving Party or the relevant Permitted Recipient shall disclose only such portion of Confidential Information which it is legally compelled to disclose and will exercise all commercially reasonable efforts to preserve its confidential nature.
- 2.6. The Receiving Party further undertakes to use commercially reasonable efforts to secure all Confidential Information and protect it against access by unauthorized persons. The Receiving Party shall, in particular, ensure that Confidential Information is protected with the same degree of care that would apply to its own Confidential Information, however, in no case with less than reasonable care.



3. Restitution and Deletion of Confidential Information

- 3.1. Upon written request, which may be delivered at any time, the Receiving Party shall promptly return or destroy all written Confidential Information disclosed to the Receiving Party or its Permitted Recipients, and all copies or transcripts made and other documents which contain Confidential Information and shall confirm compliance with this provision in writing upon written request. Notwithstanding anything to the contrary, nothing shall require the return or destruction of any Confidential Information if and to the extent the Receiving Party or any Permitted Recipient is required to retain such Confidential Information by any applicable mandatory law or other applicable mandatory judicial or governmental order. The obligations under this Agreement continue to apply to such retained Confidential Information notwithstanding any termination of this Agreement for so long as the Confidential Information is not returned and/or destroyed, as applicable.
- 3.2. The Parties nevertheless acknowledge that, due to the nature of computer information storage systems and email communications, even if a file is "**deleted**", a shadow or backup copy may remain within the Receiving Party's computer systems or its backup and/or electronic archive systems (collectively, "**Inadvertently Retained Files**"). The Receiving Party need not destroy Inadvertently Retained Files made in the ordinary course of business or remove any Inadvertently Retained Files where it would be commercially impracticable to do so. The Parties agree that retention of Inadvertently Retained Files by a Receiving Party shall not be deemed to constitute a breach of this Agreement. However, if any such Inadvertently Retained Files contain any Confidential Information, such Confidential Information shall remain confidential and subject to the limitations set forth in this Agreement.

4. Intellectual Property Rights

All Confidential Information disclosed to the Receiving Party shall remain the exclusive property of the Disclosing Party. Nothing in this Agreement shall be deemed to grant to the Receiving Party a license expressly or by implication under any copyright, trademark, or other intellectual property right. The Receiving Party hereby acknowledges and confirms that all existing and future intellectual property rights relating to the Confidential Information are the exclusive property of the Disclosing Party. The Receiving Party will not apply for or obtain any intellectual property protection in respect of the Confidential Information. The disclosure of any Confidential Information hereunder will not be considered a "**Publication**" thereof for copyright purposes, nor will it constitute the release of said Confidential Information into the public domain.

5. Injunctive Relief and Liability

- 5.1. The Receiving Party agrees to inform the Disclosing Party of any breach of the terms and provisions of this Agreement by itself or any Permitted Recipient promptly upon it has obtained knowledge thereof. The respective burden of proof that this Agreement was not



violated by the Receiving Party itself or by any person attributable to the Receiving Party rests with the Receiving Party in case the violation is a result of circumstances attributable to the sphere of the Receiving Party.

- 5.2. It is acknowledged and agreed by the Parties that any breach of this Agreement could cause another Party irreparable damages. In the event of a breach or threatened breach of any of the provisions of this Agreement, the injured Party shall be entitled to injunctive relief in court of competent jurisdiction restraining the injuring Party from breaching the terms hereof. In addition, the breaching Party will indemnify and hold the other Party harmless from any direct damages, loss, cost, or liability (including usual legal fees and the cost of enforcing this indemnity) arising out of or resulting from the breach of the terms of this Agreement or any other unauthorized use or disclosure by the breaching Party or its representatives of the Confidential Information.
- 5.3. Notwithstanding the above, in the event of a violation of this Agreement by the Receiving Party, the Receiving Party is obligated to pay to the Disclosing Party liquidated damages in the amount of EUR 5,000 (in words: five thousand Euros) for each individual breach, without prejudice to the right of the Disclosing Party to full compensation. However, the payment of such a penalty does not release the Receiving Party to respect and act in accordance with this Agreement.

6. Final Provisions

- 6.1. The Parties can also make any written declarations or statements in the form of an email to a previously notified email address.
- 6.2. This Agreement incorporates and replaces, particularly in case of contradictions, any agreement or understanding, express or implied, written or oral, between the Parties in relation to the Project. Modifications of any term of this Agreement must be effected in writing.
- 6.3. This Agreement enters into force on the Effective Date and will expire five years following the Effective Date. The Parties' respective confidentiality obligations under this Agreement with respect to the Confidential Information as set forth in clause 2 shall remain in force for an unlimited period. Neither Party shall be entitled to terminate this Agreement other than for good cause.
- 6.4. In the event that any provision of this Agreement is declared void and unenforceable in whole or in part, this finding shall not affect the validity of the remainder of this Agreement, and the remaining terms shall continue in full force and effect. If any such restriction shall be adjudged by any court of competent jurisdiction to be void or unenforceable as going beyond what is reasonable under the circumstances for the protection of the interests of the Disclosing Party but would be valid if part of the wording thereof was deleted and/or the



period thereof was reduced, the said restrictions shall apply with such modifications as may be necessary to make it valid and effective.

- 6.5. Neither Party may assign, delegate or transfer any of its rights, duties, or obligations hereunder, in whole or in part, without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent in conjunction with the transfer of substantially all of the Party's business or assets pertaining thereto, whether by merger, asset purchase, or other acquisition by law, provided that the acquiring Party agrees to be bound by the terms of this Agreement and is not a competitor of the non-assigning Party.
- 6.6. This Agreement shall exclusively be governed by and construed in accordance with Austrian law, excluding its conflict of law rules and the UN Convention on Contracts for the International Sale of Goods ("**CISG**").
- 6.7. With regard to any and all disputes arising from or in connection with this Agreement, the competent courts for commercial matters in the first district of Vienna, Austria, shall have exclusive jurisdiction.