

## TRADING PARTNER AGREEMENT – Non Disclosure Agreement

### 1. Effective Date

The effective date of this Non-Disclosure Agreement is: \_\_\_\_\_.

### 2. Parties

This Non-Disclosure Agreement (hereinafter the "Agreement") is entered into by and between:

\_\_\_\_\_(Company name),  
a company incorporated in \_\_\_\_\_  
\_\_\_\_\_(Country/State)  
and organised and existing under the laws of  
\_\_\_\_\_  
(Country/State), having its principal place of business  
at \_\_\_\_\_  
\_\_\_\_\_(Address)

(hereinafter "\_\_\_\_\_", or Party),

and

\_\_\_\_\_(Company name),  
a company incorporated in \_\_\_\_\_  
\_\_\_\_\_(Country/State)  
and organised and existing under the laws of  
\_\_\_\_\_  
(Country/State), having its principal place of business  
at \_\_\_\_\_  
\_\_\_\_\_(Address)

(hereinafter "\_\_\_\_\_", or Party).

Hereinafter collectively referred to as the Parties.

### 3. Purpose

Whereas the Parties may disclose proprietary and Confidential Information by exchanging Information electronically for the purpose of evaluating the feasibility and modality of possible business relationship between the Parties and for the purpose of the possible business relationship which is a consequence of said evaluation (hereinafter the "Purpose").

### 4. Definition of Confidential Information

Confidential Information under this Agreement shall mean any technical and commercial Information relating to respective businesses of each Party or Affiliates, including but not limited to facilities, products, documentations, specifications, know-how, techniques and processes and other Information pertaining to the business relationship, which is disclosed by one Party (hereinafter referred to as the "Discloser") to the receiving Party (hereinafter referred to as the "Recipient") under this Agreement whether in form of oral and visual disclosure, in writing, in graphic, electronic, or electromagnetic form and any derivatives of any of the foregoing.

### 5. Use of Confidential Information

The Parties agree that all Confidential Information disclosed hereunder in whatever form shall (a) not be used for any purpose other than the above-mentioned Purpose; (b) not be disclosed to third Parties without the prior written permission of the Discloser; (c) be kept as strictly confidential; (d) remain the property of the Discloser and shall not be copied or reproduced without the express written permission of the Discloser, except for such copies as may be absolutely necessary in order to perform the evaluation contemplated hereunder.

Upon expiration or termination of this Agreement, or within \_\_\_\_ (\_\_) days of receipt of Discloser's written request, Recipient shall return all Confidential Information to Discloser along with all copies and portions thereof, or certify in writing that all such Confidential Information has been destroyed.

### 6. Protection of Confidential Information

A Recipient shall protect the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Recipient uses to protect its own Confidential Information of a like nature.

<sup>1</sup>Each Recipient undertakes to restrict the use, the further disclosure and the access to Confidential Information to only those of its employees, to whom such access is necessary for carrying out the Purpose and advise such employees of the obligations assumed herein.

<sup>2</sup>The Recipient shall have a duty to protect only that Confidential Information which is (a) marked or identified as confidential or with similar identification(s) at the time of disclosure, or which is (b) disclosed by the Discloser in any other manner, e.g. orally, and is confirmed in writing as being confidential by the Discloser within thirty (30) days after the disclosure.

### 7. Exclusions

This Agreement imposes no obligation upon a Recipient with respect to the Confidential Information which (a) was in the Recipient's possession before receipt from the Discloser; (b) is or becomes a matter of public knowledge through no fault of the Recipient; (c) is rightfully received by the Recipient from a third Party without a duty of confidentiality; (d) is disclosed by the Discloser to a third Party without a duty of confidentiality on the third Party; (e) is independently developed by the Recipient without the use of any of

<sup>1</sup> This provision may be adapted depending on the Company's legal model.

<sup>2</sup> This provision may be adapted depending on the Company's legal model.

the Discloser's Confidential Information or any breach of this Agreement; (f) is disclosed under operation of law; or (g) is disclosed by the Recipient with the Discloser's prior written approval.

### 8. Affiliates

The Parties agree that (a) they both may disclose Confidential Information to their Affiliates but only to the extent that such Affiliates have a need to know for the purpose of carrying out the Purpose; (b) disclosure by or to an Affiliate of a Party hereto shall be deemed to be a disclosure by or to that Party and shall be governed by this Agreement, as applicable; (c) the employees of the Affiliates shall comply with the terms and conditions of this Agreement.

<sup>3</sup>Each Party's disclosures to its Affiliates shall be (a) defined under this Agreement before any Confidential Information is disclosed; and (b) limited to those Affiliates which are listed in section 16. The Parties agree that in case of any change regarding these lists each Party shall notify the other immediately, and that updates of these lists will be allowed only if duly authorized by both Parties.

For the purposes of this Agreement "Affiliate" shall mean any corporation, partnership, or other entity which, directly or indirectly, owns, is owned by, or is under common ownership with, such Party hereto, for so long as such ownership exists, and as long as at least fifty per cent (50%) of the outstanding shares, or securities, or other equity interests entitled to vote for the election of directors or other managing authority or governing body.

### 9. Proprietary Rights

Neither Party (a) acquires any intellectual property rights nor any other rights under this Agreement except the limited right to use set out in section 5 above; (b) is entitled to assign or transfer any of its rights, benefits and obligations under this Agreement without the prior written consent of the other Party.

### 10. Disclosure Period

This Agreement shall remain in force for a period of \_\_\_\_ (\_\_) year(s) as from the Effective Date. However, either Party may terminate this Agreement on \_\_\_\_ days (\_\_) written notice to the other, prior to its expiry.

The obligations linked to the confidentiality contained in this Agreement shall bind the Parties for a period of \_\_\_\_ (\_\_) years from the date of disclosure of Confidential Information, regardless of termination or earlier expiration of this Agreement.

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<sup>3</sup> This provision may be adapted or deleted depending on the Company's structure.

### 11. Export Administration

Each Party agrees to comply fully with all relevant export control laws that may apply to assure that (a) no Confidential Information or any portion thereof with respect to products and services is exported, directly or indirectly, in violation of the laws and applicable regulations of the country in which the Parties reside; (b) no Confidential Information will be used for any purpose prohibited by the laws that may apply including, without limitation, nuclear, chemical, or biological weapons proliferation.

### 12. Dispute Resolution

<sup>4</sup>A choice is to be made by the Parties between the two alternatives Arbitration clause and Jurisdiction clause.

#### Arbitration clause

Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration. The arbitrator is to be nominated by \_\_\_\_\_ (*Appointing authority*), in accordance with and subject to the rules or procedure of \_\_\_\_\_. The arbitration shall be held in \_\_\_\_\_ (*Country/State*).

#### Jurisdiction clause

Any dispute arising out of or in connection with this Agreement shall be referred to the courts of \_\_\_\_\_ (*Country/State*), which shall have sole jurisdiction. However, a Party shall furthermore have the right to sue the other Party in the courts at the other Party's domicile.

### 13. Applicable Law

This Agreement shall be construed and interpreted in accordance with the laws of \_\_\_\_\_ (*Country/State*), excluding its rules for choice of law.

### 14. Entire Agreement

This Agreement sets forth the entire Agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous agreements, representations, communications or understandings concerning such Confidential Information, whether written or oral. All additions or modifications to this Agreement must be made in writing and must be signed by both Parties.

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<sup>4</sup> This provision may be adopted or deleted depending on the Company's legal model.

**15. Miscellaneous**

Neither this Agreement nor disclosure or receipt of Confidential Information shall constitute or imply any promise or intention to make any purchase of products or services by either Party or any additional commitment, right or obligation by either Party with respect to the present or future marketing of any product or service or any promise, intention or obligation to enter into any other business arrangement of any kind.

All Confidential Information disclosed hereunder shall be provided by Discloser without representation or warranty of any kind.

Nothing in this Agreement shall be deemed to grant either Party a license directly or by implication under any patent, patent applications, trademark, copyright, design right (whether registrable or not) mask work rights, trade secrets, know-how or any other intellectual property right.

**16. List of the Affiliates**

<sup>5</sup> \_\_\_\_\_'s (Company A) Affiliates:

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\_\_\_\_\_ 's (Company B) Affiliates:

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<sup>5</sup> This provision may be adopted or deleted depending on the Company's legal model and on the business purpose.

**IN WITNESS WHEREOF**, the Parties hereto execute this Agreement.

----- (Company name)

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date/Place: \_\_\_\_\_

----- (Company name)

Signature: \_\_\_\_\_

Typed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date/Place: \_\_\_\_\_