# Mutual Non-Disclosure Agreement

Version 2.0

## The parties

SixtyFPS GmbH, Oranienburger Str. 44, 16540 Hohen Neuendorf, Germany registered at Amstgericht Neuruppin with registration number HRB 14048 NP

— hereinafter referred to as '**SixtyFPS**' —

and

*Name of Company* with offices at *office address*

— hereinafter referred to as '**Partner**' —

SixtyFPS and Partner, hereinafter individually referred to as '**Party**' and collectively as '**Parties**', intend to evaluate a potential business collaboration concerning *[short description of collaboration, e.g. project name or products to be purchased]* and possibly implement such collaboration (hereinafter referred to as the '**Purpose**'). With respect to such activities, it is anticipated that the Parties may disclose confidential information of any nature to each other. In order to eliminate the possibility of misuse of such confidential information, the Parties hereby agree and enter into this Non-Disclosure Agreement (hereinafter referred to as the '**Agreement**').

## §1. Definitions

a. '**Confidential Information**' shall mean information of any nature (including but not limited to technical or commercial data, documentation or knowledge), and/or samples that the Parties or their Affiliated Companies disclose in connection with the aforementioned Purpose or which they become aware of in the context of the Purpose (e.g., at factory tours), irrespective if such information is the property of the Parties, of an Affiliated Company of a Party, or of third parties, and regardless of the type and form of the transfer or disclosure of information, including without limitation a direct disclosure of Confidential Information by an Affiliated Company to the Receiving Party. Confidential Information also comprises all copies of said information, self-generated materials and data, as well as any extracts and summaries thereof.

b. '**Affiliated Companies**' are legal entities, which exercise direct or indirect control over a Party of this Agreement ('**Parent Companies**'), or which are controlled directly or indirectly by a Party or its Parent Company. For the purpose of this definition '**Control**' or '**Controlling**' shall mean to have, directly or indirectly, more than 50% of company shares or voting rights.

c. '**Disclosing Party**' is the Party who either by itself or by an Affiliated Company discloses or makes available Confidential Information to the respective other Party.

d. '**Receiving Party**' is the Party who receives or becomes aware of Confidential Information either from the Disclosing Party or from an Affiliated Company of the Disclosing Party.

## §2. Duty of non-disclosure; limited use

In respect of any Confidential Information of a Disclosing Party, the Receiving Party hereby undertakes:

a. to use such Confidential Information exclusively for the Purpose mentioned in this Agreement,

b. to maintain secrecy with respect to such Confidential Information and apply the same diligence as is used with respect to the Receiving Party's own information of similar importance,

c. to disclose such Confidential Information to Affiliated Companies only insofar as such disclosure is necessary in order to achieve the Purpose, provided such Affiliated Companies have been notified of the obligation of confidentiality under the terms of this Agreement and insofar as the Affiliated Company concerned is not a competitor to the Disclosing Party,

d. not to disclose such Confidential Information in any way or form to any third party.

## §3. Exceptions

The obligations under §2 of this Agreement do not apply to Confidential Information of the Disclosing Party that:

a. was in the Receiving Party's lawful possession without obligation of non-use or non-disclosure prior to receipt from the Disclosing Party,

b. is at the time of disclosure already in the public domain or subsequently becomes available to the public through no breach of this Agreement by the Receiving Party,

c. is lawfully obtained by the Receiving Party from a third party, unless the Receiving Party is aware or should have been aware that such third party is in breach of any obligations to the Disclosing Party relating to such information,

d. has been developed by the Receiving Party independently of and without use of or reference to such Confidential Information, or

e. has been approved for release in writing by the Disclosing Party for disclosure in a specific instance.

The Party seeking benefit of one or multiple of the aforementioned exceptions shall bear the burden of proof regarding the respective requirements thereof.

## §4. Term

a. This Agreement is effective as of the date of last signature hereunder and shall remain valid for a period of 5 years.

b. However, the obligations arising from this Agreement with respect to the Confidential Information received hereunder during the term of this Agreement shall survive termination. To the extent statutory property rights provisions apply for Confidential Information (e.g., for trade and business secrets), the post-contractual obligation of confidentiality shall extend in accordance with such statutory provisions.

## §5. Return of Confidential Information

Upon request of the Disclosing Party, Confidential Information in tangible and/or electronic form disclosed to the Receiving Party hereunder, as well as any copies thereof, must be returned or destroyed at the discretion of the Disclosing Party. Within fourteen (14) days of its receipt of such request, the Receiving Party shall either:

a. return such Confidential Information, or

b. confirm the destruction thereof in writing.

## §6. Applicable law

This Agreement, including the following dispute resolution clause, is subject to the laws of the Federal Republic of Germany excluding its conflict of law provisions. The UNCITRAL Convention on the International Sale of Goods (CISG) will not apply.

## §7. Miscellaneous provisions

a. Neither Party shall be entitled, without the prior written consent of the other, to transfer or assign any rights and obligations arising hereunder to third parties.

b. This Agreement does not constitute any obligation for the Parties to enter into a collaboration and/or other business relationship, or to disclose any particular information.

c. There exist no other written or verbal agreements with regard to this Agreement’s subject matter. This Agreement may not be modified or amended except by written amendments duly executed by each of the Parties. This requirement of written form can only be waived by written agreement between the Parties.

d. The export of Confidential Information disclosed under this Agreement may be prohibited by law or require governmental approval. Each Party shall observe the respective national and international laws, and other legal regulations which are applicable for the use and disclosure of Confidential Information exchanged pursuant to this Agreement, in particular the applicable export control regulations and sanction schemes.

e. If any provisions of this Agreement should be or become void, invalid, or for legal reasons not enforceable as intended, the validity of the remaining provisions shall not be affected thereby. The Parties shall replace the void, invalid, or unenforceable provision with a legally valid provision which corresponds to the economic purpose of the void, invalid, or unenforceable provision to the furthest possible extent.

## Signatures

| **Partner** |  | **SixtyFPS** |
| --- | --- | --- |
|  |  |  |
| Place |  | Place |
| Date |  | Date |
|  |  |  |
| Name |  | Name |
| Job Title |  | Job Title |
| E-Mail |  | E-Mail |
|  |  |  |
| Name |  | Name |
| Job Title |  | Job Title |
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