



KTM AG  
Non-Disclosure Agreement IT  
Version 10/2022

## NON-DISCLOSURE AGREEMENT

between

**KTM AG**, FN 107673v, with its registered office in Mattighofen and the business address Stallhofnerstraße 3, 5230 Mattighofen, Austria

and

\_\_\_\_\_ [company/name], \_\_\_\_\_ [name of the register and number], with its registered office in \_\_\_\_\_ [place] and the business address \_\_\_\_\_ [address]

Hereinafter referred to jointly as the "parties" or individually as the "party".

### Preamble

The parties shall review the possibility of joint business relations and/or cooperations and shall enter into the following non-disclosure agreement (hereinafter referred to as the "**Agreement**") for these purposes and for any cooperation, if any.

The parties intend to provide each other with Confidential Information that has not previously been known or readily accessible, either in its entirety or in its details, which is therefore of economic value and is protected on the part of the holder by appropriate confidentiality measures and in the confidentiality of which there is a legitimate interest. The parties further agree that Confidential Information that does not meet the requirements of a trade secret within the meaning of Directive (EU) 2016/943 and the respective national implementation laws shall nevertheless be subject to the confidentiality obligations under this Agreement. This Agreement does not create any obligation on the part of the other party to disclose Confidential Information.

### 1. Definitions

- 1.1. "**Holder**" means any natural or legal person having control over the trade secret.
- 1.2. "**Recipient**" means any natural or legal person to whom the trade secret is disclosed. The Recipient has no control of any kind over the trade secret and is not entitled to use or disclose the trade secret in violation of the Agreement.
- 1.3. "**Third party**" means any natural or legal person not a party or affiliated company under this Agreement.
- 1.4. "**Disclosure**" means the opening of a trade secret to a third party. Disclosure does not mean publicity.



1.5. "**Affiliated company**" within the meaning of this Agreement means any legal person under the control of a party that controls a party, or that is under common control with a party. Control exists if, during the term of this Agreement, at least 50% (fifty percent) of the shares of equity or voting rights are held or the management and policies of the company are controlled, directly or indirectly, by virtue of shares of equity, contracts or otherwise. A concern is an "affiliated company" of a party only if these conditions are met.

## 2. Confidential Information

2.1. "**Confidential Information**" within the meaning of this Agreement means, without exception, any and all information, whether written, electronic, oral, digitally embodied or otherwise, disclosed by Holder to Recipient or any of its affiliated companies, regardless of its form or nature, communicated or made available in connection with the purpose of the Agreement, whether or not marked "Confidential". Confidential Information is, in particular:

2.1.1. Trade secrets, products, manufacturing processes, test methods, calculations, experience, procedures, expertise, inventions, business relations, business strategies, business plans, finance planning, staff matters, digitally embodied information (data);

2.1.2. Any documents and information of the Holder that are the subject of technical and organizational non-disclosure measures and are marked as confidential or are to be considered confidential according to the nature of the information or the circumstances of the transmission;

2.1.3. The existence and content of this Agreement.

2.2. Confidential Information is not:

2.2.1. Information that is or will become fully known to the public before the communication or transfer by the Holder and this circumstance is not due to a breach of the law or the obligations contained in this Agreement.

2.2.2. Information that was already known to the Recipient before communication or transfer by the Holder.

2.2.3. Information received by the Recipient from a third party without a violation against confidentiality obligations.

2.2.4. Information already obtained by the Recipient from its own development work without use of or reference to Confidential Information by the Holder at the time of the communication or transfer by the Holder.

The party invoking one or more of the aforementioned exceptions shall provide evidence of the underlying facts.

## 3. Non-disclosure agreement

3.1. The parties hereby agree not to disclose to any third party any Confidential Information received as part of this Agreement.

3.2. Disclosure of the Confidential Information to a third party is permitted only with the prior written consent of the Holder and provided that the third party has also signed a non-disclosure



agreement, whereby all obligations under this Agreement are transferred to the third party.

- 3.3. To the extent necessary for the purposes of this Agreement, the parties may disclose the Confidential Information to their affiliated companies.
- 3.4. The Agreement shall also apply to Confidential Information made available to the Recipient by an affiliated company of the other party which is disclosed by the Holder to an affiliated company of the other party or exchanged between the parties' affiliated companies.
- 3.5. The receiving party is obligated to limit the passing on of Confidential Information to those employees, freelancers ("freelancers") or affiliated companies who need to know the Confidential Information for purposes of fulfilling the Agreement (need-to-know basis). The parties shall ensure that employees, freelancers and affiliated companies to whom confidential information is disclosed shall undertake to keep such information confidential to the extent to which the parties themselves are bound by non-disclosure agreements under this Agreement. The parties shall also ensure that such obligations are strictly complied with by the employees.
- 3.6. If disclosure of Confidential Information is mandated by an authority or court, the Recipient shall be authorized to disclose that information where the mandate requires it and provided that the Recipient informs the Holder of the order promptly for the purpose of exercising its rights (insofar as legally permissible), limits the disclosure to the minimum level required, and emphasizes the confidential nature of the information upon disclosure.

#### 4. Use of Confidential Information

- 4.1. The Recipient is not entitled to use Confidential Information disclosed by the Holder for purposes other than that of the contract. Copies/reproductions of Confidential Information are likewise considered the Confidential Information of the Holder.
- 4.2. The Recipient undertakes not to observe, examine, reverse-engineer, or test any product or item received from the Holder without the Holder's prior consent, unless the product or item is publicly available. The Recipient is not entitled to disassemble, decompile or translate received software into any other code form, whereas the mandatory copyright rights of the Recipient remain unaffected in accordance with Articles 5 and 6 of EU Directive 2009/24/EC (exceptions to acts requiring consent and decompilation).

#### 5. Rights holders and exclusion of liability

- 5.1. The Holder has, without prejudice to the rights it has under Directive (EU) 2016/943 and the respective national implementation laws, all ownership, use and exploitation rights with respect to the Confidential Information. The Holder reserves the exclusive right to apply for property rights. The Recipient shall not acquire any ownership or any other rights of use, with the exception of use for the purpose described above, to the Confidential Information (in particular to expertise, patents applied for or granted thereon, copyrights or other protective rights) by virtue of this Agreement or otherwise, by reason of implied conduct.



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5.2. The Holder shall assume no liability or warranty for the accuracy, topicality, or completeness of the Confidential Information that it provides.

## 6. Term/termination

This Agreement shall enter into effect upon signature of the last party to sign and shall be concluded for a duration of 5 (five) years, whereby the parties waive their ordinary right to termination. After this initial period has expired, the agreement shall be automatically extended annually by an additional 12 (twelve) months, unless it is terminated by one of the parties by giving notice 3 (three) months before the end of the year. The obligation to maintain confidentiality shall exist beyond the termination of this Agreement for a period of 3 (three) years.

## 7. Return/destruction of information

7.1. All Confidential Information received and copies thereof shall be returned within 14 (fourteen) days of the Holder's request to do so without compensation or, by agreement of the parties, such information shall be destroyed or deleted to the extent technically feasible and written confirmation of this shall be provided upon request.

7.2. Each party expressly acknowledges that it has no right of retention to the Confidential Information communicated or transferred.

7.3. The obligation to return or destroy/delete shall not apply to routine backup copies of electronic data communication or to Confidential Information and copies thereof which must be retained by the Recipient in accordance with legal requirements. However, such copies and retained Confidential Information shall remain subject to the provisions of this Agreement.

## 8. Obligation in respect of IT security

8.1. The contracting party shall only use the IT components, IT systems, services, data, and information to which KTM grants it access for the purpose specified by KTM.

8.2. The contracting party shall take all measures, to the best of its knowledge and belief, to prevent the accidental, or unlawful, destruction or damage of data and information and to maintain the confidentiality of KTM's data and information.

8.3. As part of the assignment and distribution of tasks, the contracting party shall define which of its employees and persons instructed by it are authorized to have access to the systems, data, and information.

8.4. The contracting party shall contractually oblige its employees and persons instructed by it to keep the information made known to them as part of their service confidential not only during their service, but also beyond the end of the employment relationship and shall provide evidence of this at the request of KTM.

8.5. The contracting party shall ensure that KTM is permitted to require each employee of the contracting party to sign a separate confidentiality agreement.

- 8.6. All activities on the KTM infrastructure or KTM internal and external systems shall be logged to the extent required. Logging shall occur within the scope of the statutory provisions of the data protection laws, as amended from time to time.
- 8.7. If requested by KTM, the contracting party shall cooperate with KTM in carrying out security audits and/or risk analyses.
- 8.8. At the termination of the contracting party's activities at KTM, the contracting party shall either itself delete the user names, accesses, and similar user rights or, if this is not possible, notify KTM of the necessity of canceling the user rights in a manner that can be verified.
- 8.9. The contracting party shall ensure that KTM's data and information that was processed on the contracting party's systems is securely deleted on the termination of the service, which shall be confirmed in writing within 14 (fourteen) days upon request by KTM.
- 8.10. The contracting party shall ensure that the data and information in its physical form is destroyed on the termination of the service in such a manner that no one can gain knowledge of the information contained therein, which shall be confirmed in writing within 14 (fourteen) days upon request by KTM.
- 8.11. By its signature, the contracting party expressly acknowledges that it shall comply with the obligations contained herein and that a breach thereof may have civil as well as criminal consequences for such party and/or for the company assigning such party.

## 9. Contractual penalty

In the event that either party breaches any of the provisions of this Agreement, such party shall be liable to pay to the other party a contractual penalty irrespective of fault, per breach, the amount of which shall be determined by the Holder according to its reasonable discretion, the reasonableness of which may be reviewed by the court of competent jurisdiction in the event of a dispute. The parties agree that the amount of the contractual penalty determined according to reasonable discretion may not exceed EUR 100,000.00 per breach. Any further claims for damages shall remain unaffected by this contractual penalty.

## 10. Data protection

- 10.1. All **personal data** within the meaning of Art. 4 No. 1 of the European Data Protection Regulation (GDPR) belonging to the parties' representatives shall be processed in accordance with the GDPR and used to fulfill the obligations set forth in this Agreement.
- 10.2. No automated decision is made on the personal data of the representatives.
- 10.3. The legal basis for the processing is therefore the fulfillment of this Agreement (GDPR Art. 6 para. 1 lit. b), and the processing of the signatories' personal data is strictly necessary to achieve this purpose.
- 10.4. The personal data shall only be processed by the parties and passed on to third parties in



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compliance with applicable legal obligations or to enforce the rights and obligations arising from this Agreement.

10.5. The personal data shall be duly destroyed or deleted after the expiration of this Agreement or after the purpose has ceased to exist, inasmuch as there are no legal or other obligations for further storage.

## 11. Code of Conduct

The parties expressly agree that the Code of Conduct ("**CoC**") of the PIERER Mobility Group, ([Download center | PIERER Mobility AG](#)), together with the appendices thereto in the respective applicable version, shall form an integral part of this contract. By signing this Agreement, the parties undertake – in a legally binding manner – to accept and comply with the minimum standards defined in the CoC of the PIERER Mobility Group.

## 12. Applicable law and jurisdiction

12.1. This Agreement shall be governed by and construed in accordance with Austrian law to the exclusion of its conflict of law provisions.

12.2. The exclusive place of jurisdiction for disputes arising from or in connection with this Agreement is A-5230 Mattighofen.

## 13. Final provisions

### 13.1. Notifications and language

The parties shall prepare all notices, requests, declarations of consent, and other forms of communication as part of this Agreement in German or English. Notifications of a change of address must be given in accordance with this provision.

### 13.2. Changes

This Agreement constitutes the entire agreement entered into between the parties and supersedes all previous agreements for the purpose set out above. There are no verbal subsidiary agreements. Amendments and supplements to this Agreement as well as terminations must be made in writing, whereby the electronic written form shall not be sufficient. This also applies to any amendment or cancellation of this clause.

### 13.3. Severability clause

The validity of the remaining provisions shall not be affected should one provision in this Agreement be or become invalid or impracticable. In this case, the parties undertake to agree on a valid provision that comes as close as possible in economic terms to the void or missing agreement in a manner permitted by law.

### 13.4. Waiver

A consent or waiver by one of the parties in the event of a breach by the other party shall not be deemed to constitute a waiver of the resulting rights. A waiver of a provision of this Agreement shall



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only be effective if it has been made in writing and signed by the party wishing to make such a waiver.

Place \_\_\_\_\_ Date \_\_\_\_\_

Place \_\_\_\_\_ Date \_\_\_\_\_

\_\_\_\_\_  
**KTM AG**

\_\_\_\_\_  
**Contracting Party**