Nondisclosure Agreement

Contract number:	
Date:	

For:

Company:	
Contact person:	
Street, no.:	
ZIP, city:	
Phone:	
STID No. Customer:	

– **"Customer"** –

From:

proALPHA Software Austria GmbH
Josefa-Posch-Straße 6
8200 Gleisdorf
Austria

– **"proALPHA"** –

1. Purpose of Disclosing Confidential Information

The parties intend to exchange information that is not freely accessible and/or is protected by law. Depending on the specific situation, the goal of this exchange is to initiate a new business relationship and/or carry out and/or change an existing business relationship. In order to protect the confidentiality of the exchange of information taking place hereby, the parties are concluding this non-disclosure agreement.

2. Confidential Information

(1) The term "confidential information" as used in this non-disclosure agreement applies to any information that is not freely accessible, as well as all trade secrets that the respective disclosing party makes available to the respective receiving party for the purposes identified in Clause 1 above: As far as the confidential nature of information protected by this non-disclosure agreement is concerned, the form in which the respective information is made accessible (e.g. electronically, orally, or on paper) or whether a piece of information is expressly designated as "confidential" or "protected by law" is immaterial. Confidential information of the disclosing party includes, in particular, its trade secrets (e.g. its expertise), undisclosed information regarding business plans, and information that is not publicly accessible and concerns planned products; technical developments; undisclosed financial information; customer, supplier or employee information; production data; research results; inventions; methods and procedures; company-specific business processes; drafts; specifications; source code; and all other information, data, and documents that are customarily supposed to be considered confidential or protected by law.

(2) The term "confidential information" as used in this non-disclosure agreement does not apply to any information belonging to the disclosing party which demonstrably:

    a. is already in the possession of the receiving party and not subject to a nondisclosure agreement before the receiving party receives the information from the disclosing party;

    b. is generally publicly accessible at the time of its disclosure with no violation of an obligation to confidentiality having taken place or that later becomes publicly accessible with no breach of the obligation to confidentiality having taken place;

    c. is disclosed to the receiving party by a third party without violating the law and without being subject to confidentiality;

    d. is or will be independently developed by the receiving party without violating this non-disclosure agreement; or

    e. is exempted from the non-disclosure agreement on the basis of a written statement from the disclosing party to the receiving party.

3. Handling Confidential Information

(1) The parties mutually obligate themselves to keep confidential information from the respective other party confidential and to protect it against unauthorized access by and notice of third parties by taking suitable measures. The requirements concerning the content and scope of the protective measures are based on the type of information concerned and, apart from that, on the generally acknowledged protective mechanisms used for comparable information.

(2) Third parties in the sense of this non-disclosure agreement do not include employees of the respective receiving party or employees of affiliated companies of the respective receiving party if the employees concerned are required to receive the confidential information due to the organizational structure of the receiving party. However, the prerequisite for this access right is that the employees concerned have been instructed concerning the handling of confidential information prior to access and have been obligated to maintain confidentiality concerning such information in a suitable manner.

(3) The receiving party is authorized to make confidential information from the disclosing party available to its tax consultants, auditors, and lawyers to the extent necessary for the respective required consulting and auditing contract.

(4) If the receiving party is obligated to disclose confidential information to the other party concerned or to issue it to third parties owing to a binding order or decision issued by a court or authority, the receiving party must inform the disclosing party of this obligation without undue delay. The obligation to inform already comes into existence as of the point in time when the receiving party gains knowledge of the initiation of corresponding proceedings. Furthermore, during the proceedings concerning the disclosure or surrender of confidential information. the receiving party must work towards ensuring that the amount of information disclosed due to a court or official decision is limited to the minimum necessary.

4. Rights of Use

(1) The use of confidential information from the disclosing party on the part of the receiving party shall be restricted to the purposes defined in Clause 1 above. Use beyond this requires prior written consent from the disclosing party.

(2) All confidential information transferred or disclosed by the disclosing party to the receiving party will remain the property of the disclosing party unless otherwise agreed in writing in individual cases.

5. Obligation to Surrender

Unless deviating written agreements have been made in individual cases, confidential information shall be returned without undue delay and at the first request of the disclosing party. Any copies must be deleted from all storage media, and the execution of the measures shall be confirmed to the disclosing party in writing upon request. Copies of confidential information that the receiving party is obligated to continue retaining owing to statutory retention periods are excepted from this provision. These copies must be deleted completely and without the other party requesting such no later than 30 calendar days after the expiration of the retention period. The deletion shall be confirmed in writing upon request from the disclosing party.

6. Liability

Each party shall be liable towards the other party for any damage arising from violations of obligations in this non-disclosure agreement pursuant to statutory provisions. However, in the event of slight negligence, the parties shall be mutually liable only if an obligation is violated, its fulfillment makes the execution of this non-disclosure agreement possible at all, and the party damaged by its violation may regularly rely upon compliance with this obligation. If a party is, accordingly, liable in the event of slight negligence, its liability shall be limited to the typical contractual damage that was predictable at the time the non-disclosure agreement was concluded.

7. Contract Period

(1) This non-disclosure agreement is concluded for a period of 2 years as of its having been signed by both parties.

This non-disclosure agreement will come to an end at the end of the agreed period without the need for special termination.

(2) The mutual rights and obligations of the parties relating to the confidentiality of confidential information disclosed during the duration of this non-disclosure agreement will not be affected by the non-disclosure agreement coming to an end, regardless of the reason for it coming to an end. The rights and obligations concerning confidentiality stipulated in this non-disclosure agreement shall continue to apply for a subsequent period of 5 years.

(3) If this non-disclosure agreement is concluded subsequently, which is to say, after the parties have already exchanged confidential information in confidence of the realization of this non-disclosure agreement, the provisions of this non-disclosure agreement shall also apply to the information exchanged before the agreement was concluded.

8.   Protecting Personal Information

The parties shall grant employees at their own companies and employees of affiliated companies access to personal data of the respective other party only if these employees have been obligated to handle personal data in compliance with data protection legislation in advance and according to the relevant data protection legislation.

9.   Final Provisions

(1) Unless the parties have made deviating written agreements concerning the handling of the confidential information of the respective other party, only the provisions of this non-disclosure agreement shall apply.

(2) Ancillary agreements concerning the object of the agreement must be made in writing to be valid. Transmission by telefax shall fulfill the requirement of written form. However, electronic form is not sufficient. The requirements of form agreed upon here also reply to any revocation of the requirement of written form.

(3) References to sections or paragraphs made in this non-disclosure agreement without any additional source information always refer to regulations in this non-disclosure agreement.

(4) Should individual regulations of this non-disclosure agreement be or become invalid, this shall not impact the validity of the remaining provisions. The invalid regulation shall be replaced by a valid provision that comes as close as possible to the commercial intentions of the invalid regulation. The same applies to any regulatory gaps.

(5) The law of the Republic of Austria applies exclusively to the legal relationships of the parties resulting from or in relationship to this non-disclosure agreement.

(6) The sole court of jurisdiction for all disputes arising from and in connection with this Nondisclosure Agreement is Wien, Austria.

proALPHA Software Austria GmbH

_____
Place/Date

_____
Signature(s)

_____
Name(s)

Customer

_____
Place/Date

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Signature(s)

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Name(s)

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