

**M&A PORT**

SAMPLE NON-DISLOSURE AGREEMENT

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1. this sample agreement is structured for M&A transactions in which the interested party considers making an equity investment in a particular company and to this end, the interested party concludes an agreement directly with the company (i.e. not with its equity partner[s]);
2. this sample agreement primarily protects the company and does not reflect in particular some of the legitimate interests of interested parties/investors that may arise in specific cases;
3. each business case is unique and may require specific adjustments to this sample agreement;
4. if the interested party is a competitor of the target company, the exchange of certain commercially sensitive information is prohibited in order not to classify the exchange of information as prohibited cartel conduct, or it is necessary to set up special teams of both parties (*clean teams*) under stricter contractual conditions for the exchange of such information; and
5. this sample agreement contains information that needs to be completed or adjusted according to the circumstances of specific business cases and, at the same time, in some parts it also contains variants of individual provisions in brackets.

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NON-DISCLOSURE AGREEMENT

(the “**Agreement**”)

Concluded on the day, month and year stated below by and between:

1. **[●]**, with its registered seat at [●], Corporate ID No.: [●], registered in the Commercial Register maintained by the [●] court in [●], file No. [●]

(the “**Company**”),

and

1. *[OPTION A: INTERESTED PARTY – LEGAL ENTITY]*

**[●]**, with its registered seat at [●], Corporate ID No.: [●], registered in the Commercial Register maintained by the [●] court in [●], file No. [●]

*[OPTION B: – INTERESTED PARTY – INDIVIDUAL]*

**[●]**, date of birth [●], residing at [●]

(the “**Interested Party**”),

(the Company and the Interested Party together also referred to as the “**Parties**” and each of them individually as the “**Party**”).

WHEREAS

1. The Company and the Interested Party have expressed an interest in entering into preliminary non-binding negotiations regarding [the possible equity investment of the Interested Party in the Company] or other similar forms of transaction (hereinafter referred to as the "**Contemplated Transaction**").
2. In connection with the Contemplated Transaction, selected documents or other information carriers containing information about the Company and entities controlling it or controlled by it and entities controlled by the same controlling entity in terms of Section 74 et seq. of Act No. 90/2012 Coll., on Commercial Companies and Cooperatives, as amended (in relation to anyone below the "**Related Parties**"), and the Interested Party may also be acquainted with the Company's equity or certain facts that form part of the trade secret of the Company or its Related Parties in terms of Section 504 of Act No. 89/2012 Coll., the Civil Code, as amended (the "**Civil Code**") and/or need to be kept confidential under this Agreement in terms of Section 1730 (2) of the Civil Code.
3. The Parties consider it necessary to modify the rights and obligations in handling the information covered by this Agreement in order to sufficiently protect the interests of the Company and its Related Parties.

THEREFORE, THE PARTIES ENTER INTO THE FOLLOWING AGREEMENT:

1. CONFIDENTIAL INFORMATION
   1. This Agreement applies to all information of any nature relating to the Company or its Related Parties and to all deeds, documents, including electronic documents and files and other information carriers, which will be made available to the Interested Party in any form by the Company, its employees, agents, contractual partners and/or professional advisors (the "**Representatives**") in connection with the Contemplated Transaction and for the purposes set forth in this Agreement, and to information about any negotiations conducted between the Interested Party and the Company or its Representatives in connection with the Contemplated Transaction and their content, including the fact that such negotiations have been initiated and conducted (the "**Confidential Information**").
   2. If certain information having the nature of Confidential Information is transmitted orally, in particular during negotiations, such oral information shall be subject to the same protection regime as the Confidential Information.
   3. For the avoidance of doubt, the Confidential Information under this Agreement shall also include any outputs, abstracts, summaries, analyses and any other reports prepared by the Interested Party in any form and of any nature based on or using the Confidential Information.
   4. The Interested Party acknowledges the top-secret and confidential nature as well as the ownership of the Confidential Information to which it obtains access or which will be disclosed to it and undertakes to treat all Confidential Information only under the conditions set forth in this Agreement.
2. OBLIGATIONS OF THE INTERESTED PARTY
   1. The Interested Party hereby undertakes to:
      1. maintain confidentiality in respect of the Confidential Information;
      2. keep the Confidential Information secret and secure from possible disclosure or access by persons other than those authorised under this Agreement, at least with such care and use of such technical and organisational means that it uses to conceal its own trade secret, sensitive private and confidential information, but always with at least reasonable care consistent with the high confidentiality of the Confidential Information; and
      3. use the Confidential Information solely for the purpose of assessing the Contemplated Transaction and possibly making an offer to execute the Contemplated Transaction or other steps in connection with the Contemplated Transaction (the "**Permitted Purpose**").
   2. The Interested Party may only disclose the Confidential Information to:
      1. the statutory bodies of the Interested Party (if it is a legal entity) [and its Related Parties];
      2. selected employees of the Interested Party [and its Related Parties], or cooperating persons of the Interested Party [and its Related Parties], for whom it is necessary to have access to the Confidential Information in order to fulfil the Permitted Purpose; and
      3. professional advisors of the Interested Party [and its Related Parties], in particular legal and tax advisors, banks and financial advisors of the Interested Party [and its Related Parties],

whereby the Interested Party shall ensure that any person to whom the Confidential Information is disclosed pursuant to Articles 2.2.1 to 2.2.3 above: (i) is informed of the private and confidential nature of the Confidential Information, together with restrictions on its use and disclosure, and (ii) prior to providing access to such Confidential Information, is bound by a duty of confidentiality at least to the extent of the Interested Party's obligations under this Agreement. The Interested Party undertakes to ensure that the Confidential Information is not disclosed to any person other than the persons referred to in Articles 2.2.1 to 2.2.3 above, and that the confidentiality of the Confidential Information will be ensured even after the persons referred to in Articles 2.2.1 to 2.2.3 above have terminated their cooperation with the Interested Party.

* 1. The Interested Party is entitled to make copies of the Confidential Information only if the Permitted Purpose strictly requires it (the “**Copies**”). The Copies are all means by which the contents of any document or other medium containing the Confidential Information are copied, whether they are individual copies (copies of individual pages or individual files) or file copies (copies of multiple pages or entire directories), regardless of the form of such copying. Copying also means sending an electronic attachment.
  2. The Interested Party is obliged to immediately inform the Company, or its Representative, of the loss or theft of any media containing the Confidential Information (including the Copies thereof), the leakage of the Confidential Information in another way, or of any other situation the result of which is or may be a breach of the Interested Party's obligations under this Agreement.
  3. The Company agrees that the Interested Party is not obliged to keep confidentiality in respect of the Confidential Information:
     1. which is or becomes public knowledge without thereby violating this Agreement;
     2. which was demonstrably and otherwise known to the Interested Party than as a result of a breach of any legal regulation prior to signing this Agreement;
     3. to the provision or disclosure of which the Company has given its explicit written consent in advance;
     4. the provision or publication of which is required on the basis of a decision of a court or public authority, provided that the Interested Party immediately notifies the Company in writing to this effect so that the Company, with the full cooperation of the Interested Party, which the Interested Party undertakes to provide, may exercise the appropriate remedy, and if such a remedy is not available or is not successfully used, the Interested Party will only provide that part of the Confidential Information that is strictly required in accordance with the law; or
     5. whose communication to the competent court, arbitration court or public administration body is necessary for the exercise of the rights and legitimate interests of the Interested Party, while the Interested Party undertakes to protect the Confidential Information from disclosure within the relevant proceedings to the maximum extent permitted by law.
  4. During the term of this Agreement, the Interested Party is also obliged to refrain from any communication, even oral, with any person who is a body or member of a body, employee, supplier or purchaser of goods, services or activities, or a person in a similar position as such persons, towards the Company or its Related Parties (the "**Protected Parties**") if such communication is conducted by the Interested Party with the intention or effect of:
     1. informing the Protected Party of the Contemplated Transaction; or
     2. obtaining information from the Protected Party that would otherwise be the Confidential Information (with the exception of the Confidential Information provided to the Interested Party by one of the Protected Parties intentionally and in direct connection with the Contemplated Transaction); or
     3. offering the Protected Party an employment, business or similar opportunity or relationship outside the Company or the Related Party; or
     4. encouraging the Protected Party to terminate its relationship with the Company or the Related Party, if any,

while the Parties agree that the above limitation shall not apply in the event that such communication between the Interested Party and one of the Protected Parties was demonstrably initiated before the signing of this Agreement and the Interested Party has fully informed the Company of such communication.

* 1. The Company does not provide and the Interested Party does not accept any licenses regarding the Confidential Information (copyrights, patents, trademarks, etc.). The ownership and intellectual property rights of the Company relating to the Confidential Information provided to the Interested Party remain unaffected.
  2. In the event that, for any reason, the negotiations on the Contemplated Transaction between the Company and the Interested Party are terminated or this Agreement is cancelled, or if the Interested Party is requested to do so in writing by the Company (whichever of these moments occurs earlier), the Interested Party is obliged to return all Confidential Information received by it and all Copies thereof to the Company without delay, except as provided by law or if the retention of the relevant Confidential Information is necessary for the purpose of exercising the rights and legitimate interests of the Interested Party. If it is not possible to return them, or if the Interested Party is requested to do so in writing by the Company, the Interested Party shall destroy the previously received Confidential Information and all Copies thereof, except in cases provided for by law. The obligation under this Article shall not apply to the termination of this Agreement under Article 4.15 of this Agreement.
  3. The Interested Party further agrees that the provisions of this Agreement relating to the protection of the Confidential Information shall continue to be in force and effect notwithstanding any return or extinction of the Confidential Information.
  4. The Interested Party agrees that the Company is entitled to check the fulfilment of the Interested Party's obligations under this Agreement at any time for the duration of these obligations and using reasonable means. At the written request of the Company, the Interested Party is obliged to reasonably demonstrate compliance with the obligations under this Agreement. Whether the method of proof chosen by the Interested Party according to the previous sentence is sufficient is entirely within the discretion of the Company.

1. liability and sanctions for breaches of the AGREEMENT
   1. The Interested Party acknowledges that the Confidential Information has a tangible as well as intangible value and contains trade secrets and property-usable information of the Company, or the Related Parties, and that if there is a breach of any provision of this Agreement, the Company and the Related Parties may incur irreparable material and non-material damage, or unjust enrichment may occur on the part of the Interested Party.
   2. The Interested Party undertakes to compensate the Company, or any Related Party, for material and/or non-material damage or any unjust enrichment that arises as a result of a breach of any obligation of the Interested Party under this Agreement. Regardless of which person caused the breach of the Interested Party's obligations under this Agreement and regardless of whether the breach occurred through the Confidential Information or the Copies thereof, the liability for the breach of the Agreement shall always be on the part of the Interested Party.
   3. [In the event of a breach of any obligation of the Interested Party under this Agreement, the Parties further agree on a contractual penalty in the amount of CZK [●] (in words: [●] Czech crowns) for each individual breach of the Interested Party's obligations (the "**Contractual Penalty**"). The Interested Party is obliged to pay the Contractual Penalty to which the Company is entitled under the previous sentence within ten (10) calendar days of the date of delivery of the call for its payment.]
   4. [The arrangement or payment of the Contractual Penalty shall not affect the right of the Company or any Related Party to compensation for damage caused by a breach of obligations secured by the Contractual Penalty, even in an amount exceeding the Contractual Penalty.]
2. FINAL PROVISIONS
   1. For the avoidance of any doubt, the Parties expressly state that they do not agree to exclusivity in relation to the subject matter of the Contemplated Transaction. Nothing in this Agreement shall be construed as an obligation of either Party to initiate any discussion, negotiation or conclusion of any agreement with the other Party, unless otherwise provided by another document binding on the Parties.
   2. This Agreement, as well as all non-contractual obligations related to this Agreement, shall be governed by the laws of the Czech Republic. All disputes arising out of or in connection with this Agreement shall be settled by the general court of the Company with subject-matter jurisdiction pursuant to Section 85 of Act No. 99/1963 Coll., the Code of Civil Procedure, as amended.
   3. Amendments to this Agreement may only be made on the basis of written amendments approved and signed by both Parties. The Parties exclude the application of the provisions of Section 582 (2) of the Civil Code and agree that the invalidity of a legal act amending or supplementing this Agreement for the lack of written form may be objected to even after it has already been performed.
   4. No waiver of a breach of obligations under this Agreement or a waiver of an objection relating to acts or omissions related to a breach of obligations under this Agreement shall be deemed a consent to the continuation of the breach of obligations, act or omission, unless it is in writing and signed by the Party from which such waiver or consent is sought.
   5. Obligations under this Agreement are not territorially limited.
   6. For the avoidance of doubt, both Parties declare and confirm that they conclude this Agreement as entrepreneurs in the course of their business, and therefore the provisions of Section 1793 et seq. and Section 1796 et seq. of the Civil Code do not apply.
   7. No obligation or liability under this Agreement shall have the nature of a fixed obligation in terms of Section 1980 of the Civil Code. The Company and the Interested Party hereby assume the risk of a change in circumstances pursuant to Section 1765 (2) of the Civil Code.
   8. The Parties have agreed that to the extent permissible under effective law, the following provisions do not apply to this Agreement (even analogically): Section 557, Section 558 (2) (second sentence), Section 1727 (second and third sentences), Section 1728, Section 1729, Section 1740 (3), Section 1748, Section 1765, Section 1766, Section 1793 to Section 1796, Section 1799, Section 1800, Section 1805 (2), Section 1885, Section 1899, Section 1918 (second sentence), Section 1925, Section 1930 (2) (first and second sentences), Section 1932, Section 1936, Section 2002 (2), Section 2177, Section 2399 (2) and Sections 2431 to 2444 of the Civil Code.
   9. If any provision of this Agreement is or becomes invalid or unenforceable, it shall not affect the validity or enforceability of any other provision of this Agreement. The same is agreed in the event that any of the provisions of this Agreement are found to be null (and void) in terms of Section 553 (1) of the Civil Code. Both Parties undertake to replace any invalid, ineffective or unenforceable provision of this Agreement with a new provision, which is as close as possible to the replaced provision in terms of purpose and economic significance.
   10. Without the prior written consent of the Company, the Interested Party is not entitled to assign or transfer any rights or obligations arising out of or in connection with this Agreement. Without the prior written consent of the Interested Party, the Company is entitled to assign or transfer any rights or obligations arising out of or in connection with this Agreement to the Related Party. Any Related Party of the Company may invoke the Company's rights under this Agreement.
   11. Unless otherwise provided in this Agreement, neither Party shall set off any of its obligations under this Agreement otherwise than by written agreement with the other Party.
   12. This Agreement shall be drawn up in two (2) counterparts, of which each Party shall receive one.
   13. The Parties hereby declare that they have not concealed any fact that could affect the conclusion of this Agreement or significantly affect the obligations under this Agreement for either Party, and at the same time, they are not aware of any fact that could lead to the invalidity or ineffectiveness of this Agreement.
   14. The Parties declare that they have read this Agreement before signing it, that they have understood it and that this Agreement has been concluded after mutual consultation, on the basis of their true and free will. In accordance with Section 4 (1) of the Civil Code, where it is considered that every person having legal capacity has the intellect of an average person and the ability to use it with ordinary care and caution and that everyone can reasonably expect every such person to act in that way in legal relations, the Parties have assessed the content of this Agreement and do not find it contradictory, which they confirm by their signature.
   15. This Agreement shall enter into force and effect on the date of its signature by both Parties. The Parties further agree that in the event that the Contemplated Transaction is successfully executed between them and settled, this Agreement shall be terminated by a written agreement of the Parties no later than the settlement date of the Contemplated Transaction, unless otherwise agreed by the Parties.

[THE SIGNATURES OF THE PARTIES FOLLOW]

|  |  |
| --- | --- |
| **COMPANY:** |  |
| Place: \_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_  On behalf of[INSERT THE BUSINESS NAME]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Position: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Position: |
| **INTERESTED PARTY**: |  |
| Place: \_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_  On behalf of [INSERT THE BUSINESS NAME]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Position: | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Position: |

Obsah obrázku text

Popis byl vytvořen automaticky