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**Swiss Startup Association**

in collaboration with



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Non-Disclosure Agreement

of

[Date]

between

[Name]

[Street]

[ZIP, City]

[Country]

(hereafter the "**Company"**.)

and

[Name]

[Street]

[ZIP, City]

[Country]

(hereafter the "**Partner"**.)

(Company and Partner each a “Party” and jointly the **"Parties")**

(each Party a "**Disclosing Party"** in its capacity as a Party disclosing Confidential Information and each Party a **"Receiving Party"** in its capacity as a Party receiving Confidential Information from the other Party)

1. **Preamble**

The Parties negotiate [a possible business relationship/collaboration/investment] ("**Collaboration**").

The Parties will receive Confidential Information about the other Party during the course of Collaboration.

Based on the foregoing, the Parties agree as follows (the "**Agreement**").

1. **Confidential information**

The Parties acknowledge that they have received and/or will receive in the course of the Collaboration, in written, oral, electronic, graphic or any other form, various information, namely contracts, financial statements, estimates, plans, strategies, reports, evaluations, [...], all of which are of a confidential nature even if not explicitly marked as confidential ("**Confidential Information**").

Not considered Confidential Information is:

1. Information that is already in the public domain or becomes generally known, provided that this is not due to a breach of this Agreement by the Receiving Party or their agents and/or
2. Information already lawfully in the possession of the Receiving Party, provided that this is not due to a breach of this Agreement by the Receiving Party or their agents; and/or
3. Information disclosed to a Party by a third party who is under no obligation of confidentiality to either Party; and/or
4. Information that is required to be disclosed by law or [stock exchange] regulation.

In the event that a Party is required to disclose all or any Confidential Information by a final court judgment or similar decision of competent judicial or administrative authorities, such disclosure of Confidential Information shall not constitute a breach of this Agreement, provided that:

1. that Party makes reasonable efforts to give the other Party prior notice so that the other Party has the opportunity to take, at their own expense, possible legal action to set aside or restrain the order; and/or
2. the Party reasonably co-operates with the other Party, provided that the other Party takes such legal action; and/or
3. if disclosure of Confidential Information is required by law, the Party shall in any event disclose only that Confidential Information which they are under a mandatory obligation to disclose; and/or
4. ensures, to the extent permitted by law, that the ordering authority treats the disclosed information confidentially.
5. **Confidentiality undertakings**

The Receiving Party of Confidential Information undertakes that it and its Representatives with respect to Confidential Information of the Disclosing Party:

1. keep all Confidential Information secret and confidential and in particular not to disclose any such Confidential Information to any third party; and/or
2. do not create or let create any physical or electronic copies or duplications of Confidential Information, except to the extent necessary for the examination of the Collaboration; and/or
3. use Confidential Information solely for the purpose of considering the Collaboration or the Evaluation and shall not otherwise use, permit to be used or permit any other use of such Confidential Information, in particular for its own purposes or the purposes of a third party and/or
4. do everything reasonably practicable to prevent such Confidential Information from becoming publicly known or disclosed to third parties; and/or
5. do not use such Confidential Information to the detriment of the Disclosing Party, except for the purpose of enforcing contractual rights against the Disclosing Party and/or
6. will make the Confidential Information available only to those Representatives who are directly involved in the evaluation(s) and have a compelling need for the information for this purpose or for the purpose of evaluating the Collaboration. The group of persons involved in the evaluation of the Collaboration and review of the evaluation is kept as small as possible.

Exceptions to these obligations require a prior written consent of the Disclosing Party.

For the purposes of this Agreement, "**Representatives**" shall mean all members of a Party's Board of Directors, their employees, internal and external consultants (such as lawyers, auditors, business and financial advisors, etc.), auxiliary persons, agents or vicarious agents who obtain Confidential Information by virtue of their activities.

1. **Return or destruction of Confidential Information**

In the event of termination or expiration of this Agreement or if the Receiving Party and/or the Disclosing Party agree that they no longer wish to perform the Collaboration, the Receiving Party shall, upon written request of the Disclosing Party, and, as requested by the Disclosing Party:

1. either return all Confidential Information received by the Receiving Party and its Representatives under this Agreement (and all copies and reproductions thereof) to the Disclosing Party or destroy it in accordance with Clause 5 of this Agreement; and/or
2. destroy all Confidential Information created by the Receiving Party or their Representatives, except for documents created based on Confidential Information which were the basis for decisions of the Receiving Party or their organs.

Notwithstanding the foregoing, the Receiving Party may retain copies of Confidential Information if required by law and their advisors may retain copies of Confidential Information if required by legal or professional requirements.

1. **Treatment of Confidential Information**

The Receiving Party of Confidential Information and the Disclosing Party shall only make such number of copies of the physically or electronically transmitted information as it or its Representatives require to conduct the evaluation. The Receiving Party and/or the Disclosing Party shall ensure that all Confidential Information disclosed is maintained or stored in a manner that protects it from access by persons not bound by this Agreement. All physically or electronically transmitted information, as well as any copies, records, translations and other reproductions thereof, shall be returned, destroyed or deleted from storage and data carriers by the Receiving Party or the Disclosing Party, as the case may be, and their Representatives, at the first request of the other Party and at their own expense (i.e., with the exception of automatically created back-up copies on exchange or data servers).

[Option, if Partner is a listed company]: The Company is aware that making the Collaboration public could have consequences for the price of the Partner's shares and that taking advantage of this could have unforeseeable criminal, liability and other legal consequences. The Company will also inform their Representatives of the provisions of this Clause 5.

The Company undertakes to strictly refrain from any on-exchange or off-exchange transactions in the Partner's equity securities or financial instruments until the date of the official announcement of the Collaboration.

The Company undertakes not to make any recommendations to third parties with regard to on-exchange or off-exchange transactions in the Partner's equity securities or financial instruments until the date of the official announcement of the evaluation.

The Company takes note of Art. 154 of the Financial Market Infrastructure Act (so-called insider offense) with the following content:

**Art. 154 Exploitation of inside information:**

1. A custodial sentence not exceeding three years or a monetary penalty shall be imposed on any person who, as a body or member of a management or supervisory body of an issuer or of a company controlling or controlled by the issuer or as a person who, by virtue of their participation or by virtue of their activities, has access to inside information for the intended purpose, procures for themselves or another a pecuniary advantage by using inside information:
2. to acquire or dispose of securities admitted to trading on a trading venue in Switzerland or to use derivatives derived therefrom;
3. to inform others;
4. uses it to make a recommendation to another person to acquire or dispose of securities admitted to trading on a trading venue in Switzerland or to use derivatives derived therefrom.
5. Any person who obtains a pecuniary advantage of more than one million francs through an act in accordance with paragraph 1 is liable to a custodial sentence not exceeding five years or to a monetary penalty.
6. A custodial sentence not exceeding one year or a monetary penalty shall be imposed on anyone who procures a pecuniary advantage for themselves or another by taking advantage of inside information or a recommendation based thereon communicated or given to them by a person referred to in paragraph 1 or obtained by them through a felony or misdemeanor to acquire or dispose of securities admitted to trading on a trading venue in Switzerland or to use derivatives derived therefrom.
7. Any person who is not one of the persons referred to in paragraphs 1-3 and who procures a pecuniary advantage for themselves or another by taking advantage of inside information or a recommendation based thereon to acquire or dispose of securities admitted to trading on a trading venue in Switzerland or to use derivatives derived therefrom shall be liable to a fine.

The Company takes note of Art. 142 of the Financial Market Infrastructure Act with the following content:

**Art. 142 Exploitation of insider information**

1. Any person who provides insider information which they know or must know to be insider information, or a recommendation which they know or must know to be based on insider information, is acting improperly:
2. to acquire or dispose of securities admitted to trading on a trading venue in Switzerland or to use derivatives derived therefrom;
3. to inform others;
4. uses it to make a recommendation to another person to acquire or dispose of securities admitted to trading on a trading venue in Switzerland or to use derivatives derived therefrom.
5. The Federal Council shall issue regulations on the permissible use of insider information, in particular in connection with:
6. securities transactions in preparation for a public purchase offer;
7. a special legal status of the recipient of the information. ]
8. **No representations or warranties**

The Receiving Party of Confidential Information and the Disclosing Party neither make any representations, nor warranties to each other as to the accuracy or completeness of the Confidential Information. The Receiving Party and the Disclosing Party expressly acknowledge and confirm that they are solely responsible for the assessment of the Confidential Information, for their decisions based thereon and for all arrangements and agreements resulting from any discussions.

1. **Ownership of intellectual property rights**

Nothing in this Agreement grants or transfers, explicitly or by implication, any intellectual property rights (whether or not legally registrable) or licenses in the Confidential Information. The Disclosing Party is and shall remain the exclusive owner of its Confidential Information and all patent, copyright, trademark, domain, name and other intellectual property rights therein.

1. **Breach of contract**

If the Receiving Party of Confidential Information and/or the Disclosing Party or any of its Representatives breaches any provision of this Agreement, the other Party shall be entitled to all legal remedies resulting therefrom. In the event of litigation to enforce any claim arising under this Agreement, the claiming Party shall be entitled to reasonable reimbursement of costs and expenses by the other Party.

1. **[Liquidated damages]**

In the event of a breach of this Agreement by the Receiving Party, the Receiving Party shall owe the Disclosing Party liquidated damages in the amount of [amount/currency] for each breach. Without prejudice to the payment of the penalty:

1. the Receiving Party is liable to the Disclosing Party for any loss suffered by the Disclosing Party in excess of the amount of liquidated damages owed; and/or
2. the Receiving Party continues to be bound by all the provisions of this Agreement; and/or
3. the Disclosing Party may continue to take action against any breach of contract by the Receiving Party, including that which gave rise to the obligation to pay a contractual penalty, and in particular have such breach prohibited and apply for precautionary measures against it.
4. **Final provisions**

**10.1 Entire agreement**

This Agreement, together with its Annexes, if any, contains the entire agreement of the Parties relating to the subject matter hereof. This Agreement supersedes all corresponding pre-existing agreements between the Parties.

**10.2 Costs**

Each Party shall bear its own costs incurred in connection with this Agreement.

**10.3 Amendments to the contract**

No modification, amendment, notice or waiver of this Agreement shall be valid unless in writing and signed by the Receiving Party and the Disclosing Party.

**10.4 Severability clause**

Should this Agreement be or become legally ineffective in whole or in part, the remaining provisions shall remain unaffected thereby. The Receiving Party and the Disclosing Party undertake to replace an invalid provision with a valid provision that comes as close as possible to the economic purpose of the invalid provision. The same shall apply in the event of a loophole.

**10.5 Duration and termination**

This Agreement shall become effective upon the signature of the Receiving Party and the Disclosing Party and shall terminate [one (1)] year after the date of the last disclosure of Confidential Information under this Agreement, unless earlier terminated or replaced by written agreement in accordance with the provisions below. This Agreement may be terminated by either Party at any time upon sixty (60) days written notice. The obligation to maintain the confidentiality of the Confidential Information shall continue indefinitely for the Receiving Party and the Disclosing Party after the termination of this Agreement.

**10.6 No offer**

This Agreement does not constitute a binding offer or commitment by either Party to perform the Collaboration or Evaluation.

**10.7 Affiliated companies**

The Receiving Party represents and warrants that all entities directly or indirectly under its control and its respective Representatives (as defined in Section 3 above) shall also comply with all the Receiving Party's obligations under this Agreement. The Receiving Party shall be liable for their conduct as for its own.

**10.8 Applicable law and place of jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of Switzerland (excluding international private law). The exclusive place of jurisdiction for any dispute or claim arising out of or in connection with this Agreement shall be [place, Switzerland]. In addition, either Party may apply to any competent court for precautionary measures.

Signatures on the next page.

**[Company]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Location, Date

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[Name, Function] [Name, Function]

**[Partner]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Location, Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
[Name, Function]