

NON-DISCLOSURE AGREEMENT

KTM AG (hereinafter referred to as the “KTM”), a company registered in accordance with Austrian law under Company Register Number FN 107673v 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, including its directors, officers, employees and representatives 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 development 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. 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.

9. DATA PROTECTION

- 9.1. 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 KTM with evidence of this on request.
- 9.2. 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 KTM, before the Contractual Partner is granted access to personal data, a contract data processing agreement must be concluded.

- 9.3. The Contractual Partner acknowledges that all data generated at KTM, 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 KTM 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.

10. CODE OF CONDUCT

The Parties expressly agree that the Code of Conduct of the Bajaj Mobility Group, including its appendices ([available on the internet under Publications | Bajaj Mobility AG](#)) in its respective current version, is an integral part of this Agreement and that the minimum standards defined herein are complied with. Upon request, a hard copy of the CoC can be provided free of charge.

11. APPLICABLE LAW AND JURISDICTION

- 11.1. 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 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.
- 11.2. 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.

12. FINAL PROVISIONS

- 12.1. 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.
- 12.2. 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.
- 12.3. 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.
- 12.4. 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.
- 12.5. The Contractual Partner shall inform BMAG promptly of any changes in its ownership structure.
- 12.6. 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 _____

KTM AG

Contractual Partner