

# Telefónica Tech Mutual Non-Disclosure Agreement

Counterparty Name: [REDACTED]

Dated: [REDACTED]

Reference: TTUKI-MNDA-004

**PARTIES**

- (1) **Telefónica Tech UK Limited** incorporated and registered in England and Wales registered company number 02563193 whose registered office is at East House, Newpound Common, Wisborough Green, West Sussex, RH14 0AZ (**Telefónica Tech**).
- (2) **[Counterparty name]** incorporated and registered in **[England and Wales]** registered company number **[insert company registration number]** whose registered office is at **[insert registered office address]** (**the Counterparty**).

**WHEREAS**, each party intends to disclose to the other party Confidential Information in relation to the Purpose and intends to receive Confidential Information from the other party, subject to the terms of this MNDA.

**NOW, THEREFORE**, in consideration of the promises and mutual undertakings contained in this MNDA, the parties agree as follows:

**1. Definitions and interpretation**

1.1 In this MNDA the following words and phrases will, unless the context otherwise requires, have the following meanings:

|                                   |                                                                                                                                                                                                                                                                                                                                                                     |
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| <b>“Applicable Law”</b>           | means the laws of England & Wales.                                                                                                                                                                                                                                                                                                                                  |
| <b>“Business Days”</b>            | means any day which is not a Saturday, Sunday or public holiday in London.                                                                                                                                                                                                                                                                                          |
| <b>“Business Hours”</b>           | means 09:00 to 17:00 GMT Monday to Friday excluding public holidays.                                                                                                                                                                                                                                                                                                |
| <b>“Confidential Information”</b> | means all confidential information (however recorded, preserved or disclosed) of a party or its Group Company including but not limited to: <ul style="list-style-type: none"> <li>a) the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and/or negotiations;</li> <li>b) this MNDA;</li> </ul> |

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|                                      | <p>c) any information that would be regarded as confidential by a reasonable businessperson relating to:</p> <ul style="list-style-type: none"> <li>I. the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party or of the Disclosing Party's Group Company; and</li> <li>II. the operations, processes, price or product information, Intellectual Property Rights, know-how, technical information, financial information, designs, trade secrets or software or systems of the Disclosing Party or of the Disclosing Party's Group Company; and</li> </ul> <p>d) any information that is identified as being of a confidential or proprietary nature;</p> <p>e) any information, findings, data or analysis derived from Confidential Information;</p> <p>but not including any information that:</p> <ul style="list-style-type: none"> <li>f) is or becomes generally available to the public other than as a result of its disclosure by the Recipient in breach of this MNDA or of any other undertaking of confidentiality addressed to the party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known will nevertheless be treated as Confidential Information); or</li> <li>g) was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party; or</li> <li>h) the parties agree in writing is not confidential or may be disclosed; or</li> <li>i) is independently developed by the Recipient, which independent development can be shown by written evidence; or</li> <li>j) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.</li> </ul> |
| <p><b>“Data Protection Laws”</b></p> | <p>means:</p> <ul style="list-style-type: none"> <li>a) in the United Kingdom: the UK GDPR, Data Protection Act 2018, Data Protection, Privacy and Electronic Communications Regulations</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |

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|                                         | <p>2019 and any national laws or regulations amending, replacing, or superseding them;</p> <p>b) in member states of the European Union: the GDPR and all relevant member state laws or regulations giving effect to or corresponding with any of them; and</p> <p>c) any Applicable Laws replacing, amending, extending, re-enacting, or consolidating any of the above Data Protection Laws from time to time.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>“Disclosing Party”</b>               | means a party to this MNDA which discloses or makes available directly or indirectly Confidential Information.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>“Group”</b>                          | means in relation to a company, 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.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>“Group Third Party”</b>              | means any member of the Group.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>“Holding company and subsidiary”</b> | means a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee. In the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights. |
| <b>“Intellectual Property Rights”</b>   | means any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trademarks,                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

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|                         | registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions and <b>"Intellectual Property"</b> shall be construed accordingly. |
| <b>"MNDA"</b>           | means this mutual non-disclosure agreement between Telefónica Tech and the Counterparty.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>"Personal Data"</b>  | has the meaning given in the Data Protection Laws.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>"Purpose"</b>        | The parties intend to commence negotiations with each other in relation to [insert a brief description of the potential contract or matter].                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>"Recipient"</b>      | means a party to this MNDA which receives or obtains directly or indirectly Confidential Information.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>"Representative"</b> | means in relation to each party: <ul style="list-style-type: none"> <li>a) its officers and employees and those of its Group Third Party that need to know the Confidential Information for the Purpose;</li> <li>b) its professional advisers or consultants who are engaged to advise that party in connection with the Purpose;</li> <li>c) its contractors and sub-contractors engaged by that party in connection with the Purpose; and</li> <li>d) any other person to whom the other party agrees in writing that Confidential Information may be disclosed in connection with the Purpose.</li> </ul>                                                                                                                                                                                                                                                                                                                           |

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- 1.2 In this MNDA references to any statute or statutory provision will, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted, or replaced.
- 1.3 Unless the context requires a different interpretation, references to any gender include all genders.
- 1.4 Headings in this MNDA are for convenience only and do not affect the construction of this MNDA and its interpretation.
- 1.5 A reference to a 'party' means either Telefónica Tech or the Counterparty and includes that party's personal representatives, successors and permitted assigns.
- 1.6 A reference to a 'person' includes a natural person, corporate or unincorporated body (in each case regardless of having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.7 A reference to a 'company' includes any company, corporation, or other body corporate, wherever and however incorporated or established.
- 1.8 Words and definitions in the singular include the plural and vice versa.
- 1.9 Any words that follow 'include', 'includes', 'including', 'in particular' or any similar words and expressions will be construed as illustrative only and will not limit the sense of any word, phrase, term, definition or description preceding those words.
- 1.10 Any reference to writing, or to a 'notice in writing' includes email.
- 1.11 Any obligation in this MNDA on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.12 References to clauses are to the clauses of this MNDA.

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## 2. Obligations of confidentiality

2.1 The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall:

- (a) not use the Confidential Information in any way except for the Purpose;
- (b) not directly or indirectly disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this MNDA;
- (c) not copy, scan, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose (and any such copies, reductions to writing and records shall be the property of the Disclosing Party);
- (d) keep separate the Confidential Information from all documents and other records of the Recipient;
- (e) apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use.

2.2 The Recipient may disclose the Disclosing Party's Confidential Information to those of its Representatives who need to know this Confidential Information for the Purpose, provided that:

- (a) it informs its Representatives of the confidential nature of the Confidential Information before disclosure;
- (b) it procures that its Representatives shall, in relation to any Confidential Information disclosed to them, comply with this MNDA as if they were the Recipient;
- (c) it keeps a written record of these Representatives; and
- (d) it shall at all times:
  - (i) take all necessary precautions to ensure that the provisions of this MNDA are enforced; and
  - (ii) be liable for the failure of any Representative to comply with the terms of this MNDA and for the actions or omissions of the Representative as if they were the failure, actions or omissions of the Recipient.

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- 2.3 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted and practical to do so, it gives the other party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 2.3, it takes into account the reasonable requests of the other party in relation to the content of this disclosure.
- 2.4 The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Disclosing Party from time to time) to safeguard the Confidential Information from unauthorised access or use.
- 2.5 No party shall make, or permit any person to make, any public announcement concerning this MNDA, the Purpose or its prospective interest in the Purpose without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) except as required by law or any governmental or regulatory authority or by any court or other authority of competent jurisdiction. No party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.
- 2.6 The Recipient will provide, upon the Disclosing Party's request, assurance that access to and use of the Disclosing Party's Confidential Information is being controlled in accordance with this MNDA. The Disclosing Party will have the right to audit to verify compliance with this MNDA.

### **3. Return of information**

- 3.1 At the request of the Disclosing Party, the Recipient shall:
- (a) destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information;
  - (b) erase all the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (to the extent practicable); and

- (c) certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this MNDA. The provisions of this MNDA shall continue to apply to any documents and materials retained by the Recipient.

- 3.2 If the Recipient develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the Disclosing Party's Confidential Information, the Recipient shall, at the request of the Disclosing Party, supply to the Disclosing Party information reasonably necessary to establish that the Disclosing Party's Confidential Information has not been used or disclosed.

#### **4. Breach**

- 4.1 The Recipient will notify the Disclosing Party's Legal Department (or, if there is no such department, the Disclosing Party's Senior Management) promptly in writing if they become aware of any suspected or actual unauthorised use, or mis-use of Confidential Information by any Representative of the Recipient or a Group Third Party, or by any third party.
- 4.2 The Recipient will notify the Disclosing Party's Legal Counsel (or, if there is no such officer, the party's Senior Management) immediately in writing in the event of any direct loss or damage of Confidential Information (made by the Recipient or made aware to the Recipient).

#### **5. Reservation of rights and acknowledgement**

- 5.1 All Confidential Information shall remain the property of the Disclosing Party. Each party reserves all rights in its Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of a party's Confidential Information are granted to the other party and no obligations are imposed on the Disclosing Party other than those expressly stated in this MNDA.

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- 5.2 Except as expressly stated in this MNDA, no party makes any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.
- 5.3 The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of, the Disclosing Party to enter into any further agreement.
- 5.4 The Recipient acknowledges that damages alone may not be an adequate remedy for the breach of any of the provisions of this MNDA. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to apply for the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this MNDA.
- 5.5 Each party acknowledges that nothing in this MNDA shall impose an obligation on either party to continue discussions or negotiations in connection with the Purpose, or an obligation on each party, or its Group Third Party to disclose any information (whether Confidential Information or otherwise) to the other party.

## **6. Warranty and Indemnity**

- 6.1 Each Disclosing Party warrants that it has the right to disclose its Confidential Information to the Recipient and to authorise the Recipient to use such Confidential Information for the Purpose.
- 6.2 Each Recipient shall indemnify and keep fully indemnified the Disclosing Party and its Group at all times against all liabilities, costs (including reasonable legal costs), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Disclosing Party and/or its Group) arising from any breach of this MNDA by the Recipient and from the actions or omissions of any Representative of the Recipient.
- 6.3 Subject to liabilities which cannot legally be limited, the Recipient's liability to the Disclosing Party resulting from breach of this MNDA shall not in aggregate exceed one (1) million British pounds.

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## **7. Term and Termination**

- 7.1 If either party decides not to become involved or continue to be involved in the Purpose with the other party it shall notify the other party in writing at which point this MNDA shall terminate. If the MNDA has not already been terminated as set out above, it will automatically expire two (2) years after the date it is entered into. The obligations of each party shall, notwithstanding the expiry or earlier termination of this MNDA, continue for a period of three (3) years from the date this MNDA is entered into.
- 7.2 Termination of this MNDA shall not affect any accrued rights or remedies to which either party is entitled.

## **8. Personal Data**

- 8.1 Both parties shall comply with their respective obligations in the Data Protection Laws.

## **9. Severance**

- 9.1 If at any time any one or more clause or sub-clause or any other part of this MNDA is held to be, or becomes, void or otherwise unenforceable for any reason under any Applicable Law the affected provisions will be deemed omitted and the validity and/or enforceability of the remaining provisions of this MNDA will not in any way be affected or impaired thereby.
- 9.2 If any invalid, unenforceable or illegal provision of this MNDA would be valid, enforceable, and legal if some part of it were deleted or modified, the provision will apply with the minimum modification necessary to make it legal, valid, and enforceable and to give effect to the commercial intention of the parties.

## **10. Assignment**

- 10.1 Except as otherwise provided in this MNDA, no party may assign, sub-contract or deal in any way with, any of its rights or obligations under this MNDA or any document referred to in it.

## **11. No Waiver**

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- 11.1 No failure or delay by either party in exercising any of its rights under this MNDA will be a waiver of that right.
- 11.2 A waiver of any right under this MNDA is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given. No waiver by either party of any breach of this MNDA by the other will be considered as a waiver of any subsequent breach of the same or any other provision. Unless specifically provided otherwise, rights arising under this MNDA are cumulative and do not exclude rights provided by law.

## **12. Variation**

- 12.1 No variation will be of any effect unless the variation is made in writing and signed by both parties.

## **13. Entire Agreement**

- 13.1 This MNDA constitutes the entire agreement and understanding between the parties and supersedes and extinguishes all previous or contemporaneous agreement or understanding between them relating to the Purpose, whether written or oral. All other terms, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 13.2 Each party acknowledges and agrees that no representations were made prior to entry into this MNDA.
- 13.3 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in this MNDA. Each party agrees that its only liability in respect of those representations and warranties that are set out in this MNDA (whether made innocently or negligently) shall be for breach of contract.

## **14. Notices**

- 14.1 Any notice required or permitted to be given by either party to the other under this MNDA will be in writing, delivered by hand or sent by pre-paid first class post or recorded delivery post to the other party at its registered address. A

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notice may be given under this MNDA if sent by e-mail upon successful transmission: to the Legal Department at Telefónica Tech to: legal@telefonicatech.uk and to the Counterparty at [insert Counterparty E-mail address].

- 14.2 A notice delivered by hand will be deemed to have been received when delivered (or if delivery is not in Business Hours, at 9 am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post will be deemed to have been received at the time at which it would have been delivered in the normal course of post. Where permitted, notices sent by email during Business Hours will be deemed received on the day of despatch and if sent outside Business Hours, will be deemed received on the following Business Day.

## 15. Third Party rights

- 15.1 This MNDA does not confer any rights on any person or party (other than the parties to this MNDA and (where applicable) their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

## 16. No Partnership or Agency

- 16.1 Nothing in this MNDA is intended to or will operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party will have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

## 17. Governing Law and Jurisdiction

- 17.1 This MNDA and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed exclusively in accordance with the laws of England and Wales.
- 17.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in

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connection with this MNDAs or its subject matter or formation (including non-contractual disputes or claims).

This MNDAs has been entered into on the date stated at the beginning of it.

Signed by for and on behalf of the  
**Counterparty**

Signed by for and on behalf of **Telefónica  
Tech**

**Signature:**

**Signature:**

**Name:**

**Name:**

**Title:**

**Title:**

**Date:**

**Date:**