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| [\_\_\_\_] parts to be edited and/or references to be checked  [\_\_\_\_] alternative clauses of Party AAA  [\_\_\_\_] alternative clauses of Party BBB  (\_\_\_\_) help function for input fields, options and alternatives  AGREEMENT ON JOINT GENERATION AND USE OF "SENSITIVE DATA" IN A "HEALTH DATABASE" entered into by and between  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name, company name)  a company established under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(e.g. Austrian) law   \_\_\_\_\_\_\_\_\_\_\_\_\_\_(Business Register Number), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(competent court), registered office in \_\_\_\_\_\_\_\_\_\_(town or city)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)  represented by \_\_\_\_\_\_\_\_\_\_\_(name)  (hereinafter referred to as "AAA")  and  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(name, company name)  a company established under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(e.g. Austrian) law   \_\_\_\_\_\_\_\_\_\_\_\_\_\_(Business Register Number), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(competent court), registered office in \_\_\_\_\_\_\_\_\_\_(town or city)  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)  represented by \_\_\_\_\_\_\_\_\_\_\_(name)  (hereinafter referred to as "BBB")  either of them hereinafter referred to as a "Party" and together as the "Parties"  Nouns are to be understood as gender neutral. The male form is used for reasons of convenience only. |
| 1. DEFINITIONS |
| * 1. "Trade and Business Secret" means information which is (i) secret because it is not generally known to or easily accessible for persons who normally deal with this kind of information, neither in its entirety nor in the exact arrangement or composition of its parts; (ii) of commercial value because it is secret, and (iii) the subject matter of reasonable secrecy measures that are appropriate under the given circumstances and taken by the person who is the lawful controller of such information [and (iv) marked as such by the Party providing the same, e.g. as "secret" or similar]. |
| * 1. "Data Subjects" means persons whose personal data is processed. |
| * 1. "Data" means personal health data of Data Subjects which is processed by the Parties under the present Agreement. |
| * 1. "Third Parties" means all legal entities or natural persons, except for the Parties and their employees. |
| * 1. "Written Form" or "In Writing" means the simple form of a handwritten personal signature or equivalent digital signatures. [According to the second set of eyes principle that is applied by AAA the signatures of two authorised representatives are required in any case.] The time at which the document is received or available for retrieval by the recipient is decisive for its legal effect. |
| * 1. "Proprietary Rights" means intellectual property rights, including, without limitation, those under the laws regulating copyrights, patents, registered designs and/or marks, in particular trademark rights. |
| * 1. "Expert Audit" means a dispute resolution process with an expert being called in, as regulated in Clause 9, to avoid legal proceedings. |
| * 1. "Signing Date" means the day on which this Agreement is signed by the Customer and AAA. |
| * 1. "Processing" shall be understood as defined in Article 4(2) GDPR, i.e. any operation or set of operations which is performed on Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. |
| * 1. "Affiliate(s)" means [business entities which according to the provisions on full consolidation of the annual financial statements of affiliated entities (full consolidation) pursuant to [Section 244 of the Austrian Business Code [*Unternehmensgesetzbuch/UGB*]](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40109006) must be included in the consolidated financial statements of a parent company which is required to prepare consolidated financial statements as the ultimate parent for the largest group as defined in [Sections 244 to 267 *UGB*](http://www.ris.bka.gv.at/MarkierteDokumente.wxe?Abfrage=Bundesnormen&Kundmachungsorgan=&Index=&Titel=UGB&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=244&BisParagraf=267&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=07.02.2013&NormabschnittnummerKombination=Und&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&WxeFunctionToken=fd0a55a0-a9a4-4209-96eb-c5d84bd9b27c), even if no consolidated financial statements are prepared. The provision applies *mutatis mutandis* where the parent's registered office is not in Austria. Subsidiaries which are not included pursuant to [Section 249 *UGB*](http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Bundesnormen&Dokumentnummer=NOR40114066) are also considered Affiliates.] [The companies belonging to the Customer's group of companies listed in Annex 1.10.] |
| * 1. "Agreement" means the present contractual arrangement between the Parties, including all annexes, documents and the like that are expressly referred to. |
| 1. SUBJECT MATTER |
| * 1. AAA and BBB are enterprises which develop products and services in the health sector and distribute them within the EU. |
| * 1. The Parties intend to jointly create a [\*health database\*] (see Clause 2.3 and Clause 4) under the present Agreement on the basis of Data collected by the Parties from the Data Subjects (upon their explicit consent as defined in Clause 3). Subsequently, the health database is to be fully anonymised with respect to the Data Subjects (see Clause 2.4) and marketed on behalf of and, vis-à-vis Third Parties, for the account of AAA (regarding monetisation and internal compensation see Clause 5) as an online health database in the health sector in the EU (see Clause 2.5). |
| * 1. The project plan (including schedule and the relevant services to be provided by the Parties and the reciprocal interdependencies of the services) for the collection of Data (including its specification, both as raw data and for migration to the database) and the creation of the health database (including its technical specifications) has been agreed between the Parties in Annex 2.3. The updating process and enhancing process of raw data by the Parties is also stipulated therein. |
| * 1. AAA shall regularly migrate the health database initially and after updates or enhancements to an online health database, with the Data being anonymised by AAA in the course of migration according to the agreed process (Annex 2.4). AAA warrants that it will keep this process strictly secret. In the case that, even though AAA complies with the process, public authorities or an Expert Audit as defined in Clause 9 find(s) that the process is not suitable for generating anonymous Data, the Parties will immediately adapt the process to ensure anonymity. The Parties will bear the costs and other damage (including any claims for reimbursement, damages and/or costs of representation/legal counsel and the like) on a 50:50 basis or offset them internally upon first demand. |
| * 1. The online health database is intended to be exclusively distributed by AAA on the basis of the marketing concept developed jointly by the Parties, including the jointly developed licence agreements (EULA) of the online health database (Annex 5) on behalf of AAA according to its best efforts in the EU, with AAA being entitled to use Affiliates as agents for distribution. The expenses incurred by AAA (and of Affiliates, if any) have been fully taken into account by the payment provision in Clause 5. Any further exploitation of the health database and/or the online health database by the Parties shall be prohibited unless expressly agreed otherwise in the Agreement. To the extent that AAA does not reach the annual distribution targets defined in Annex 5 BBB shall be entitled to notify AAA In Writing that exclusivity no longer applies and that BBB and/or Affiliates will act as agents, who will then be entitled to a brokerage commission (subject to indexation as per Clause 5) as defined in Annex 2.5, irrespective of the payment provision of Clause 5. |
| 1. PROCESSING DATA OF DATA SUBJECTS AS JOINT CONTROLLERS |
| * 1. The Parties are aware of the fact that according to data protection law (in particular the General Data Protection Regulation - GDPR) Processing of health data of natural persons, i.e. the Data of Data Subjects, is prohibited as a matter of principle. According to the legal framework such prohibition in particular does not apply, however, where the Data Subjects have given their explicit consent to the Processing of the Data for one or more defined purposes. |
| * 1. The Parties warrant to each other that they will process the Data of the Data Subjects exclusively on the basis of legally effective, voluntary (see Clause 3.5) and explicit consent of the Data Subjects and in compliance with the requirements of applicable data protection law. Since according to the legal framework the burden of proving legally effective consent to Processing lies with the Parties, the Parties will obtain such consent in a provable form and upon identification of the Data Subjects. If consent by a declaration In Writing concerns other matters as well, the request for consent must be made in a comprehensible and easily accessible form using clear and simple language, so that it can be clearly distinguished from other matters; for parts of the declaration of consent may not be binding if they constitute a violation of data protection law. |
| * 1. The consent of the Data Subjects shall in particular include the collection and Processing of the categories of Data as per Clause 2.3 for Processing by both Parties for creating a health database as per Clause 2.3, the storage period in its personal form until withdrawal of consent (to ensure the quality of Data in the health database), and the anonymisation procedure as per Clause 2.4. In addition, when obtaining consent, the Data Subjects shall be informed of their right to withdraw their consent at any time (see Clause 3.4) and that their Data which has been anonymised as defined in Clause 2.4 will be used in the online health database. In addition, the Parties must provide the Data Subjects with the data protection information as per Clause 3.9.1. |
| * 1. Pursuant to data protection law the Data Subjects have the right to withdraw their consent to Processing of their personal Data at any time (regarding the Party stated as the joint contact vis-à-vis Third Parties see Clause 3.9.1). The lawfulness of Processing on the basis of consent up to the time of withdrawal of the same shall not be affected by withdrawal of consent; consequently, withdrawal will have no effect on the (anyhow completely anonymised Data) in the online health database. The Parties warrant that withdrawing consent will be as easy as giving consent and that the Data Subjects will be informed about the possibility to withdraw their consent accordingly when their consent is obtained. |
| * 1. When assessing whether consent was given by the Data Subjects voluntarily, the question of whether, among other things, fulfilment of a contract, including the provision of a service, depends on consent to Processing of personal data, which consent is not required for fulfilment of the contract must be taken into account to the greatest extent possible. The Parties warrant to each other that they will comply with these principles. |
| * 1. Since the Parties define the purposes and the means of Processing of Data of the Data Subjects jointly, the Parties understand that for the purposes of data protection law they are joint controllers as defined in Article 26 GDPR. Accordingly, the Parties regulate the rights and obligations under data protection law in connection with performance of the Agreement and, in particular, specify the allocation and fulfilment of tasks and duties under applicable data protection law (in particular the GDPR) between the Parties with respect to Data Processing as follows: |
| * 1. The subject matter of Data Processing shall be the Processing of (sensitive) Data of the Data Subjects in connection with the subject matter of the present Agreement. Data Processing shall be done in line with the purposes, means and extent stipulated in this Agreement. The duration of Processing of Data in its personal form shall be subject to withdrawal of consent, if any, by the Data Subjects and/or the anonymisation procedure as per Clause 2.4. |
| * 1. The Parties warrant to each other that data processing will exclusively be carried out in a Member State of the European Union (EU) or the European Economic Area (EEA). Every transfer to a third country must be agreed between the Parties and may, in general, be effected only if the special requirements of Article 44 *et seq.* of the GDPR are fulfilled. |
| * 1. The responsibilities for fulfilling the obligations under data protection law with respect to data processing are allocated between the Parties according to the different stages of data processing as follows, and the Parties will in advance agree on a uniform wording as well as a uniform form and uniform processes as regards the texts for data protection information and consent. |
| * + 1. As regards information of the Data Subjects in connection with consent and lawful consent of the Data Subjects either Party shall be responsible for its own sphere. The Parties agree that AAA will be stated as the joint contact for withdrawal of consent vis-à-vis Third Parties, with BBB undertaking to immediately forward any withdrawal of consent received by BBB to AAA. |
| * + 1. As regards the provision of data protection information (Articles 13 and 14 GDPR in conjunction with Article 12 GDPR) to the Data Subjects each Party shall be responsible for its own sphere. In this connection the Data Subjects shall be informed free of charge in a precise, transparent, comprehensible and easily accessible form using clear and simple language, including about the material contents of the allocation of responsibilities under data protection law between the Parties defined herein. |
| * + 1. With respect to collection of Data of the Data Subjects each Party shall be responsible for its own sphere. The Parties warrant that they will comply with the Health Telematics Act 2012 [*Gesundheitstelematikgesetz/GTelG 2012*], which may be applicable, and any other special data protection provisions with respect to Processing. |
| * + 1. With respect to storage of Data in the health database each Party shall be responsible for its own sphere. If the Parties agree that one Party will be the technical operator of the health database, that Party shall be responsible for compliance with all framework conditions of data protection law, including with respect to data security. |
| * + 1. Depending on the sphere of Processing as defined in Clause 3.9.4 the Parties shall be responsible for editing and erasure of Data, restriction of Processing of the same and transfer of the same pursuant to Article 20 GDPR, if applicable. Irrespective thereof the Parties designate AAA as the joint contact for asserting rights of Data Subjects as defined in Article 15 *et seq.* GDPR vis-à-vis Third Parties; to the extent that such rights are asserted vis-à-vis BBB, BBB undertakes to immediately forward such claims to AAA. Prior to any erasure of Data the other Party must be informed; it may object to erasure for legitimate reasons, e.g. if it has to observe a statutory retention period. The Parties shall keep records of erasure and destruction of Data. |
| * + 1. Depending on the sphere of Processing as defined in Clause 3.9.4 the Parties shall be responsible for assessing and handling all violations of the protection of personal data as defined in Article 4 No. 12 GDPR (hereinafter referred to as "Data Breach(es)"), including for fulfilling all relating notification duties vis-à-vis the competent supervisory authority as defined in Article 33 GDPR or vis-à-vis Data Subjects as defined in Article 34 GDPR. The Parties will immediately notify the respective other Party of any Data Breach that may have been identified and contribute as necessary and reasonable to clear up and remedy Data Breaches in the case of a notification as per Articles 33 and/or 34 GDPR, including by making available all relevant information in connection therewith to each other. |
| * + 1. AAA shall be responsible for migration of the Data to the online health database and for anonymisation of the same as defined in Clause 2.4 in the online health database. |
| * 1. The Parties shall support each other in connection with fulfilling the requirements agreed herein and complying with the applicable statutory data protection provisions (in particular the GDPR) to the extent necessary and reasonable; this includes, without limitation: |
| * + 1. the obligation to support the other Party in establishing and maintaining appropriate technical and organisational measures; |
| * + 1. the obligation to support each other with respect to any data protection impact assessment that may be required and consultation duties, if any, of the competent supervisory authority as defined in Articles 35 and 36 GDPR; |
| * + 1. the obligation to support each other with respect to the creation and maintenance of records of processing activities on both sides; |
| * + 1. with respect to cooperation with supervisory authorities a Party will immediately notify the respective other Party if it has been contacted by a data protection authority in connection with this Agreement and/or the data processing related to it. The Parties agree that requests by competent data protection authorities must be complied with as a matter of principle, including by providing requested information and enabling inspections (including on site). The Parties shall grant competent data protection authorities the access, information and inspection rights required in this connection. The Parties shall coordinate their procedures to the extent possible before answering enquiries from competent data protection authorities and/or surrendering information in connection with this Agreement, their cooperation or data processing to competent data protection authorities. |
| * 1. The Parties shall include data processing in their respective records of processing activities as defined in Article 30(1) GDPR and mark it as a jointly-controlled process in the same. |
| * 1. Either Party states in a legally binding manner and warrants for its sphere and/or responsibility that it has taken sufficient security measures as defined in Article 32 GDPR and other appropriate technical and organisational measures as defined in Article 28 GDPR to prevent Data from being used improperly or becoming accessible by Third Parties without authorisation and to ensure that Processing will be in compliance with the requirements of the GDPR and relevant legislation and that protection of the rights of the Data Subjects will be warranted and that the Parties will support each other with respect to compliance with such security measures. Data processing will be done in data processing systems for which technical and organisational measures have been taken to protect personal Data. In this connection the Parties shall take all agreed measures that are required for the Processing of the Data made available in the data processing systems defined in Articles 32, 24 and 25 GDPR. In particular, the tasks in connection with data processing have expressly been allocated and assigned to organisational units and staff members. The measures will be documented properly from time to time. |
| * 1. Since the technical and organisational measures are subject to both technological progress and development as well as statutory changes, the Parties shall be permitted to implement alternative and adequate measures, provided that the security level of the measures defined at the time of conclusion of the Agreement is not fallen short of. If a Party finds that the measures implemented under this Agreement are not sufficient or that technological progress and/or statutory changes require additional measures, it shall immediately notify the other Party thereof In Writing. Such additional measures shall be implemented only upon the Written approval from the other Party. The Parties will document such changes. |
| * 1. Either Party may use processors for data processing only upon the prior Written approval from the other Party. For the purpose of assessing whether to approve processors the Party who intends to use (a) processor(s) shall provide the other Party with a copy of the agreement on processing on behalf of a controller to be concluded (except for the fee provisions). In addition, the Party who intends to use a processor shall confirm to the other Party In Writing that it has carefully selected the processor with a special view to the appropriateness of the technical and organisational measures taken by the same and that it has satisfied itself that the technical and organisational measures taken by the processor are complied with. Such confirmation shall be enclosed with the documentation of the results of the assessment. The agreement on processing on behalf of a controller shall meet the requirements of Articles 28 and 29 GDPR. Both Parties must effectively conclude the agreement as controllers, with each Party having the option of being represented by the other Party on a case-by-case basis. Data may be forwarded only after effective conclusion of the agreement on processing on behalf of a controller between the Parties and the processor. Processors used shall be subject to appropriate regular audits (i.e. at least once a year) by the Party who wants to use them. Audit reports shall be prepared on such audits and made available to the other Party without being asked to do so. Depending on the type of approved processing on behalf of a controller the Parties will coordinate the activities, including, without limitation, with respect to giving instructions to the relevant processor and auditing of the same, in good faith by mutual consent. The processors listed in Annex [\*] shall be deemed accepted by the Parties; details of the processing activities are specified therein as well. |
| * 1. The Parties represent that they have put all persons in charge of data processing under an obligation to maintain data secrecy as defined in Section 6 of the Austrian Data Protection Act [*Datenschutzgesetz/DSG*] and Article 29 GDPR before they start their work or that they are subject to a reasonable statutory obligation to maintain secrecy. The obligations of the persons in charge of data processing to maintain secrecy shall continue to apply even after they stop working for and leave the relevant Party. |
| * 1. The Parties are aware of the fact that, irrespective of the present Agreement, the Data Subjects may assert their rights under the GDPR with and vis-à-vis each of the Parties as the controllers under data protection law. |
| 1. DATA OWNERSHIP |
| * 1. The Parties understand that, irrespective of the framework conditions of data protection law, that they have established data ownership of the embodied set of Data of the Data Subjects and the embodied set of Data in the online health database upon generation of the Data in each case. The data sets are jointly owned by them. |
| * 1. To the extent that no ownership is established as defined in Clause 4.1, the Parties agree that upon generation of the data sets they will jointly hold or grant each other an irrevocable, exclusive, (sub)licensable, transferable and unencumbered licence, which shall be unlimited as to nature, time and place, including the right of unrestricted processing and tagging. |
| * 1. Unless stipulated otherwise in the present Agreement, the Parties may use the data sets exclusively by mutual consent. |
| * 1. The Parties will conclude in Written Form any agreements that may be necessary with their staff and the like who are directly or indirectly used to render performance under the Agreement and will surrender to each other copies thereof with respect to the granting of rights upon request to pursue their rights for the purpose of Processing. |
| 1. MONETISATION |
| * 1. Monetisation (of data ownership) is intended to be achieved by distribution of the online health database (see Clause 2.5). |
| * 1. BBB shall be paid by AAA a share of the fee (ultimately) received by AAA from end customers for use of the online health database in accordance with the allocation key agreed in and subject to indexation as per Annex 5.2. |
| * 1. AAA shall render reports as agreed in Annex 5.3, with BBB being entitled to inspect the books of AAA, i.e. to have the reports audited by an accounting expert who is subject to an obligation to maintain secrecy (including vis-à-vis BBB, except for the audit results). |
| * 1. The amounts resulting from reporting and/or from the audit results shall be invoiced by BBB to AAA by means of a proper invoice to be issued by BBB in compliance with the law. Invoices shall be payable upon receipt without any deduction within [30/ 60] days. Payments shall be made, without exception, by transfer to an account with an Austrian credit institution to be advised by BBB. |
| * 1. In the case of late payment, even through no fault, interest at the statutory rate applicable between entrepreneurs will accrue on the outstanding amount as of the end of the payment period. |
| * 1. Unless expressly stipulated in the present Agreement, any additional payment claims between the Parties shall be reciprocally excluded. |
| 1. PRINCIPLES OF COOPERATION |
| * 1. In particular in the light of the complexity of the subject matter of the Agreement the Parties agree to cooperate as partners at all times, so that the Parties are required to do everything according to the principle of good faith that is necessary to fulfil the subject matter of the Agreement. |
| * 1. The Parties expressly put on record that they are mutually bound by the general statutory and contractual fiduciary, protection and information duties. |
| * 1. The Parties shall always render their services [professionally, conforming to standards, expertly and diligently and] in line with "best practices in [research/ industry]" and in compliance with the applicable legal requirements as well as with the requirements commonly expected and/or agreed. For this purpose [the relevant time of performance] [the time of conclusion of the Agreement] shall be decisive. |
| 1. LIABILITY PROVISIONS |
| * 1. The Parties are aware that, despite compliance with all duties of care, the Parties may not be able to generate appropriate equivalent Data (both in terms of quantity and quality) for unforeseeable reasons. Therefore, the Parties shall only owe their reasonable efforts in this respect. |
| * 1. The provisions regulating contracts for work shall be applicable on a supplementary basis to the creation of the health database on the basis of raw data and to the creation of the online health database. |
| * 1. The Parties represent that they hold the relevant rights and/or authorisations required for performance under this Agreement. This means, in particular, that no Proprietary Rights of Third Parties will be directly or indirectly infringed upon, i.e. that either no such rights exist or that such rights have been granted comprehensively by Third Parties. [If Third Parties assert claims for infringement of rights due to a violation of provisions of this Agreement, the Parties shall indemnify each other in this regard upon first demand, irrespective of fault.] |
| * 1. The Parties shall notify each other of any infringement of a Proprietary Right in connection with this Agreement of which they obtain knowledge and/or which is presumed and/or alleged. In that case the Party held liable will coordinate any further steps with the other Party. The other Party may join, or intervene in, the relevant proceedings to the extent permitted by law. Conclusion of settlements or refraining from continuing such proceedings shall require the other Party's consent insofar as there may be legal consequences for the other Party. |
| * 1. Should rights of Third Parties have actually been infringed in connection with performance, which will also be considered to be the case where an Expert Audit (see Clause 9) arrives at that result, the following shall apply: the Party rendering performance shall [, where reasonable and technically feasible,] use an alternative which is free of any rights of Third Parties at its cost [and indemnify and hold harmless the other Party in this regard, irrespective of fault]. With respect to the alternatives the requirements of this Agreement shall apply *mutatis mutandis*. |
| * 1. To the extent that the Parties do not meet the representations and warranties expressly stated in this Agreement, they shall indemnify and hold harmless each other irrespective of fault. |
| * 1. Unless expressly agreed otherwise in the Agreement, the Parties shall be liable in accordance with the statutory provisions. |
| * 1. The Parties shall release each other from any liability between them regarding the Processing of Data of Data Subjects if they share responsibility for the cause triggering liability. This shall also apply with respect to any fine that may be imposed on either Party for any violation of data protection provisions, subject to the proviso that the Party on whom the fine was imposed must have exhausted the appeals against the decision on the fine first. If, thereafter, the relevant Party remains burdened with a fine in whole or in part which does not correspond to its internal share of responsibility for the violation, the respective other Party shall indemnify it against the fine to the extent of the other Party's share of responsibility for the violation sanctioned by the fine. |
| 1. OBLIGATION TO MAINTAIN SECRECY AND TO REFRAIN FROM USE |
| * 1. It has to be assumed that in the course of (performance of) this Agreement the Parties will obtain knowledge of Trade and Business Secrets of the respective other Party. Therefore, the Parties agree to keep secret all Trade and Business Secrets received and to use them exclusively for the purpose of cooperation under this Agreement and to refrain from exploiting them or have them exploited for their own purposes in any way whatsoever and from making them accessible to uninvolved parties or tolerate this without the prior consent of the other Party In Writing. |
| * 1. The Parties may disclose Trade and Business Secrets of the other Party to staff of their enterprises [and Affiliates], but only to the extent that they absolutely need such information to render the agreed performance. The Parties shall ensure that such persons who may be allowed access to such Trade and Business Secrets will be bound by an agreement In Writing to maintain secrecy and to refrain from use at least in the way agreed herein, which shall continue to apply after they leave the company. |
| * 1. The obligation to maintain secrecy and to refrain from use shall not apply to information for which there is evidence that * it was known to the receiving Party before its transmission; * it was in the public domain at the time of transmission; * it has become publicly known after transmission through no fault of the receiving Party; * after transmission it has been lawfully made accessible to the receiving Party by a Third Party and without any restriction in terms of secrecy or use; * it was developed independently by the receiving Party; or * it has to be disclosed on the basis of statutory provisions, court decisions or official orders; in that case the Party required to disclose the same shall immediately notify the other Party of such disclosure to the extent permitted by law. |
| * 1. The above provisions on secrecy and non-use shall continue to be in force even after termination of this Agreement [for an unlimited period of time / for a period of five years] for as long as the information is not in the public domain. |
| 1. **EXPERT AUDIT** |
| * 1. Either Party may demand and institute an Expert Audit if there is disagreement between the Parties on a specific technical or commercial issue. This requires that the Party that wishes to institute the Expert Audit has invited the other Party before by notice In Writing and has provided reasons and granted a reasonable period to resolve the dispute or (if the dispute is about performance to be rendered by the other Party) to render performance in conformity with the contract. After expiry of that period the Party who demanded resolution of the dispute or performance in conformity with the contract shall be entitled to demand and institute an Expert Audit. It shall also be entitled to interrupt or cancel the Expert Audit which has been instituted. |
| * 1. The Expert Audit serves as (out-of-court) expert evidence. |
| * 1. An Expert Audit shall be conducted by an independent expert (hereinafter "Auditor") from an area of expertise that is as closely related to the case at hand as possible. The Auditor shall be put under a comprehensive obligation to main secrecy. The Auditor should be appointed by mutual consent, if possible. |
| * 1. An Expert Audit shall be comprised of the findings, the expert opinion and (if the findings and expert opinion so require) recommendations for appropriate measures (hereinafter referred to as "Expert Recommendations"). In his Expert Recommendations the Auditor shall in particular state specific measures, and reasonable deadlines for taking such measures, by which the target condition is to be brought about (or restored). The Auditor shall issue Expert Recommendations as quickly as possible and communicate them to the Parties simultaneously, where possible. |
| * 1. The Parties shall assist in such Expert Audits and generally support the Auditor to the best possible extent in fulfilling his tasks, including, without limitation, by providing all documents, explanations, statements and documentation and by granting access to the relevant infrastructure and staff as necessary or useful for the Audit. The Auditor may also call in other experts for certain topics. Both the Auditor and the other experts shall be granted rights of inspection and access to the broadest extent. |
| * 1. The costs of the Expert Audit (costs of the Auditor and other experts called in by him, if any) will be borne as determined by the Auditor according to the "judicial principle of reimbursement of costs according to the proportion by which the Parties have won" after the Parties have been heard; in the case of doubt he shall determine that the costs be borne on a 50:50 basis. The Party who stops or cancels the Expert Audit shall bear the total costs incurred by then. For the rest, either Party shall bear itself the other costs incurred by it in connection with the Audit. |
| * 1. Commenced or concluded Expert Audits shall constitute no procedural impediment (no pending dispute and no *res judicata*). While legal proceedings are pending, no Expert Audits shall be conducted with respect to the relevant dispute; Expert Audits which have been commenced in this matter shall be discontinued; reimbursement of costs will then depend on who "wins the case" in court. |
| * 1. For the period in which the Parties try to resolve the dispute by means of an Expert Audit, statutory limitation of all related claims shall be suspended. |
| 1. TERMINATION |
| * 1. Since the Parties assume joint data ownership, the regulations on the winding-up of co-ownership shall apply (by analogy). |
| 1. PLACE OF JURISDICTION; APPLICABLE LAW |
| * 1. All disputes arising out of or in connection with this Agreement (including the issue of its valid conclusion and existence) shall exclusively be decided by the court having jurisdiction over [BBB / AAA], depending on the amount in dispute (courts of law). |
| * 1. Austrian law shall apply in any case; the conflict of laws rules and UN Sales Law shall be excluded. |
| 1. **OTHER PROVISIONS** |
| * 1. The Parties waive their right to avoid the Agreement on account of mistake (including a mistake in calculation) [but not on account of *laesio enormis* [translator's note: under the legal concept of *laesio enormis* a contract may be challenged based on the argument that the value of the item delivered is less than 50% of the consideration paid]] or frustration of contract or any other present or future grounds for avoidance and root defects. |
| * 1. This Agreement and all its documents, including, without limitation, the Annexes to which it refers or which it states to be integral parts hereof contain all contractual arrangements made by and between the Parties. [General Terms and Conditions of Purchase, if any, and similar pre-worded contract terms shall not apply. No oral side agreements exist. |
| * 1. Modifications of or amendments to this Agreement, including the abolishment of the requirement of Written Form, shall be made In Writing in order to be effective. |
| * 1. If any provision of this Agreement is or becomes ineffective, void, unlawful or unenforceable, the validity of the remaining provisions of this Agreement shall not be affected. The ineffective, void, unlawful or unenforceable provision(s) shall be replaced by a provision which comes as close as possible to the will of the Parties to the extent permitted by law and which reflects the commercial effect of the ineffective, void, unlawful or unenforceable provision(s) in the best possible way. |
| * 1. This Agreement will be executed in two (2) counterparts, each of which will be deemed an original and of which each Party will be given one. |
| * 1. The undersigned warrant that the Party for which they sign will be bound by their signatures ipso jure. |
| [Place], [date]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  AAA |
| [Place], [date]  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  BBB |