



MOBILITY  
AG

Bajaj Mobility AG  
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## NON-DISCLOSURE AGREEMENT

**Bajaj Mobility AG** (hereinafter referred to as the “**BMAG**”), a company registered in accordance with Austrian law under Company Register Number FN 78112x with business address at Stallhofnerstraße 3, 5230 Mattighofen, Austria

and

\_\_\_\_\_ [company/name] (hereinafter referred to as the “Contractual Partner”), a company registered in accordance with the laws of \_\_\_\_\_ [country] under Company Register Number \_\_\_\_\_ with business address at \_\_\_\_\_ [address]

Hereinafter referred to jointly as the “Parties” or individually as the “Party”.

### PREAMBLE

The Parties are exploring the possibility of joint business relations and/or cooperation and, for these purposes and for any resulting cooperation, enter into the following non-disclosure agreement (hereinafter referred to as the “**Agreement**”).

The Parties intend to exchange 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 will nevertheless be subject to the confidentiality obligations under this Agreement. This Agreement does not create any obligation for either Party to disclose Confidential Information.

### 1. DEFINITIONS

- 1.1. “**Holder**” means any natural or legal person with control over the Confidential Information.
- 1.2. “**Recipient**” means any natural or legal person to whom the Confidential Information is disclosed. The Recipient has no control over the Confidential Information and is not entitled to use or disclose the Confidential Information outside the scope of this Agreement.
- 1.3. “**Third Party**” means any natural or legal person who is not a Party or Affiliated Company within the meaning of this Agreement.
- 1.4. “**Disclosure**” means disclosing Confidential Information to a Third Party. Disclosure does not mean the public.
- 1.5. “**Affiliated Company**” within the meaning of this Agreement means any legal entity 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 directly or indirectly controlled by virtue of shares of equity, contracts or otherwise. A company is considered 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 includes, without exception, any and all information, whether written, electronic, oral, digitally embodied or in any other form, disclosed by the Holder to the Recipient or to any of its Affiliated Companies, regardless of its form or nature, which is communicated or made available in connection with the business relationship, irrespective of whether it is marked as “Confidential” or not. Confidential Information includes, in particular:



- 2.1.1. Trade secrets, products, manufacturing processes, test methods, calculations, experiences, procedures, know-how, 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 subject to technical and organizational non-disclosure measures and are either marked as confidential or are 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 of confidentiality obligations.
- 2.2.4. Information that the Recipient has already independently developed without using or referencing to Confidential Information from the Holder at the time of communication or transfer of the information from the Holder to the Recipient.

The Party invoking one or more of the aforementioned exceptions must prove the underlying facts.

### **3. NON-DISCLOSURE AGREEMENT**

- 3.1. The Parties hereby agree not to disclose to any Third Party any Confidential Information received under 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 also applies to Confidential Information made available to the Recipient by an Affiliated Company of the Holder, Confidential Information disclosed by the Holder to an Affiliated Company of the Recipient or Confidential Information exchanged between the Affiliated Companies of the Parties.
- 3.5. The Recipient is obligated to limit the disclosure of Confidential Information to those employees, freelancers or Affiliated Companies who need to know the Confidential Information for the purpose of fulfilling the Agreement (need-to-know basis). The Parties must ensure that employees, freelancers and Affiliated Companies to whom Confidential Information is disclosed are obliged to keep such information confidential to the same extent to which the Parties themselves are bound by non-disclosure agreements under this Agreement. The Parties ensure that such obligations are strictly complied with by the employees.
- 3.6. If disclosure of Confidential Information is ordered by an authority or court, the Recipient will be authorized to disclose it to the extent required by the order, provided that the Recipient informs the Holder of such an order promptly for the purpose of enabling the latter to exercise its rights (insofar as legally permissible), limits the disclosure to the minimum level required, and highlights the confidentiality 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 this Agreement. Copies/reproductions of Confidential Information are likewise considered Confidential Information of the Holder.
- 4.2. The Recipient undertakes not to observe, investigate, deconstruct or test (so-called reverse engineering) any product or object received from the Holder without the Holder's prior consent, unless the product or object is publicly available. The Recipient is not entitled to disassemble, decompile or translate received software into any other code form. The mandatory copyright rights



of the Recipient remain unaffected in accordance with Articles 5 and 6 of EU Directive 2009/24/EC (exceptions to consent-requiring acts and decompilation).

## 5. RIGHTS HOLDERS AND EXCLUSION OF LIABILITY

- 5.1. The Holder, without prejudice to the rights it has under Directive (EU) 2016/943 and the respective national implementation laws, holds 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 acquires no ownership or – except for use for the purpose described above – any other rights of use, to the Confidential Information (in particular know-how, patents applied for or granted thereon, copyrights or other protective rights) under this Agreement or otherwise, by reason of implied conduct.
- 5.2. The Holder assumes no liability or warranty for the accuracy, topicality, or completeness of the Confidential Information that it provides.

## 6. TERM AND TERMINATION

This Agreement comes into effect upon signature of the last signing Party and is concluded for an indefinite period. It may be terminated subject to a notice period of 3 (three) months to the end of the year. The obligation of confidentiality shall remain in force beyond the termination of this Agreement for a period of 3 (three) years.

## 7. RETURN/DESTRUCTION OF CONFIDENTIAL INFORMATION

- 7.1. All Confidential Information received and any copies made thereof must be returned to the Holder within 14 (fourteen) days upon request, without reimbursement of costs, or, by agreement of the Parties, be destroyed or deleted to the extent technically feasible. Upon request, a corresponding written confirmation should be issued.
- 7.2. Each Party expressly acknowledges that it has no right of retention with respect to the disclosed Confidential Information.
- 7.3. The obligation to return or destroy/delete shall not apply to routine backup copies of electronic data traffic 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 Contractual Partner shall only use the IT components, IT systems, services, data, and information to which BMAG grants it access for the purpose specified by BMAG.
- 8.2. The Contractual Partner 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 BMAG's data and information.
- 8.3. As part of the assignment and distribution of tasks, the Contractual Partner 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 Contractual Partner 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 BMAG.
- 8.5. The Contractual Partner shall ensure that BMAG is permitted to require each employee of the Contractual Partner to sign a separate confidentiality agreement.
- 8.6. All activities on the BMAG infrastructure or BMAG 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 BMAG, the Contractual Partner shall cooperate with BMAG in carrying out security audits and/or risk analyses.
- 8.8. At the termination of the Contractual Partner's activities at BMAG, the Contractual Partner shall either itself delete the user names, accesses, and similar user rights or, if this is not possible,



notify BMAG of the necessity of canceling the user rights in a manner that can be verified.

- 8.9. The Contractual Partner shall ensure that BMAG's data and information that was processed on the Contractual Partner's systems is securely deleted on the termination of the service, which shall be confirmed in writing within 14 (fourteen) days upon request by BMAG.
- 8.10. The Contractual Partner 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 BMAG.
- 8.11. By its signature, the Contractual Partner 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 per breach irrespective of fault, the amount of which shall be determined by the Holder according to its reasonable discretion. The appropriateness of this penalty may be reviewed by the competent court. The Parties agree that the amount of the contractual penalty, as determined at the Holder's reasonable discretion, shall not exceed EUR 100,000.00 per breach. Any additional claims for damages shall remain unaffected by this provision.

## **10. DATA PROTECTION**

- 10.1. If the Contractual Partner gains access to personal data as part of its contractual performance, it is obliged to comply with all applicable data protection regulations. This includes, in particular: processing personal data exclusively for the purpose of providing the contractual services (intended purpose), ensuring that its employees and subcontractors only have access to the data where this is absolutely necessary, binding its employees and subcontractors to data secrecy in writing, instructing these about the data protection regulations with which they must comply and providing BMAG with evidence of this on request.
- 10.2. The Contractual Partner ensures that personal data is protected using the latest technical advancements. In the event of personal data is processed by the Contractual Partner on behalf of BMAG, before the Contractual Partner is granted access to personal data, a contract data processing agreement must be concluded.
- 10.3. The Contractual Partner acknowledges that all data generated at BMAG, the Contractual Partner, the end customer or a third party from or in connection with the use of the contract goods is to be assigned to BMAG unless the end customer or another third party is entitled to that data under applicable law. The Contractual Partner will assert no ownership over or other rights to that data and will not use the data, in particular for "big data purposes", such as collecting data, compiling databases or carrying out data analyses. The Contractual Partner's right to use data for the performance of this contract, where this is necessary, remains unaffected.

## **11. CODE OF CONDUCT**

The parties expressly agree that the Code of Conduct of the Bajaj Mobility Group, including its appendices (available on the Internet at [Code of conduct | Bajaj Mobility AG](#)) in the version applicable at the time of conclusion of the Agreement shall form an integral part of this Agreement and that the minimum standards defined therein shall be complied with. In addition, they expressly agree that future revisions of the Code of Conduct of the Bajaj Mobility Group that are necessary and appropriate due to new or amended laws shall form the basis of their business relationship as soon as they are informed of the existence of such amendments. The Code of Conduct can also be sent in paper form free of charge on request.

## **12. APPLICABLE LAW AND JURISDICTION**

- 12.1. For Contractual Partner with registered office within the EEA or Switzerland:  
Austrian law shall apply exclusively, excluding the conflict of laws rules of International Private



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Law (IPRG) and the UN Convention on Contracts for the International Sale of Goods (CISG). The competent court exclusively responsible for all disputes arising from or in connection with this Agreement is the court with jurisdiction over 5230 Mattighofen.

**12.2. For Contractual Partner with registered office outside the EEA or Switzerland:**

All disputes arising from or in connection with this Agreement shall be finally settled by one or more arbitrators appointed in accordance with the Arbitration Rules of the International Chamber of Commerce (ICC). The proceedings shall be conducted in English, and the place of arbitration shall be 5020 Salzburg, Austria. The applicable substantive law shall be Austrian law.

**13. FINAL PROVISIONS**

- 13.1. This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements for the purpose mentioned above. Amendments to this Agreement shall only become valid if they are specifically and mutually agreed, in writing, and signed by both Parties. This shall also apply to an amendment of the provision requiring the written form. Termination notices must also be in writing.
- 13.2. Written means either a handwritten signature or an electronic signature (simple or qualified electronic signature pursuant to the Austrian Signature Act). A signature by means of electronic data interchange (EDI) is also considered written.
- 13.3. All notices, requests, declarations of consent, and any other form of communication within the scope of this Agreement must be drafted by the Parties in either German or English. Address changes shall be communicated in accordance with this provision.
- 13.4. If any provision of this Agreement is wholly or partially invalid or unenforceable, the validity of the remaining provisions of this Agreement shall remain unaffected. In place of the invalid or unenforceable provision, a provision shall be deemed to have been agreed which, to the extent legally permissible, economically comes closest to what was originally intended by the invalid or unenforceable provision in terms of place, time, extent and scope. This also applies in the event of unintentional gaps in this Agreement. This severability clause is not merely a reversal of the burden of proof but rather conditions the entire law.
- 13.5. The Contractual Partner shall inform BMAG promptly of any changes in its ownership structure.
- 13.6. A consent or waiver declaration by one of the Parties in the event of a violation by the other Party shall not be construed as a waiver of the resulting rights. A waiver of a provision of this Agreement is only effective if it is declared in writing and signed by the Party wishing to waive such provision.

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

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

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**Bajaj Mobility AG**

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**Contractual Partner**