

Non-disclosure Agreement and Data Protection Obligations ("Non-disclosure Agreement")

between

contract partner

and

d.velop AG,
Schildarpstrasse 6-8,
48712 Gescher

(referred to hereinafter individually as "Party" or jointly as "Parties")

1 Business and Legal Purpose of the Non-disclosure Agreement

- 1.1 The Parties intend to enter into a business relationship or are already in such a business relationship. In the course of initiating, executing and/or terminating the business relationship, each Party shall obtain or use trade secrets of the other Party (hereinafter collectively referred to as the "business purpose").
- 1.2 This Non-disclosure Agreement serves to safeguard both Parties against any use of trade secrets contrary to or deviating from the business purpose, and to safeguard personal data and ensure data protection.
- 1.3 Unless otherwise indicated below, the Party that is the original, rightful owner of the trade secret shall be referred to as the "Entitled Party," while the other Party that obtains said trade secret shall be referred to as the "other Party."

2 Non-disclosure Agreement as Part of Future and Existing Contracts

- 2.1 This Non-disclosure Agreement shall become part of any future contract between the Parties. Further, this Non-disclosure Agreement supersedes all previous agreements on the protection of trade secrets in connection with the business purpose, including any agreements in existing contracts.
- 2.2 For each such contract concluded or already in existence, the business purpose (Section 1.1) also refers to the execution and/or termination of the business relationship under the respective contract.
- 2.3 This Non-disclosure Agreement shall not apply to future contracts if and insofar as the Parties specifically agree in the respective future contract to other provisions governing the safeguarding of trade secrets or data protection that are agreed as taking precedence over this Non-disclosure Agreement with respect to all or individual products/services or parts of the contract.

3 Definitions of Trade Secret and Third Party

- 3.1 This Non-disclosure Agreement defines trade secrets as set forth in the current version of the German Trade Secrets Act (GeschGehG) and based on the following provisions. A trade secret is any information:
- that is not generally known or readily accessible—neither in its entirety nor in the precise arrangement and composition of its components—to persons in groups that normally deal with this type of information and is therefore of economic value,
 - that is subject to appropriate confidentiality measures by its lawful holder under the circumstances, and
 - for which there is a legitimate interest in confidentiality.
- 3.2 Trade secrets may include but are not limited to financial, technical, economic, legal, fiscal, organizational, strategic or business-related factual information, as well as evaluations, intentions, experience and other information. The medium of information transfer is irrelevant; information transferred orally is also covered by the Non-disclosure Agreement. This Non-disclosure Agreement covers the trade secrets of the Entitled Party as well as those of its employees and entitled third parties.
- 3.3 Not considered a trade secret is any information
- that is known to the other Party prior to disclosure by the Entitled Party,
 - that is known to the public prior to disclosure by the Party,
 - that, after disclosure by the Entitled Party to the other Party, becomes known to the public without the cooperation or fault of the other Party,
 - that the other Party has learned of from an entitled third party who is not subject to secrecy vis-à-vis the Entitled Party regarding the information in question, or
 - that the other Party developed or had developed for it independently of knowledge of the information.
- 3.4 The other Party is deemed to have obtained a trade secret if the secret is disclosed to the other Party or to its employees or entitled third parties by the Entitled Party or by its entitled third parties.
- 3.5 At the request of the other Party, the Entitled Party shall at any time provide information as to whether a particular piece of information is a trade secret from the point of view of the Entitled Party. If the Entitled Party does not respond to such a request within one week of receipt, the information shall be deemed a trade secret.
- 3.6 This Non-disclosure Agreement defines “employees” as (i) persons in an employment or training relationship, (ii) members of governing bodies and/or (iii) members of supervisory bodies.
- 3.7 “Entitled third parties” include
- any companies affiliated with the Entitled Party within the meaning of Sections 15 et seq. of the German Stock Corporation Act (AktG) (or equivalent for legal forms other than a stock corporation),
 - any persons otherwise acting on behalf of the Entitled Party, and
 - contractual or business partners of the Entitled Party, in particular their suppliers/subcontractors and customers.
- 3.8 For the purposes of this Non-disclosure Agreement, “third party” refers to anyone who is not the Parties, their employees or their entitled third parties.

4 Obligations to Secrecy and Non-use

- 4.1 The other Party is obliged to treat a trade secret as strictly confidential and to use it, or allow employees and/or entitled third parties to use it, only if necessary for the business purpose. Furthermore, the other Party shall keep trade secrets confidential and shall protect them from access by third parties using appropriate technical and organizational secrecy measures. Any other use of trade secrets by the other Party for its own or for third-party business purposes is prohibited.
- 4.2 The other Party is not entitled to subject a trade secret to reverse engineering or to have one reverse engineered on its behalf. Mandatory rights of the other Party according to Section 69e of the German Act on Copyright and Related Rights (UrhG) remain unaffected.

5 Disclosure of Trade Secrets to Employees and Third Parties

- 5.1 In their capacity as the other Party, both Parties are obliged to disclose trade secrets only to those employees or entitled third parties who need them to achieve the business purpose and only to the extent that this is necessary to achieve the business purpose.
- 5.2 The Parties shall oblige their employees and entitled third parties to keep trade secrets confidential—to the extent legally permissible, in text form and identical in content to this Non-disclosure Agreement—before these employees or entitled third parties obtain knowledge of a trade secret.
- 5.3 If the entitled third party is a consultant to the Party (lawyer, tax advisor, auditor or company belonging to the aforementioned professional groups) who is bound by professional secrecy, a separate non-disclosure obligation is not necessary. In this case, the respective other Party undertakes not to release the consultants from their obligation of professional secrecy vis-à-vis third parties.

6 Rights to Trade Secrets

- 6.1 The rights of the Parties, their employees or their entitled third parties to their own trade secrets remain unaffected by this Non-disclosure Agreement. This Non-disclosure Agreement does not establish rights of use or other rights to trade secrets on the part of the other Party, its employees, its entitled third parties or third parties; such rights result exclusively from the contracts concluded or to be concluded under the business relationship.
- 6.2 Neither does this Non-disclosure Agreement give rise to any claims by the other Party, its employees, its entitled third parties or third parties to disclosure of certain trade secrets.

7 Objects Embodying Trade Secrets

- 7.1 Objects embodying trade secrets that the other Party obtains from the Entitled Party under this Non-disclosure Agreement shall remain the property of the Entitled Party. They are to be treated with the necessary care by the other Party and are subject to the same confidentiality obligations as the trade secret itself. Making copies of these objects, regardless of the medium, is permitted only insofar as is necessary to achieve the business purpose.
- 7.2 If the Entitled Party's ownership of objects embodying trade secrets that were provided to the other Party is endangered by seizure or confiscation, insolvency proceedings or other events or actions by employees, entitled third parties or third parties, the other Party shall inform the Entitled Party of this immediately in text form. At the same time, the other Party shall immediately notify in text form the employee, entitled third party or third party initiating the action that the ownership and responsibility for the objects lies exclusively with the Entitled Party.

8 Surrender, Destruction or Deletion of Objects and Trade Secrets

- 8.1 Objects pursuant to Clause 7, including any physical or non-physical copies of trade secrets, shall be returned to the Entitled Party at the request of the Entitled Party at any time, otherwise no later than upon termination of this Non-disclosure Agreement or the contract under which the object or trade secret was obtained. This shall not apply only insofar as the other Party is obliged to continue to store the objects or secrets due to the statutory storage obligations incumbent upon it; in this case, the object or secret shall be surrendered immediately after the statutory retention obligations have elapsed; the obligations arising from this Non-disclosure Agreement shall remain unaffected.
- 8.2 If the other Party is unable to surrender the objects in accordance with Clause 8.1, or if the Entitled Party waives its right to their surrender, or if the other Party holds other trade secrets that are not embodied in/by objects, the other Party shall destroy or delete the objects or trade secrets in accordance with the current state of the art at the request of the Entitled Party at any time, otherwise no later than upon termination of this Non-disclosure Agreement or the contract under which the objects or trade secrets were transferred or disclosed. The Entitled Party is entitled, at its discretion, to supervise the destruction or deletion by the other Party and/or to demand written confirmation of the destruction or deletion.
- 8.3 A right of retention on the part of the other Party to trade secrets and objects is excluded.

9 Obligations to Notify and Provide Evidence

- 9.1 At the request of the Entitled Party, the other Party shall immediately provide proof of compliance with Clauses 4.1 and 8.
- 9.2 Unless prohibited from doing so by mandatory statutory provisions, the other Party shall immediately notify the Entitled Party in text form and shall coordinate the further course of action if the other Party is requested to provide information by an authority, a court or any other body acting in a sovereign capacity, or if the other Party is subjected to a measure which may be enforceable by levy of execution and which is connected with the trade secrets.
- 9.3 The other Party shall pass on trade secrets in their entirety or individual parts thereof to the requesting party exclusively after prior approval from the Entitled Party, unless the other Party is obliged to provide information by mandatory statutory provisions or by legally binding judgments from courts or authorities or provisionally enforceable judgments without the provision of security or any other authorization to avert enforcement.

10 Data Protection

- 10.1 Processing of personal data concerning the other Party, its employees or its entitled third parties (hereinafter "data processing") shall only be permitted within the scope of the business purpose.
- 10.2 The Parties shall ensure compliance with all statutory provisions on data protection within their respective areas of responsibility.
- 10.3 Data processing shall take place exclusively within the territory of the Federal Republic of Germany, in a member state of the European Union or in another contracting state to the Agreement on the European Economic Area. Any transfer of data processing to a third country may take place only if the special conditions of Art. 44 et seq. of the GDPR are fulfilled.

- 10.4 The Parties shall only employ persons for data processing who have been obliged in text form to comply with the applicable data protection regulations, in particular those of the GDPR, and have been informed of the legal consequences of disregard; further, the Parties shall monitor compliance with data protection regulations by the persons employed on their end.

11 Liability of the Parties

- 11.1 An Entitled Party shall be liable for the accuracy or completeness of a trade secret or its suitability for a particular purpose only if a separate agreement has been concluded to this effect. This shall not apply in the event of willful misconduct or fraudulent intent on the part of the Entitled Party.
- 11.2 The parties are liable without limitation of the amount (i) for intentional or grossly negligent acts, (ii) for injury to life, body or health, (iii) in cases of fraudulent intent or if a guarantee was given in writing (Section 126 Para. 1 of the German Civil Code (BGB)).
- 11.3 For breaches of essential contractual obligations due to simple negligence, the liability of the Parties shall be limited to the contract-typical and predictable damage. Essential contractual obligations are those obligations whose fulfillment is a prerequisite for the proper performance of the contract and on whose fulfillment the respective Party may regularly rely. Liability for simple negligence that does not constitute a breach of essential contractual obligations is excluded, except in the cases set forth in Paragraph 1 of this Clause.
- 11.4 The aforementioned exclusions of liability shall also apply to the actions of the employees and entitled third parties of the liable Party.
- 11.5 Liability claims shall lapse after one year. Section 199 Para. 1 BGB shall define the start of the limitation period.

12 Costs

- 12.1 Any costs incurred by either Party in performing its obligations under this Non-disclosure Agreement shall be borne by that Party.

13 Duration of this Non-disclosure Agreement

- 13.1 This Non-disclosure Agreement shall enter into force upon signature. After the partnership has ended or contractual negotiations have been broken off, it shall continue to apply until the other Party has surrendered, destroyed or deleted all trade secrets and objects embodying trade secrets that belong to the Entitled Party.
- 13.2 The confidentiality and non-use obligations of the other Party shall remain unaffected by the termination of this Non-disclosure Agreement and shall end five years after the termination of this Non-disclosure Agreement or five years after the surrender, destruction or deletion of the objects and trade secrets, whichever is later.
- 13.3 With respect to an individual trade secret, the Non-disclosure Agreement shall terminate if the information ceases to be classified as a trade secret by virtue of Clause 3.3 or if the Parties waive compliance with the Non-disclosure Agreement.
- 13.4 The provisions on liability and the final provisions shall continue to apply after termination of this Non-disclosure Agreement until all rights and obligations of the Parties under this Non-disclosure Agreement have been fulfilled or otherwise settled.

14 Final Provisions

- 14.1 The Parties agree that this Non-disclosure Agreement does not create or intend to create a partnership under German civil law, a pre-registration company (Vorgesellschaft), a pre-formation company (Vorgründungsgesellschaft) or any other partnership.
- 14.2 Changes to, additions to or terminations of this Non-disclosure Agreement must be in text form in order to be effective. This also applies to any amendment to this form clause.
- 14.3 Should any provision of this Non-disclosure Agreement be or become invalid or void, in whole or in part, or should this Non-disclosure Agreement contain a loophole not considered by the Parties at the time of its conclusion, this shall not affect the validity of the remaining provisions.
- 14.4 This Non-disclosure Agreement shall be governed exclusively by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods and without giving effect to the principles of conflict of laws; Art. 3 Para. 3 and Para. 4 of the Rome I Regulation shall remain unaffected.
- 14.5 If the Parties are merchants ("Kaufleute") within the meaning of the German Commercial Code ("Handelsgesetzbuch"), legal entities under public law or special funds under public law ("öffentlich-rechtliche Sondervermögen"), the exclusive and international jurisdiction for all disputes arising directly or indirectly from this contractual relationship is Münster, Germany. This shall not apply if the dispute concerns claims other than proprietary claims or if the law establishes an exclusive place of jurisdiction for the dispute.