

NON-DISCLOSURE, NON- USE AND NON- CIRCUMVENTION

THIS NON-DISCLOSURE, NON-USE AND NON-CIRCUMVENTION AGREEMENT (this “Agreement”) dated _____, 20____ (the “**Effective Date**”) is made by and between LOGICDATA Electronic & Software Entwicklungs GmbH, Wirtschaftspark 18, 8530 Deutschlandsberg, Austria (“**LD-AT**”), and _____, a _____ with an address at _____ (the “**Company**”). LD-AT and the Company are sometimes referred to in this Agreement individually as a “**Party**” and sometimes collectively as the “**Parties**”.

BACKGROUND

Each Party possesses Confidential Information (as defined below), and the Parties desire to exchange their respective Confidential Information for an Authorized Purpose (as defined below) upon the terms and conditions of this Agreement. Neither Party would be willing to provide Confidential Information to the other Party without the execution and delivery of this Agreement by the other Party.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereby agree as follows:

1. DEFINITIONS

“**Affiliate**” means, with respect to any Party, any third party controlling, controlled by, or under common control with such Party. For purposes of this definition, “control” of a Party or third party means the possession, directly or indirectly, of the power to direct the management and policies of such Party or third party, whether through the ownership of voting securities, contract, or otherwise.

“**Authorized Purpose**” means any of the following **[SELECT ONE OR MORE OPTIONS FROM THE FOLLOWING LIST OR INSERT OTHER SPECIFIC PURPOSES. DELETE ANY OF THE FOLLOWING THAT DO NOT APPLY]:**

the purpose of evaluating whether to sell or provide the following goods or services to the other Party: **[INSERT APPLICABLE GOODS/SERVICES]**; the purpose of one Party evaluating whether to assist the other Party with the manufacture or distribution of such other Party’s products or services; the purpose of the Parties evaluating the mutual compatibility of their respective products or services; the purpose of each Party evaluating the desirability of forming a business relationship with the other Party; or the purpose of a Party fulfilling obligations or exercising rights under any agreement or contract to which the Parties become a party.

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A “**Disclosing Party**” means, as the case may be, LD-AT or the Company.

Where LD-AT is the Disclosing Party, the Company is the “**Receiving Party**,” and where the Company is the Disclosing Party, LD-AT is the “**Receiving Party**.”

2. CONFIDENTIAL INFORMATION

“**Confidential Information**” means all information, documents, and records concerning the business and affairs of a Disclosing Party or its Affiliates, including without limitation, financial statements, projections, budgets, and other financial information; information describing or relating to business, operational, marketing, and financial plans, strategies, relationships, customers, suppliers, and performance; trade secrets; product specifications and other product information; customer lists; supplier lists; market studies; business plans; and any other confidential or proprietary information. Confidential Information shall also include the fact that any negotiations or discussions have taken place, or are taking place, between LD-AT and the Company in connection with the Authorized Purpose. All of the foregoing shall be Confidential Information whether or not marked as “confidential” or “proprietary,” whether or not provided or existing in oral, written, electronic, or other form, and regardless of the source of disclosure to the Receiving Party. Confidential Information shall also include all notes, databases, summaries, analyses, documents, models, prototypes, electronic media storage devices, and other records containing or embodying any, or based on, Confidential Information, regardless of who prepared them.

Notwithstanding the foregoing, Confidential Information will not include: (i) information that is or becomes available to the general public through no wrongful act of, or breach of this Agreement by, the Receiving Party; (ii) information that the Receiving Party receives from a third party; (A) without restriction as to use or disclosure; and (B) without the breach or violation of any agreement; contractual, legal, or fiduciary duty; or applicable law, court order, or regulation; (iii) information which is independently developed by employees of the Receiving Party having no access to, and without the benefit of or reference to, the Confidential Information; or (iv) information which was rightfully in the possession of the Receiving Party prior to disclosure by the Disclosing Party. Each of the foregoing exceptions are effective only after the date of the event described in each, and each of the foregoing enumerated exceptions must be established by independent documentary proof by the Receiving Party.

3. RESTRICTIONS

A Receiving Party shall not, directly or indirectly, use any of the Confidential Information except for the limited purpose of an Authorized Purpose. The Parties expressly agree, that the Receiving Party shall not use Confidential Information in the development of any products, services or business relationships for its own account or for the account of a third party unless expressly agreed to by the Disclosing Party in writing. Except as provided in Section **Fehler! Verweisquelle konnte nicht gefunden werden.**, a Receiving Party: (a) shall keep confidential all Confidential Information; and (b) shall not, directly or indirectly, disclose,

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reveal, or allow to be revealed to any third party any Confidential Information. The Receiving Party shall employ the same security measures to Confidential Information that it would apply to its own confidential information (but in no event less than a reasonable degree of care).

A Receiving Party may only disclose Confidential Information to its directors, officers, managers, members, and employees who have a need to know such Confidential Information in connection with an Authorized Purpose and who agree to comply with this Agreement. A Receiving Party shall be fully responsible for any failure to comply with this Agreement by its directors, officers, managers, members, and employees while they are directors, officers, managers, members, and employees and subsequently. The provisions of this Agreement shall apply whether Confidential Information was disclosed to a Receiving Party prior to or after the Effective Date.

Upon the request by a Disclosing Party, the Receiving Party shall cease use of the Confidential Information and promptly destroy or return to the Disclosing Party all notes, databases, summaries, analyses, documents, models, prototypes, electronic media storage devices, and other records containing or embodying any, or based upon, Confidential Information whether they were originally provided to the Receiving Party by the Disclosing Party or whether they were produced by the Receiving Party after receiving Confidential Information, together with a certificate signed by the Receiving Party certifying that all such materials in the Receiving Party's possession have been delivered to the Disclosing Party and all such electronic copies of the Confidential Information have been permanently destroyed.

A Receiving Party may only disclose Confidential Information to an Affiliate which has a need to know such Confidential Information in connection with an Authorized Purpose and who agrees to comply with this Agreement as though such Affiliate were a party to this Agreement. A Receiving Party shall be responsible and liable for any breach of this Agreement by any of its Affiliates. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not, and is not intended in any way to, prohibit a Party from using or disclosing its own Confidential Information.

4. LEGALLY COMPELLED DISCLOSURE

If a Receiving Party is required by law, including without limitation any subpoena or court order issued by a court of competent jurisdiction, to disclose any of the Confidential Information, the Receiving Party will (to the extent it may legally do so) give prompt and prior written notice of the required disclosure to the Disclosing Party so that the Disclosing Party may seek a protective order or other appropriate remedy, and the Receiving Party will cooperate with the Disclosing Party with respect to the Disclosing Party's efforts (at the expense of the Disclosing Party) to resist or narrow the scope of such required disclosure. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Disclosing Party, the Receiving Party is nonetheless legally compelled to disclose Confidential Information, the Receiving Party may disclose only that portion of the Confidential Information which the Receiving Party is legally

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required to be disclosed.

5. OWNERSHIP. NO REVERSE ENGINEERING

The Disclosing Party shall remain the sole owner of all rights, title, and interest in and to the Disclosing Party's Confidential Information. Except for the limited right to use the Disclosing Party's Confidential Information for the Authorized Purposes, the Disclosing Party does not grant, and the Receiving Party does not obtain, any express, implied, or other license of or any other rights in any of the Confidential Information (or any trademarks, trade names, patents, or other property or rights of the Disclosing Party or its Affiliates) by virtue of this Agreement or the disclosure of Confidential Information.

Notwithstanding anything else in this Agreement to the contrary, without the prior written consent of the Disclosing Party, a Receiving Party shall not, and shall not attempt to: (i) modify, disassemble, decompile, reverse engineer, or otherwise open any software, hardware, product, or other device provided or disclosed by the Disclosing Party to the Receiving Party; or (ii) access the underlying design information or source code of any object or executable code, encrypted or other obfuscated information, prototype, sample, or other tangible object provided by the Disclosing Party.

6. NON-CIRCUMVENTION

The Company agrees for itself, its Affiliates, their officers, directors, employees, associates and related parties, that they will not direct or indirect, contact, deal or otherwise become involved with any entity or any other entities or parties introduced, directly or indirectly, by or through the other Party, its officers, directors, agents or associates, for the purpose of avoiding the payments to LD-AT, of profit, fees or otherwise, or enticing LD-AT customers or suppliers without the specific written approval of LD-AT.

7. PENALTY

In case Company infringes this Agreement, in particular uses the Confidential Information for any other purpose than for the performance of this Agreement or the business relationship between the Parties, reverse engineer or circumvent Company shall pay a contractual penalty in the amount of EUR 500.000 for each infringement to LD-AT, regardless of negligence or fault and without LD-AT having to prove a damage. If LD-AT is able to prove damage higher than the contractual penalty, LD-AT shall have the right to claim any damage exceeding the contractual penalty.

8. TERM

All Confidential Information shall be safeguarded as required by this Agreement for a period of six (6) years from the date of disclosure or any other longer period permitted by the applicable law; provided, however, that any Confidential Information that is a trade secret shall be safeguarded as required by this Agreement in perpetuity or for so long as such information

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remains a trade secret. The Parties specifically acknowledge that the term of this Agreement is reasonable and properly required for the protection of the Disclosing Party's legitimate business interests. In the event that the term is deemed by a court of competent jurisdiction to cause this Agreement to be invalid or unenforceable, then the Parties specifically intend for such court to impose any such time limitation as such court shall deem reasonable.

9. EQUITABLE REMEDIES

Each Receiving Party acknowledges that the Confidential Information is unique and valuable to the Disclosing Party and that monetary damages would not be an adequate remedy for the breach of this Agreement by the Receiving Party. The Disclosing Party shall be entitled to a temporary restraining order, preliminary and permanent injunctions, and other injunctive and equitable relief to enforce this Agreement and to prevent a breach or threatened breach of this Agreement. Such remedies shall nonetheless not be deemed to be the exclusive remedies for a breach of this Agreement and shall be in addition to all other remedies available at law or in equity.

10. NO WARRANTIES

This Agreement is designed to facilitate the Parties' discussions related to the Authorized Purposes. No Party shall be obligated under this Agreement to enter into any transaction, agreement, or relationship. A Disclosing Party is not obligated to disclose any Confidential Information pursuant to this Agreement. The Disclosing Party makes no representation or warranty as to the completeness or accuracy of the Confidential Information. ALL CONFIDENTIAL INFORMATION IS PROVIDED BY THE DISCLOSING PARTY "AS IS" AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE. THE DISCLOSING PARTY HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED REPRESENTATIONS AND WARRANTIES WITH RESPECT TO ITS CONFIDENTIAL INFORMATION, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, AND ALL IMPLIED REPRESENTATIONS AND WARRANTIES PROVIDED FOR BY STATUTE OR COMMON LAW. RECEIVING PARTY'S RELIANCE UPON ANY CONFIDENTIAL INFORMATION OF THE DISCLOSING PARTY IS AT THE RECEIVING PARTY'S SOLE RISK.

11. COOPERATION UPON BREACH

In addition to all other remedies the Disclosing Party has for any breach by the Receiving Party of this Agreement, the Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized disclosure or use of Confidential Information and cooperate, without charge, with reasonable efforts by the Disclosing Party to regain possession of the Confidential Information, prevent further breaches of this Agreement, and prevent further unauthorized uses or disclosures of the Confidential Information.

12. NO ASSIGNMENT

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No Party shall assign or delegate this Agreement or any right or obligation under this Agreement without the prior written consent of the other Party, which may be withheld in its sole discretion, and any attempted assignment or delegation without that consent shall be void. For purposes of this Agreement, a change of control or assignment by operation of law shall be considered assignments.

13. GOVERNING LAW AND DISPUTE SETTLEMENT

This Agreement and any disputes arising out of or related to this Agreement (regardless of the nature of the claims asserted) will be governed by and construed in accordance with the laws of Austria without regard to conflicts of laws principles that may require the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods is excluded from this Agreement and shall not apply to this Agreement or any dispute arising out of or relating to this Agreement.

All disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (“Vienna Rules”) of the Vienna International Arbitral Centre (“VIAC”) of the Austrian Federal Economic Chamber by one arbitrator appointed in accordance with the said rules. The place of arbitration shall be Vienna, Austria. The language to be used in the arbitration proceeding shall be English.

Nothing in this Agreement shall preclude either Party from seeking interim measures of protection in any court of competent jurisdiction. The courts at the place of arbitration shall not have exclusive jurisdiction to entertain such applications.

14. SEVERABILITY

If any provision of this Agreement or portion thereof is found to be invalid, illegal, or unenforceable then, notwithstanding such invalidity, illegality, or unenforceability, this Agreement shall remain in full force and effect and there shall be substituted for such invalid, illegal, or unenforceable provision or portion thereof a like but legal and enforceable provision or portion that, in the judgment of a court of competent jurisdiction, most nearly implements the intention of the Parties. If a like but legal and enforceable provision or portion cannot be substituted under the laws of a particular jurisdiction, then the invalid, illegal or unenforceable provision or portion shall be deemed to be deleted from this Agreement and the remaining provisions shall continue in full force and effect.

15. MISCELLANEOUS

Each Party is an independent contractor, and nothing in this Agreement shall be construed as creating a partnership, joint venture, agency, or fiduciary relationship between the Parties.

This Agreement is the entire agreement between the Parties regarding, and supersedes all prior and contemporaneous agreements, negotiations, and understandings regarding, the subject

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Rev.: 01
Date: 09.09.2019

matter of this Agreement.

The Parties may amend this Agreement only by a written amendment executed and delivered by the Parties.

The Parties acknowledge and agree that they have participated in the negotiations and preparation of this Agreement. Accordingly, no presumption or burden of proof shall be raised in any question of interpretation of this Agreement based upon any assertion that one Party or the other has drafted this Agreement or any provision hereof.

No failure or delay by a Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial waiver thereof preclude any other or future exercise thereof or the exercise of any other right, power, or privilege hereunder.

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original of this Agreement and all of which, taken together, shall be deemed to constitute one and the same instrument. This Agreement may be translated into Chinese language. In case of contradiction between the English and the Chinese version of this Agreement, the English version shall prevail.

The exchange of signed counterparts by the Parties, including exchange by facsimile transmission or other electronic means, shall constitute effective execution and delivery of this Agreement.

(The remainder of this page is blank. Signatures are on the following page.)

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Rev.: 01
Date: 09.09.2019

IN WITNESS WHEREOF, the Parties have executed this Mutual Confidential Disclosure Agreement as of the Effective Date.

LOGICDATA
Electronic & Software Entwicklungs GmbH

Signature: _____
Name: _____
Place, Date: _____
Company Chop _____

**[INSERT FULL CORPORATE NAME OF
COMPANY]**

Signature: _____
Name: _____
Place, Date: _____
Company Chop _____