

NON-DISCLOSURE AGREEMENT¹

This non-disclosure agreement (the “**Agreement**”) is dated [dd Month YYYY] and is between [Name of the Discloser], an Estonian private limited company with registry code [insert], address [insert], and e-mail address [insert] (the “**Discloser**”) and [Recipient's name], [Recipient's domicile and type] with registry code [insert], address [insert], and e-mail address [insert] (the “**Recipient**”) (each also a “**Party**” and together, the “**Parties**”).

This Agreement comprises the Outlined Terms in Section 1 and the Detailed Terms in Section 2.

1. OUTLINED TERMS

1.1	What is Confidential Information?
	“Confidential Information” is any information which is disclosed by the Discloser, its shareholders, affiliates or any of their representatives or advisers to the Recipient in connection with [describe the purpose]² (the “Purpose”), either orally, visually or in writing (including graphic material), whether before or after this Agreement is entered into, and which is disclosed on the express basis that such information is confidential or which should be treated as confidential in nature. If the Recipient is not sure whether certain information is confidential in nature and therefore Confidential Information, the Recipient shall consult with the Discloser. Confidential Information includes, without limitation: 1.1.1 business, financial, operational, technical, administrative, marketing, planning, customer and supplier details, business opportunities, staff information and personal data³ relating to the Discloser; 1.1.2 proprietary information, data, know-how, formulae, processes and engineering processes, strategies, designs, photographs, drawings, specifications, software, inventions, patents, technology, hardware configuration information, samples, technical literature and data or other material attributable to or deriving its existence from discussions relating to the Purpose; 1.1.3 any notes, extracts, analyses, or materials prepared by or on behalf of the Recipient which are copied or derived from Confidential Information. Without limiting the aforesaid, the following is definitely considered Confidential Information: (a) [insert]⁴
1.2	What is not Confidential Information?
	Information is not Confidential Information if it: 1.2.1 is or becomes generally available to the public or enters the public domain other than due to a breach of this Agreement; or 1.2.2 was lawfully and independently received by the Recipient from a third party without any obligation of confidence at the time of receipt.

¹ NOTE TO DRAFT: This agreement is intended to be used in cases where only one party intends to disclose its confidential information to the other. If both parties are going to disclose their information, use the ‘Mutual Non-Disclosure Agreement’.

² NOTE TO DRAFT: Some standard Purposes could be: (a) investigating and evaluating the Discloser for possible acquisition of the shares in the Discloser by the Recipient (b) negotiating and signing xxx agreement (c) preparation and negotiations for cooperation in xxx.

³ NOTE TO DRAFT: This NDA is not drafted for disclosing or handing over large amounts of personal data. Should this be required, please do not use this agreement and seek legal assistance, if necessary.

⁴ NOTE TO DRAFT: For example: (a) Software X; (b) the business plan disclosed to Recipient on yyyy-mm-dd. Remove, if there is no specifically confidential information to outline.

1.3 Contractual Penalty⁵

Upon each individual breach of this Agreement, Recipient shall pay to Discloser, upon its request, a contractual penalty of EUR [insert].

2. DETAILED TERMS

2.1 Protection of Confidential Information

2.1.1 The Recipient shall:

- (a) use Confidential Information only for the Purpose;
- (b) treat all Confidential Information as being strictly confidential and implement and maintain all such technical and organizational security measures as may be reasonably available (having regard to technical developments at the time) and as are appropriate in the circumstances to protect Confidential Information against unauthorized or unlawful processing, accidental loss, distribution or damage;
- (c) in case Confidential Information includes personal data, follow the Discloser's instructions on processing personal data and adhere to the applicable data protection regulation;
- (d) not, without the express prior written consent of the Discloser, disclose any Confidential Information to any person other than its advisers and members of governing bodies, directors, officers, members, employees, agents, managers, consultants, and individuals seconded to work (the "**Representatives**") required to carry out the Purpose, and will ensure that all those to whom Confidential Information is disclosed are aware of and observe the terms of this Agreement in all respects as if they were a party to this Agreement;
- (e) procure confidentiality undertakings from any third party to whom Confidential Information is disclosed pursuant to this Agreement;
- (f) only make physical copies of Confidential Information to the extent strictly necessary for the Purpose;
- (g) not copy or store Confidential Information electronically or transmit it outside Recipient's usual place of business, unless otherwise agreed between the Parties in writing; and
- (h) not, without the Discloser's prior written consent, use Confidential Information for its advantage, commercial or otherwise.

2.1.2 Notwithstanding the foregoing, disclosure of Confidential Information is not considered a breach of this Agreement if the Recipient is required to disclose it by applicable law or a court of competent jurisdiction, but only to the minimum extent of such requirement and provided that the Recipient, to the extent permitted by applicable law, gives the Discloser prior advance notice before making such disclosure so as to afford the Discloser a reasonable opportunity to object to and obtain a protective order or other appropriate relief regarding such disclosure.

2.1.3 The Recipient shall notify the Discloser immediately in writing if it becomes aware that Confidential Information has been disclosed to an unauthorised third party and take all reasonable measures to prevent or reduce damage to the Discloser.

⁵ NOTE TO DRAFT: If you choose to not use the penalties, (e.g., because the other party's corporate policy forbids them to sign any NDAs containing contractual penalties), remove this entire Section 1.3. This does not exclude the Parties' liability for damages caused by the breach of confidentiality.

2.2 Intellectual Property, no warranty

2.2.1 Except for the limited right to use Confidential Information for the Purpose, this Agreement does not grant the Recipient any right to such information, including to use, sell, copy, further develop or create derivative works based on such information. The Recipient agrees that:

- (a) all documents and other materials containing Confidential Information, and any parts or copies of Confidential Information, will always remain the property of the Discloser; and
- (b) the Discloser and/or its licensors (as applicable) will retain all intellectual property rights in Confidential Information always and for all purposes; any economic copyright in any materials produced by or under control of the Recipient relating to Confidential Information shall be automatically transferred to the Discloser as from the creation of such materials.

2.2.2 The Discloser makes no representation or warranty as to the accuracy, completeness or otherwise of Confidential Information supplied, and the Recipient agrees that it is responsible for making its own evaluation of such information. The Recipient agrees that unless and until a definitive agreement with respect to the Purpose shall have been executed, neither the Discloser, its shareholders nor any of their affiliates will be under obligation of any kind with respect to such a transaction by virtue of this agreement.

2.2.3 If the Discloser will, at any time after any disclosure of any Confidential Information hereunder, apply for a patent, utility model, industrial design, or any other form of industrial property containing the Confidential Information so disclosed, the Recipient shall never object to such application on the grounds of lack of novelty resulting from any disclosures made under this Agreement.

2.3 Return of Confidential Information

2.3.1 If the Parties' discussions relating to the Purpose terminate, and in any event on the Discloser's written request, the Recipient will promptly:

- (a) return to the Discloser all Confidential Information (and any copies of it) in the Recipient's control or possession;
- (b) delete and destroy all Confidential Information from any computer or data storage system into which it was entered (however, any copies of Confidential Information contained in scheduled backups of the Recipient's data storage systems may be retained until the end of the scheduled retention period of such backups); and
- (c) if required by the Discloser at any time, certify in writing that the provisions of paragraphs (a) and (b) above have been complied with.

2.4 Contractual penalties and damages

2.4.1 Each contractual penalty (if set forth in the Outlined Terms) 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 a penalty exists regardless of the actual damage caused by the relevant breach.

2.4.2 Before the Discloser becomes entitled to claim any penalty or damages hereunder, the Recipient must be given a reasonable term (being no less than 30 days) to cure the respective breach and its negative consequences. In case the breach and its negative consequences are not cured entirely during the described cure period or the breach is not curable, the respective Parties will become entitled to claim the penalty hereunder.

2.4.3 A Party entitled to claim any contractual penalty or damages under this Agreement loses such right only if it fails to notify the Party in breach of its intention to claim the penalty or damages within six (6) months after the entitled Party becomes aware of the respective breach.

2.4.4 In case the Recipient breaches this Agreement, the Discloser 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. For the sake of clarity, if no penalties have been set forth in the Outlined Terms, then the Discloser is still entitled to claim damages.

2.5 Notices

All notices and other communications made or to be made under this Agreement shall be made in English in writing or in a form reproducible in writing (unless a written form is explicitly required hereunder) and shall be given to the addressees listed in the first page of this Agreement. Each Party may change the addresses given above or designate additional addresses for the purposes of this Section 2.5 by giving the other Party notice of the new address in writing.

2.6 Amendments

Any amendments to this Agreement are valid only if made in writing.

2.7 Entire agreement, severability, no waiver

2.7.1 This Agreement constitutes the full and entire understanding and agreement between the Parties regarding the subject matter hereof and supersedes any agreement or understanding between the Parties prior to the signing of this Agreement.

2.7.2 If any provision of this Agreement is held to be invalid or unenforceable, all other provisions will remain in full force and effect and will not in any way be impaired. The Parties agree to replace the invalid or unenforceable provision with a valid and enforceable provision, which shall best reflect the Parties' original intention and shall to the maximum extent possible achieve the same economic result.

2.8 Rules of interpretation

2.8.1 If there is a conflict between the Detailed Terms and the Outlined Terms, then the Outlined Terms shall prevail.

2.8.2 References to the word "include" or "including" (or any similar term) are not to be construed as implying any limitation and general words introduced by the word "other" (or any similar term) shall not be given a restrictive meaning because they are preceded or followed by words indicating a particular class of acts, matters or things.

2.8.3 Except where the context specifically requires otherwise, words importing one gender shall be treated as importing any gender, words importing individuals shall be treated as importing corporations and vice versa, words importing the singular shall be treated as importing the plural and vice versa, and words importing the whole shall be treated as including a reference to any part thereof.

2.9 Governing law and jurisdiction

2.9.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of Estonia.

2.9.2 Any disputes resulting from this Agreement will be resolved in the Harju County Court as the court of first instance.

PARTIES' SIGNATURES:

The DISCLOSER:	Signature, date	The RECIPIENT:	Signature, date
[Representative's name] [Representative's title]	/ signed electronically /	[Representative's name] [Representative's title]	/ signed electronically /