

MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (“NDA”) is entered into as of **(Date)** 2021 (“Effective Date”)

BETWEEN:

1. **Beekeeper AG** Höggerstrasse 65, 8037 Zürich Switzerland and its affiliates and subsidiaries (“**Beekeeper**”); and
2. The company as set out in the signature block below (“**Company**”).

each a “**Party**” and collectively the “**Parties.**”

BACKGROUND

- A. Beekeeper and Company have entered into or are proposing to enter into a business arrangement with each other (“**Purpose**”).
- B. In connection with the Purpose, the Parties may need to and are willing at their own discretion to exchange Confidential Information (as defined below).
- C. Each Party acknowledges the other Party is engaged in a highly competitive business and possess trade secrets, confidential and proprietary information which such Party considers confidential. This has been acquired, developed and maintained at considerable cost, is not generally known outside of their respective companies, and which, if disclosed to a competitor, would be harmful to the other.
- D. In consideration of a Party’s disclosure of Confidential Information to the other Party the Parties have agreed to keep such information confidential on the terms and conditions set out in this NDA.

The Parties agree as follows:

1. DEFINITIONS

- 1.1. “**Confidential Information**”: all information disclosed by Discloser to Recipient, including information of a Confidential Nature disclosed before the Effective Date, in whatever form or medium whether oral, written, graphic, machine readable or otherwise intangible, that is proprietary to Discloser, including any marketing strategies, plans, financial information or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of Discloser, its affiliates, subsidiaries and affiliated companies; (ii) products, plans for products or services, agreements with third parties, and customer or supplier lists; (iii) any scientific or technical information, inventions, designs, processes, procedures, formulas, algorithms, improvements, technologies or methods; (iv) any concepts, intellectual property, intellectual property applications, research, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases; and (v) any other information provided by Discloser to Recipient that is reasonably recognizable as being of a confidential or proprietary nature of Discloser. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information.
- 1.2. “**Confidential Nature**”: for the purposes of the definition of Confidential Information, Confidential Nature refers to information marked or otherwise identified as confidential, proprietary or similar at the time of disclosure, or which Recipient knows is confidential, or which would be considered to be confidential by a reasonable person based on the nature of the information and the circumstances of the disclosure.
- 1.3. “**Discloser**”: the Party disclosing Confidential Information.

1.4. **“Recipient”**: the Party receiving Confidential Information from the Disclosing Party.

2. TREATMENT OF CONFIDENTIAL INFORMATION

2.1. Recipient acknowledges the Confidential Information is proprietary to Discloser and has been developed and obtained through great efforts by Discloser. The Discloser regards all of its Confidential Information as trade secrets. Recipient must consider and process all Confidential Information disclosed to it by Discloser as trade secrets.

2.2. Recipient must use at least the same degree of care as for its own Confidential Information of equal importance, in safeguarding Discloser’s Confidential Information against unauthorized use, access or disclosure;

2.3. Recipient must promptly notify Discloser upon discovery of any unauthorized use or disclosure of the Confidential Information and prevent further unauthorized actions or other breach of this NDA;

3. EXCLUSIONS

3.1. This NDA does not apply to and the definition of Confidential Information does not include information that:

- a) is rightfully known to Recipient before such disclosure; or
- b) is lawfully obtained from a third party on a non-confidential basis whom was not, to Recipient’s knowledge, under an obligation not to disclose such information;
- c) explicitly approved for release by written authorization of Discloser;
- d) is already or becomes generally available to the public;
- e) independently developed by, or on behalf of, Recipient without the use of Discloser’s Confidential Information or breach of this NDA.

4. COMPELLED DISCLOSURE

4.1. If Recipient is required to disclose Confidential Information by court order or operation of law, Recipient will, to the extent it is able, promptly notify Discloser. If Discloser seeks to obtain appropriate remedies to preserve Confidential Information, Recipient agrees to reasonably cooperate with Discloser at the expense of Discloser. If Discloser fails to timely seek or obtain enforceable protective relief, Recipient may disclose the Confidential Information requested without liability to Discloser. Any Confidential Information disclosed will continue to be subject to the protections in this NDA for all other purposes.

5. DISCLOSURE AND USE OF CONFIDENTIAL INFORMATION

5.1. Recipient shall use Confidential Information only in connection with the Purpose.

5.2. Recipient shall only disclose this NDA or Confidential Information to Recipient’s employees, agents and representatives who have a need to know for the purpose of carrying out the Purpose and who are bound by confidentiality obligations no less protective of the Confidential Information than this NDA. Recipient is liable for any breach of this NDA by it’s employees, agents and representatives.

- 5.3. Any reverse engineering, derivative work, or other unauthorized use of the Confidential Information is strictly forbidden. The products or results of such unauthorized activity is automatically also Confidential information and Recipient waives, and will procure at its own expense, all intellectual property rights and rights of commercialisation and assign the same to Discloser for such products or results.
- 5.4. The software programs of the other Party contain valuable Confidential Information. Recipient shall not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Confidential Information of the other Party without the prior written consent of the other Party.
- 5.5. Recipient shall not export, directly or indirectly, any technical data acquired under this NDA, or any products utilizing such data, in violation of applicable export laws or regulations.

6. RETURN OF CONFIDENTIAL INFORMATION

- 6.1. Within ten (10) days of receipt of Discloser's written request, Recipient will return to Discloser, or certify the destruction, of all Confidential Information either saved in electronic format, available on devices and any other means, or embedded on hard copies. When a Confidential Information of Discloser is saved in the electronic back-up files of Recipient and its single deletion could result excessively burdensome or impossible, Recipient may keep such Confidential Information until destroyed according to its regular document destruction policies.

7. OWNERSHIP OF CONFIDENTIAL INFORMATION

- 7.1. Discloser retains all right, title and interest in and to Confidential Information.
- 7.2. Nothing in this NDA is intended to create, nor does it create, any legal obligation or rights or license, whether expressed or implied, for the Recipient in the Confidential Information other than the ones specifically agreed in this NDA.
- 7.3. All information and documentation developed, compiled or otherwise derived by Recipient from Confidential Information of Disclosing Party ("**Derivative Information**") is considered Confidential Information of Discloser. The obligations in this NDA extend to Derivative Information. Any copies, reproductions, or reductions to writing, of Confidential Information are the property of Discloser.

8. NO COMMITMENT TO FURTHER AGREEMENT

- 8.1. This NDA will not create a joint venture, partnership or any other business relationship.
- 8.2. This NDA does not obligate the Parties or their affiliates to proceed with any transaction or business relationship between them. Any agreement between the Parties or their affiliates as to such business activities shall be set out in a separate written agreement.

9. PUBLICITY

- 9.1. All news releases, announcements of any kind in any media, such as media releases, public announcements or any public disclosures relating to this NDA or the Purpose, or use of the name or logo of the other Party or its affiliate(s), including in promotional or marketing material or customer lists, shall be coordinated with and approved by the other Party in writing before release.

10. TERM, TERMINATION AND SURVIVING OBLIGATIONS

- 10.1. The term of this NDA is three (3) years from the Effective Date. Either Party may terminate this NDA for any reason by giving thirty (30) days' written notice to the other Party.
- 10.2. **Clauses 1, 2, 4, 5, 6, 7, 8 and 9** will survive the expiration or termination of this NDA and will be binding on Recipient's heirs, successors and assigns.

11. REMEDY AND RELIEF

- 11.1. A breach or threatened breach of this NDA will cause irreparable damage to the Discloser. Financial damages may not be an adequate remedy and would be impossible to calculate. In the event of a breach or threatened breach of this NDA by Recipient, Discloser may seek injunctive or other equitable relief or remedy relief against Recipient and in addition to any other available relief or remedy that may be available, in law, in equity, or otherwise. If litigation relating to this NDA occurs between the Parties, the prevailing Party may recover its reasonable attorney's fees and expenses.

12. WARRANTY AND LIABILITIES

- 12.1. Discloser warrants it has the right to disclose the Confidential Information it discloses to the Recipient. All Confidential Information is provided "as is." Neither Party makes any warranty, expressed or implied, regarding the sufficiency or accuracy of its Confidential Information, and all warranties of merchantability, fitness for purpose and non-infringement are expressly excluded. Neither Party will be liable to the other for any loss of profits, loss of use, indirect, incidental, consequential or punitive, or special damages, whether or not foreseeable. Nothing in this NDA excludes liability for fraud or fraudulent misrepresentations.

13. NON-SOLICITATION

- 13.1. For one year after the expiration or termination the Recipient shall not and shall cause its affiliates, and each of its and their respective directors, officers or employees not to directly or indirectly (i) solicit for hire or engagement or (ii) hire or engage any person who is now or was during the three (3) months before such proposed solicitation hire or engagement, engaged or employed by the Discloser or any of its affiliates. The Recipient may make general solicitations through public advertisements or recruiting agencies in the ordinary course of business and employ persons in connection with such general solicitations.

14. GOVERNING LAW AND JURISDICTION

- 14.1. This NDA is governed by the laws of Switzerland.
- 14.2. All disputes arising out of or in connection with these terms shall be governed by substantive Swiss law, excluding any conflict of law rules and the laws in treaties, including but not limited to the Uniform Law on Purchases (Vienna treaty). The competent Court of the Canton of Zurich shall have exclusive jurisdiction to settle any dispute which may arise out of or in connection with these terms. Each applicable Party irrevocably submits to the jurisdiction of such courts and waives any object to proceedings in such courts on the grounds of venue or inconvenient forum.

15. NOTICE.

- 15.1. Any notice under this NDA must be given in English in writing and will be deemed to have been duly given when hand delivered personally or three (3) days after such notice is posted (registered, postage prepaid) and addressed to each Party at such Party's address within this NDA or notified in writing to the other Party.

16. GENERAL

- 16.1. If any provision or part of any provision of this NDA is found void or unenforceable by a court of competent jurisdiction, such provision or part, shall be deemed severed, and the remainder of this NDA shall remain in full force and effect.
- 16.2. This NDA may be executed in counterparts.
- 16.3. This NDA constitutes the entire agreement between the Parties and supersedes any other written or oral agreements concerning this subject matter.
- 16.4. This NDA may only be modified in writing by the Parties.
- 16.5. Neither Party may assign their rights under this NDA without the prior written consent of the other Party.

17. SIGNATURES

- 17.1. The individuals executing this NDA on behalf of the Company and Beekeeper each represent and warrant they respectively have been and are duly authorized to execute this NDA on behalf of their respective principals.
- 17.2. Either Party may sign this NDA by means of an electronically-produced signature, and that such signature shall have the same legal effect as a manually written signature.

SIGNED by:

BEEKEEPER AG

Name:

Job Title

Signature:

Date:

BEEKEEPER AG

Name:

Job Title:

Signature:

Date:

COMPANY

(Full company legal name)

Address:

Name:

Job Title:

Signature:

Date: