

## Non-Disclosure Agreement

between  
XXX

"the Recipient",

and

YYY GmbH, a German limited liability company based in Berlin and registered in the commercial register of the Berlin local court with the number HRB 1111.

"YYY",

The Recipient and YYY are jointly referred to herein as "**the Parties**".

### Preliminary statement

YYY will make information available to the Recipient that serves to help it gain an impression of the legal and financial situation of [.....] ("ZZZ"). YYY shall only disclose information about [ ] to third parties on the proviso that said third parties undertake to treat the information confidentially.

Given the above, the Parties jointly stipulate the following:

#### § 1 OBJECT OF CONFIDENTIALITY

"Confidential Information" as defined by this Agreement shall be:

- 1.1 All information (whether marked as confidential or not) relating to ZZZ that YYY or third parties acting for YYY have made or make available to the Recipient, be this orally, in writing, in digital or in any other form, or that the Recipient has gained or gains access to in the course of discussions, investigations, etc.;
- 1.2 All reports, analyses, compilations, memoranda, summaries, records, excerpts or other material in written, magnetic, digital or any other form that refers in part or in whole to

information within the meaning of sub-paragraph 1.1 that YYY or third parties acting for YYY have made or make accessible to the Recipient;

- 1.3 The fact that the Parties are holding discussions about ZZZ, and the status of these discussions;
- 1.4 The fact that the Recipient receives and utilises confidential information.

## § 2 EXCEPTIONS

Not Confidential Information shall be:

- 2.1 All information that can be proven to have been known to the Recipient before its disclosure to the Recipient by YYY or third parties acting for YYY;
- 2.2 Information that has already been made public or accessible to the public prior to its disclosure to the Recipient, or that becomes generally available to or known by the public subsequent to disclosure to the Recipient, other than as a result of a disclosure made by the Recipient that is in breach of this Agreement;
- 2.3 Information that the Recipient receives from third parties that is not subject to a non-disclosure agreement with YYY or;
- 2.4 Information that YYY has expressly allowed in writing to be disclosed to third parties.

## § 3 DUTY OF CONFIDENTIALITY

The Recipient undertakes not to disclose Confidential Information and to take all necessary measures to uphold confidentiality. Above all the Recipient undertakes to:

- 3.1 Maintain strict secrecy about the Confidential Information and only make it available to people authorised by, and in a manner stipulated in this Agreement;
- 3.2 Limit the duplication of Confidential Information to the absolutely essential minimum;
- 3.3 Only use Confidential Information to examine the possible acquisition or agency of real property and not for other purposes, above all not for those of a competing nature;
- 3.4 Take all necessary measures to prevent unauthorised access to Confidential Information;
- 3.5 Only approach those agents and employees nominated by YYY for this purpose;

3.6 Inform YYY immediately upon learning or suspecting that unauthorised persons have gained access to Confidential Information.

#### § 4 AUTHORISED PERSONS

4.1 The Recipient may only disclose Confidential Information to the following persons:

4.1.1 Those members of the Recipient who require Confidential Information in order to be able to properly examine measures relating to ZZZ;

4.1.2 Third parties to which YYY has previously authorised in writing the disclosure of the information in question;

4.2 The Recipient undertakes to monitor the maintenance of confidentiality pursuant to this Agreement by those persons encompassed by 4.1. Any breach of confidentiality by persons encompassed by 4.1 shall be deemed a breach of confidentiality by the Recipient (§ 278 BGB (German Civil Code)).

#### § 5 COMPELLED DISCLOSURE

5.1 If the Recipient is or believes it will be compelled by any court or other authority to disclose Confidential Information, it shall:

5.1.1 Inform YYY immediately about the existence and scope of such disclosure and the exact circumstances;

5.1.2 Cooperate with YYY in its attempts to prevent or restrict such disclosure, inasmuch as this does not involve significant disadvantages for the Recipient;

5.1.3 Only disclose to the authority or court in question the Confidential Information it is legally obliged to disclose, and;

5.1.4 Where possible, ensure the confidential treatment of Confidential Information disclosed to the authority or court.

5.2 Insofar as the Recipient cannot, through no fault of its own, fulfil the obligations under 5.1 before disclosing the Confidential Information to the authority or court in question, it shall inform YYY of all the details of the disclosure immediately afterwards.

**§ 6 RETURN**

6.1 Upon request by YYY, the Recipient shall immediately:

6.1.1 Return to YYY all Confidential Information in its possession, as well as all copies and records it has made of said information;

6.1.2 Delete all Confidential Information from all data carriers;

6.1.3 Return to YYY or destroy all reports, analyses, compilations, memoranda, summaries, records, excerpts or other material in written, digital or any other form that were generated by the Recipient and that refer in part or in whole to Confidential Information;

6.1.4 Ensure that all persons gaining access to Confidential Information behave in accordance with provisions 6.1.1 to 6.1.3,

inasmuch as these obligations are not opposed by statutory or professional/ethical duties to preserve commercial records.

6.2 On request, the Recipient shall confirm to YYY in writing that it has completely fulfilled the duties outlined in 6.1.1 to 6.1.4.

**§ 7 RELEASE**

The Recipient releases YYY from all third-party claims and other liability claims arising from a Recipient's breach of this Agreement.

**§ 8 NON-LIABILITY**

YYY and its agents, employees and consultants accept no liability for the completeness, correctness or exactness of the Confidential Information they make available. Accordingly, YYY and its agents, employees and consultants accept no liability for damage or losses incurred directly or indirectly through the use of the Confidential Information.

**§ 9 CONFIDENTIALITY PERIOD**

The Parties shall remain bound by this Agreement after conclusion of the discussions regarding the possible sale/agency of the real property and the complete return or destruction of the Confidential Information.

**§ 10 FINAL PROVISIONS**

- 10.1 Amendments to this Non-Disclosure Agreement and the waiver of rights stemming from it must be made in writing. This also applies to amendments to or the rescission of this written-form requirement.
- 10.2 The place of jurisdiction for all disputes arising between the Parties relating to this Agreement shall be Munich.
- 10.3 This Agreement shall be governed exclusively by German law.
- 10.4 Should any provision of this Agreement be or become partially or wholly invalid, or should the Agreement prove to be incomplete, this shall not affect the remaining provisions of the Agreement. In lieu of the invalid provision or gap in the Agreement, the effective and enforceable provision shall apply, with retroactive effect, which most closely serves the legal and commercial purpose of this Agreement. If the invalidity of a provision is based on a performance, time period or deadline cited within it, the provision shall apply with the legally admissible performance or time that most closely approximates that originally contained in the provision. It is the explicit will of both Parties that this article § 10.4 should not merely result in a reversal of the burden of proof, but that it should override § 139 BGB.