

# AGREEMENT

---

between

**XYZ**

and

**TWT ...**

---

regarding

**„Mutual  
Non-Disclosure of Confidential Information and  
Non-Circumvention including Non-Solicitation”**

*(Document Cover Sheet)*

*(This page intentionally left blank)*

Draft

**Non-Disclosure of Confidential Information, and  
Non-Circumvention including Non-Solicitation**

**A G R E E M E N T**

This Agreement, business to business (B2B), with its terms and elements being the same quality as, and fully equal to a contract legally binding and enforceable in a court of law, is made and entered into on this [MONTH, DAY, 20..] by and between,  
on the one hand,

[EITHER]

[NAME OF INDIVIDUAL], a natural person with professional commercial business, of [COUNTRY] nationality, born on [BIRTHDATE dd/mm/yyyy] with current [COUNTRY] passport Nr. [DATA] and place of residence at [REGISTRATION ADDRESS], (in short hereinafter referred to also simply as [NAME])

[OR]

[NAME OF COMPANY] (see also [WEBSITE ADDRESS]), for the purpose of this Agreement contactable via [E-MAIL ADDRESS], a legal person with professional commercial business, duly organized and active without any restrictions under the legislation of [COUNTRY], with registration reference [REGISTRATION ID], registered at the public registry of [NAME] and having its registered address at [REGISTRATION ADDRESS], in the country of [COUNTRY] being represented by [NAME OF INDIVIDUAL], a natural person of [COUNTRY] nationality, born on [BIRTHDATE dd/mm/yyyy] with current [COUNTRY] passport Nr. [DATA] and place of residence at [REGISTRATION ADDRESS] with full legal proxy to alone represent and sign for [NAME OF COMPANY] (in short hereinafter referred to also simply as “[NAME]”),

and, on the other hand,

**TWT INTERNATIONAL c/o TWT ...**, (see also <https://www.twt-international.com/>), for the purpose of this Agreement contactable via e-mail [contact@twt-international.com](mailto:contact@twt-international.com), a legal person with professional commercial business duly organized and active without any restrictions under the legislation of [COUNTRY], with registration reference [REGISTRATION ID], registered at the public registry of [NAME] and having its registered address at [REGISTRATION ADDRESS], in the country of [COUNTRY] being represented by [NAME OF INDIVIDUAL], a natural person of [COUNTRY] nationality, born on [BIRTHDATE dd/mm/yyyy] with current [COUNTRY] passport Nr. [DATA] and place of residence at [REGISTRATION ADDRESS] with full legal proxy to alone represent and sign for [NAME OF COMPANY] (in short hereinafter referred to also simply as “[NAME]”),

with all the above persons hereinafter referred to also individually as “**Party**” and collectively as “**Parties**”:

*WHEREAS, the Parties*

*in general*

[OR]

*pertaining to a hereunder defined specific Subject Matter*

*wish to exchange information, which most likely will involve also Confidential Information.*

*WHEREAS, the Parties recognize and acknowledge that each had in the past, currently has, and in the future may possibly have, access to certain Confidential Information that first of all is a relevant Party's individual business privilege, original and special to it and a unique asset meaning a trade secret of their relevant individual business.*

*WHEREAS, each Party as Disclosing Party wishes to have assurance that its Confidential Information, if and when provided to the other Party as Receiving Party, is protected and kept confidential by the Receiving Party and used by the Receiving Party only based on non-disclosure and non-circumvention including non-solicitation rules, not to the detriment of the Disclosing Party.*

*WHEREAS, TWT is a competent commercial business professional experienced internationally in business development and among other activities maintains so called geographical and/or subjective foreign markets expertise providing commercially in support of others a variety of insights and services according the defined TWT portfolio.*

*WHEREAS, XYZ is ...*

**NOW, this stated, in consideration of the premises and mutual promises set forth herein, XYZ and TWT, intending to be legally bound, mutually agree and declare the following terms and conditions:**

#### **1. Preamble**

The preamble is an integral part of this Agreement.

#### **2. Definitions**

Unless otherwise specified, definitions and interpretations used in and / or in connection with this Agreement, whether they are capitalized or not, singular or plural, are generally accepted definitions and interpretations.

**"Affiliate(s)"** means in relation to any person, any other person directly or indirectly Controlled by, or Controlling of, or under common Control with, that person and, in the case of

a trust, any trustee or beneficiary (actual or potential) of that trust and, in the case of an individual, any of the individual's Connected Persons.

**"Connected Person"** means, in respect of an individual: (A), that individual's spouse or civil partner, relative or the spouse or civil partner or lineal descendant of a relative (relative means brother, sister, ancestor or lineal descendant (including stepchildren) for the purposes of this definition); any person acting in his capacity as trustee of a trust of which A is a settler or beneficiary; any person which is an undertaking; or (B) Controlled by A or any of the other persons referred to in this definition or which is a subsidiary or parent company of B or a subsidiary of any such parent company.

**"Control"** means the power of a person to secure, directly or indirectly, (whether by the holding of shares or other equity interests, possession of voting rights or by virtue of any other power conferred by the articles of association, constitution, partnership agreement, trust agreement or other documents regulating another person, or by any other means whatsoever) that the affairs of such other person are conducted in accordance with its wishes and "Controlled" and "Controlling" shall be construed accordingly.

**"Group"** means in relation to a company, means that company, each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company.

**"Person"** means natural person or legal person.

**"Receiving Party's Group"** means any subsidiary, parent undertaking or holding company of the Receiving Party and any subsidiary of such parent undertaking or holding company and any partnership interest in or of the Receiving Party.

**"Representative(s)"** means in relation to the Receiving Party and the Receiving Party's Group:

- a) their officers, directors, employees, any operator, partner, funder or any investment or fund manager that needs to know the Confidential Information in connection with this Agreement;
- b) their professional advisers or consultants who are engaged to advise that party in connection with this Agreement;
- c) their contractors and sub-contractors engaged by that party in connection with this Agreement; and

- d) any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with this Agreement.

For the purpose and use of this document any additional special definitions and / or interpretations if any, shall be separately defined, agreed upon and documented in writing by Annex, which with signature from all the Parties then automatically becomes an integral part of this Agreement.

### **3. Subject Matter**

There is no specific Subject Matter defined. The Parties agree in general

[OR]

The Subject Matter of this Agreement is defined as follows:

[SUBJECT MATTER SHORT DEFINITION].

It's short reference is "[...]".

Subject Matter additional definitions / descriptions, if any, shall be separately defined, agreed upon and documented in writing by Annex, which with signature from all the Parties then automatically has become an integral part of this Agreement.

### **4. Purpose**

The Purpose of this Agreement is to express, regulate, organize and document the mutual confidentiality and non-circumvention including non-solicitation obligations of the Parties.

Purpose additional definitions / descriptions, if any, shall be separately defined, agreed upon and documented in writing by Annex, which with signature from all the Parties then automatically has become an integral part of this Agreement.

### **5. Scope**

The Scope of this Agreement is limited to the Non-Disclosure of Confidential Information and Non-Circumvention including Non-Solicitation in protection of the Disclosing Party.

Scope additional definitions / descriptions, if any, shall be separately defined, agreed upon and documented in writing by Annex, which with signature from all the Parties then automatically has become an integral part of this Agreement.

## 6. Non-Disclosure of Confidential Information Obligation

The Non-Disclosure of Confidential Information Obligation is agreed as follows:

**6.1 Basic Obligation:** The Parties in connection with this Agreement each oblige equally to honor the generally accepted principle of confidentiality. They mutually oblige in principle to pro-actively protect received Confidential Information and not to disclose it except according agreed rules.

**6.2 Receiving Party & Disclosing Party:** Each Party to this Agreement is referred to as "Receiving Party" if and when it receives or uses the Information disclosed by the other Party then referred to as the "Disclosing Party".

**6.3 Information:** Information is all possible kind of processed, organized and structured data. It provides context for data, resolves uncertainty and enables discussions, negotiations and decision making processes.

**6.4 Confidential Information:** Whatever information is being exchanged and this way disclosed between the Parties, it in principle always shall be mutually considered, treated and protected by the Parties as "Confidential Information". This includes i.e. all disclosed contact information and contact introductions; details about the Disclosing Party, its group, its representatives, its affiliates and its connected persons; the fact that information is exchanged, discussions and negotiations taking place and the status of those discussions and negotiations; the existence and terms of this Agreement; all information relating to the business, affairs, customers, clients, suppliers, plans, intentions, market opportunities, the operations, processes, product information, know-how, technical information, designs, hardware/software, assets or whatever trade secrets of the Disclosing Party.

**6.5 Non-Confidential Quality:** Information disclosed is not confidential if and when it clearly can be proven not to be of confidential nature as i.e.

- a. any information which is in the public domain (unless as a result of the breach of this Agreement); or
- b. any information which is already known to the Receiving Party and which was not subject to any obligation of confidence before it was disclosed to the Receiving Party by the other Party.

**6.6 Doubts / Rejection of Confidential Quality:** If the Receiving Party doubts the privileged confidential quality of disclosed Confidential Information, then the Receiving Party without

delay (within maximum 14 working days) must in writing inform the Disclosing Party and declare rejection of the privileged confidential quality of this specific information.

**6.7 Rightful Use:** The Receiving Party undertakes not to use the Confidential Information disclosed by the other Party, for any other than the above B2B purpose, without first obtaining the written agreement of the other Party. Typically the Confidential Information is disclosed only to assist the Receiving Party in evaluating, furthering and executing the mutual B2B cooperation and transactions. Only in this context and to this extent the Disclosing Party is prepared to make available its confidential information to the Receiving Party.

**6.8 Protection of Confidential Information:** The Receiving Party undertakes all to protect the Confidential Information disclosed by the Disclosing Party. The Receiving Party shall be solely and directly responsible for all persons, who obtain such Confidential Information by or through the Receiving Party, the Receiving Party's Group or any Receiving Party's Representative. The Receiving Party shall keep it securely secret and not disclose it to any third Party except to its employees, professional advisers and / or subcontractors who need to know the same for the above B2B purpose, who know they owe a duty of confidence to the Disclosing Party and who are bound by obligations equivalent to those in clauses herein. Without limitations to these obligations, all Confidential Information must be safeguarded at all times with the highest degree of care to avoid unauthorized disclosure, and shall, to the extent reasonably possible, be preserved digital bug- and virus free. The Receiving Party shall not allow or permit any such Confidential Information to be knowingly or negligently misappropriated or used (directly or indirectly, by independent research, data mining, reverse engineering, decompiling, or otherwise) by the Receiving Party or the Receiving Party's Representatives for their own benefit or for the benefit of others, except in conjunction with discussions and transactions between the Disclosing Party and the Receiving Party and agreements or actions arising therefrom or related hereto. Each Receiving Party hereby agrees to indemnify, defend, and hold the Disclosing Party harmless from and against any and all suits, liabilities, cause of action, claims, losses, damages, or expenses of any kind (including reasonable attorneys' fees and expenses) incurred or suffered by the Disclosing Party arising from or in connection with a breach of the Non-Disclosure obligation, including without limitation unauthorized use or disclosure of the Confidential Information in violation of this Agreement, and negligent or intentional acts or omissions in the performance of this Agreement by the Receiving Party or the receiving Party's Representatives or persons to whom such persons reveal Confidential Information.



**6.9 Rightful / Forced Disclosure:** Nothing in this Agreement will prevent the Receiving Party from making any disclosure of the Confidential Information if, and when required by law or by any competent state authority such as i.e. a state court of law etc. when proceeding “under color of law”. In such case the Receiving Party shall, if possible, give prior written notice thereof to the other Party and provide the Disclosing Party with the opportunity to contest such “forced” disclosure. The Receiving Party shall only furnish this portion of the Confidential Information that it is required to disclose and shall exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded with respect to the Confidential Information disclosed. The same shall be true if the Receiving Party reasonably believes that disclosure is required in connection with the defense of a lawsuit against the Disclosing Party.

**6.10 Return of Confidential Information:** The Receiving Party will, on request from the other Party, return all copies and records of the Confidential Information disclosed by the other Party to the Receiving Party and will not retain any copies or records of the Confidential Information disclosed by the other Party. In case of Confidential Information in digital form the Receiving Party may ask the Disclosing Party for permission to simply delete the data from its systems. In case of such permission the Receiving Party is obliged to warrant the secure and permanent deletion from its electronic systems.

**6.11 Breach / Threatened Breach:** In the event of a breach or threatened breach by the Receiving Party, of the provisions of this section, the Disclosing Party shall be entitled to an injunction restraining the Receiving Party from disclosing, in whole or in part, such Confidential Information. Nothing herein shall be construed as prohibiting the Disclosing Party from pursuing any other available remedy for such breach, including the recovery of damages.

**6.12 No Warranty:** The Receiving Party acknowledges and agrees that the confidential information is provided on an “AS IS” basis. THE DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE DISCLOSING PARTY BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OR USE OF ANY PORTION OF THE CONFIDENTIAL INFORMATION. The Disclosing Party does not represent or warrant that any product or business plans disclosed to the Receiving Party will be marketed or carried out as disclosed, or at all. Any actions taken by the Receiving Party in response to the disclosure of the confidential information shall be solely at the risk of the Receiving Party

## 7. Non-Circumvention / Non-Solicitation Obligation

The Non-Circumvention Obligation is agreed as follows:

**7.1. Basic Obligation:** The Parties towards the above purpose each oblige equally to honor the generally accepted business rule of Non – Circumvention including Non-Solicitation.

**7.2. Circumvention:** Circumvention is any act of the Receiving Party bypassing the Disclosing Party by stratagem deception, fraud or by chance negligent act. Any proven event of circumvention under this Agreement shall be considered to have automatically detrimental effect for the circumvented Party. Accordingly there is no need for the circumvented Party to prove the damage fact. There is only need to quantify and prove the actual damage amount for the claim and recovery of damages. Any use of disclosed Confidential Information by the Receiving Party for the intentional or accidental bypassing of the Disclosing Party is forbidden. Independent of any detrimental effects for the Disclosing Party. Circumvention is considered to be the case if and when the Receiving Party or any of its controlled individuals, associates or subsidiaries (without the prior asking and receiving the written consent of, or without the prior having entered into a separate agreement i.e. commission agreement with, the Disclosing Party) use the disclosed Confidential Information in order to:

- a. Directly or indirectly initiate, solicit, discuss, negotiate, Agreement or enter into any business Agreements, undertakings or transactions with any third party;
- b. any other way, than towards the Subject-Matter, Purpose and Scope of this Agreement.

The Receiving Party agrees not to contact, initiate contact, or attempt to do business with, at any time for any purpose, either directly or indirectly, with any employees, officers, directors, shareholders, consultants, attorneys, agents or other affiliates introduced, or otherwise referred to by the Disclosing Party to the Receiving Party, for the purpose of circumventing, the result of which shall be to prevent the Disclosing Party from realizing a profit, fees, or otherwise, without the specific written approval of the Disclosing Party;

The Receiving Party covenants not to use any of the Confidential Information to the detriment of the Disclosing Party. The Receiving Party agrees that all Confidential Information based and/or related issues will only be discussed, submitted or directed via

the Disclosing Party and not directly with / to any third party unless prior agreed to in writing by the Disclosing Party.

**7.3. Non-Solicitation:** Non-Circumvention includes Non-Solicitation. The Receiving Party obliges not to solicit or entice away, neither directly or indirectly, and whether for itself or on behalf of any other third party, without prior written approval from the Disclosing Party, the capital providers, shareholders, directors, employees, free-lancers, subcontractors, contractors, suppliers, advisers etc. of the Disclosing Party if originally introduced to the Receiving Party from the Disclosing Party.

**7.4. Breach / Threatened Breach:** In the event of a breach or threatened breach by the Receiving Party, of the provisions of this section, the Disclosing Party shall be entitled to an injunction restraining the Receiving Party from circumvention and/or solicitation, in whole or in part. Nothing herein shall be construed as prohibiting the Disclosing Party from pursuing any other available remedy for such breach, including the recovery of damages.

#### **8. No Hidden Agenda**

The Parties each represent that they are acting (and covenant that they will act in the future) for their own account and not as an agent, trustee or in a comparable function for or on behalf of any third party or in any way which could be construed as "Hidden Agenda".

#### **9. No Obligation to Contract**

By signing this Agreement, neither Party shall be obliged to disclose any information (whether Confidential Information or otherwise), pursue discussions and/or enter into negotiations and/or enter into any business contract with the other Party („clausula rebus sic stantibus“ - principle) or do or omit any other acts not directly stipulated herein.

#### **10. Additional Party Accession**

When deemed necessary any legitimate Third Party may additionally join this Agreement and oblige to its terms and conditions with all responsibilities and rights from it, from the date of its joining, simply by dating and co-signing this Agreement after being newly issued and endorsed one way or the other in writing by all previous signatories and after being distributed evenly in original to all Parties.

#### **11. Reciprocity / Applicability of Agreement**

All of the obligations contained in this agreement are mutual and reciprocal. This agreement shall be binding on the Parties and their relevant groups.

### **12. Assignment / Third Party Rights**

This Agreement shall not be assignable by either Party. No other than a Party to this Agreement shall have any right to enforce any of its terms. Neither Party may delegate its duties under this Agreement without the prior written consent of the other Party.

### **13. Relationship of Parties**

Neither Party has an obligation under this Agreement to purchase any service or item from the other Party, or commercially offer any products using or incorporating the Confidential Information. This Agreement does not create any agency, partnership, or joint venture.

### **14. Licenses**

Neither this Agreement nor the disclosure of any information grants the Receiving Party any license, interest or right in respect of any intellectual property rights of the Disclosing Party except the right to use them solely according the purpose of this Agreement.

### **15. Association**

This Agreement is not deemed to constitute an association, joint venture, partnership or formal business organization of any kind that may oblige or burden the Parties except with regard to Non-Disclosure and Non-Circumvention including non-solicitation as explicitly addressed herein.

### **16. Force Majeure**

If the performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either Party's reasonable control ("Force Majeure"), and if the Party unable to carry out its obligations gives the other Party reasonably timely written notice of such event, then the obligations of the Party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm, pandemic or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages, other labor disputes, or supplier failures. The excused Party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with

reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a Party if committed, omitted, or caused by such Party, or its employees, officers, agents, or affiliates.

#### **17. End Date / Termination**

The common end date of this Agreement is **36 month** after the above referenced made and entered into date.

Either Party may terminate this Agreement at any time upon written notice to the other Party. Termination shall not affect confidentiality, non-circumvention and/or non-solicitation obligations, which survive with respect to any confidential information or business contacts that were obtained prior to the effective date of termination.

The surviving time period for all obligations agreed herein in any case is **24 month** either after the regular end date or the effective date of termination whatever comes first.

#### **18. Disputes**

Differences the Parties in general settle through negotiations. They mutually shall make every effort to amicably settle any dispute relating to the Agreement, which may arise between them.

Once a dispute has arisen, the Parties to this Agreement notify each other in writing of their positions on the dispute as well as of any solution which they envisage possible. If any of the Parties deems it useful, the Parties might meet and try and settle the dispute. Each Party is obliged to respond to a request for amicable settlement within 14 days of such request. The period to reach an amicable settlement shall be 45 days. Should the attempt to reach an amicable settlement not be successful or should a Party not respond in time to any requests for settlement, each Party shall be free to proceed to submit the matter for settlement in court.

The Parties still may agree to the settlement of the dispute by conciliation within a specific time limit by a third party after the amicable settlement procedure adopted has failed. The amicable settlement or conciliation procedure adopted shall in all cases involve a procedure in which complaints and responses are notified to the other Party.

In the event the Parties wish for a resolution of any dispute arising out of or in connection with the present Agreement by means of arbitration then, the Parties herewith agree that such shall be finally settled according to the Arbitration Rules of the Chamber of Industry and Commerce of Munich and Upper Bavaria (IHK München), Germany then without recourse to

the ordinary courts of law. All arbitration proceedings shall be conducted in English Language. The arbitration tribunal shall consist of three (3) arbitrators to be appointed by IHK München.

The tribunal shall have the authority to render his award on the basis of equity principles consistent with the explicit terms of this agreement. Such awards shall include a decision binding upon the parties, directing them to take or refrain from taking specific action with respect to the matter in dispute or disagreement.

Any award and decision taken by the tribunal then shall be final on all parties excluding any right of application or appeal to any court in connection with any question of law arising in the course of arbitration or in respect of any award made. All parties then shall accept all decisions of the tribunal as being final.

In absence of an amicable settlement or settlement by conciliation or settlement by arbitration within the maximum time limits specified, the dispute shall then simply be settled in the competent court of law with arbitration then being excluded.

**>or alternative clause<**

In the event of any dispute arising out of or in connection with the present Agreement, the parties agree to submit the matter to settlement proceedings under the ADR Rules of the International Chamber of Commerce in Paris. If the dispute has not been settled pursuant to the said Rules within 45 days following the filing of a Request for ADR or within such other period as the parties may agree in writing, such dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

**>or alternative clause<**

In case the Parties are not ready, willing or able to resolve their differences mutually each Party is free to refer the matter of dispute to the competent court of law.

**19. Governing Law**

This Agreement is governed by, and is to be construed in accordance with, [COUNTRY] law.

**20. Jurisdiction**

Place of Jurisdiction is [PLACE], [COUNTRY] and the responsible courts will have exclusive jurisdiction to deal with any dispute which has arisen or may arise out of, or in connection with, this Agreement.

**21. Entirety of Agreement**

This Agreement sets forth the entire understanding of the Parties regarding confidentiality and non-circumvention. Any amendment shall be separately defined, agreed upon and documented in writing by Annex, which with signature from all the Parties then automatically has become an integral part of this Agreement.

**22. Issuance, Signature, Digital Exchange and Effectiveness**

This Agreement is made and signed in two exact and true originals, all of which constitute one and the same, distributed evenly between the Parties. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

The Parties may sign this Agreement in their respective cities and exchange Agreement and Agreement signature pages scanned digitally by e-mail. Such digital scans shall be deemed originals and shall have the same effect as original signatures.

The date of Agreement is indicated as above independent from the individual Parties' date of signature. If a Party signs but fails to date the signature this shall have no adverse effect to the date of Agreement.

This Agreement becomes effective only if and when signed by the Parties.

**IN WITNESS WHEREOF**, the undersigned signatories as indicated below each declaring with full personal and corporate responsibility, under penalty of perjury, to represent their respective Party as stated and to possess proxy to sign alone for the Party represented, hereto have caused this Agreement to be executed:

For  
[XYZ]  
**[SIGNATORY PERSON NAME]**  
Signature

For  
TWT ...  
**[SIGNATORY PERSON NAME]**  
Signature

.....

.....