This **Mutual Non-Disclosure Agreement** (“MNDA”) is made and entered into force as of **XX XX XXXX** (the “**Effective Date**”) by and between

**MENU Technologies AG**, on its behalf and on behalf of its affiliates, and direct and indirect subsidiaries(herein referred to as: “**MENU**”)

|  |  |
| --- | --- |
| Principal place of business (seat) |  |
| Company Register |
| VAT-ID No. |
| Website |
| Represented by |
| E-mail representative |

and

**XXXXXXXXXX**, on its behalf and on behalf of its affiliates, and direct and indirect subsidiaries (herein referred to as: “**Company**”)

|  |  |
| --- | --- |
| Principal place of business (seat) |  |
|  |
|  |
|  |
| Register ID in Company Register  |  |
| Tax/VAT/EID-ID No. |  |
| Website |
| Represented by |  |
| E-mail representative |  @  |

each referred to as „**Party**“ and together as “**Parties**”.

**WHEREAS**, MENU is a provider of white-label software-as-a-service restaurant ecosystems covering the guest journey by enabling self-order, pay and guest engagement inside and outside of restaurants. Using different guest channel applications (mobile, web or kiosk), an ecosystem powered by MENU is covering the order types dine-in, take-out, curbside and delivery. The incentive programs Coupons, Rewards and Loyalty are further important software components of an ecosystem powered by MENU; and

**WHEREAS,** Company is a web development company, in the business of building websites, and providing further online presence technology, consulting, software development, systems integration and managed services; and

**WHEREAS,** MENU and Company are interested in exploring the possibility of a business collaboration (the "**Project**");

**WHEREAS**, each Party is in possession of Confidential Information (as defined hereafter) regarding their business and operations relating to such Project which they are willing to make available to the other Party subject to the terms of this Agreement;

**WHEREAS**, each Party wishes to ensure that its Confidential Information so disclosed remains confidential under the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual premises and mutual covenants contained herein, the Parties hereto agree as follows:

# Confidential information

## For the purpose of this Agreement, "**Confidential Information**" shall mean with respect to the Disclosing Party’s business, including without limitation any information, data, that may relate to the Disclosing Party’s products, whether in distribution or under development, trade secrets, computer source code and object code, software and other product designs and specifications, methodologies, financial information and projections or documentation disclosed, directly or indirectly, in writing, verbally, electronically or by any other means, by either Party or a third party designated by that Party ("**Disclosing Party**") to the other Party ("**Receiving Party**"). Such Confidential Information includes, but is not limited to, business plans, proposals, processes, forecasts, ideas, concepts, methods, techniques, projections, analyses, specifications, marketing information, financial information, and any other information regarding the Parties’ business and operations however that Confidential Information shall not include the following:

1. information that is or becomes publicly known through no wrongful act of the other Party;
2. information that was available in writing to the Receiving Party on a non-confidential basis prior to the Disclosing Party’s disclosure, and written documentation is available to prove that such development predated this Agreement;
3. information that a third party discloses to the other Party without the third party breaching any confidentiality obligations;
4. information that is independently developed by a Party without relying on any of the Confidential Information that the other Party provides; or
5. information that a Party is required to disclose by applicable law or by the order of a competent court or other governmental authority, provided that the Party being ordered to disclose Confidential Information provides the other Party with prior written notice of the circumstances in which the disclosure of such information is required, to the extent such notice is not restricted by the order of the competent court or governmental authority.

# Confidentiality Obligations

## Subject to Article ‎2.2., each Party shall keep the Confidential Information of the other Party, as well as the existence of the Project, strictly confidential and shall not disclose to any third party Confidential Information of the other Party, and will only use the Confidential Information for the purpose of evaluating or pursuing a business opportunity in connection with the Project.

## Each Party shall disclose Confidential Information only to persons within its organization with a need to know such Confidential Information in the course of the performance of their duties, and who are bound by confidentiality obligations at least as restrictive as those set forth herein (“**Representatives**”).

## Each Party shall ensure that all Representatives who have access to the Confidential Information in accordance with Article ‎2.2 are obliged to observe the non-disclosure obligations relating to such Confidential Information stipulated in this Agreement. Each Party shall be responsible for any breach of this Agreement by its Representatives.

## Each Party undertakes not to modify, copy, not to reverse engineer, decompile, disassemble or otherwise attempt to derive software source code,  not to remove any proprietary rights legend from, and upon Disclosing Party’s reasonable request to add such legend to, materials disclosing or embodying Confidential Information except as required for the purpose of evaluating or pursuing a business opportunity in connection with the Project. All reproductions shall contain all proprietary and confidential notices which appear on the original, unless otherwise authorized in writing by the Disclosing Party.

## All Confidential Information as well as any reproduction thereof shall remain the property of the Disclosing Party. Except as provided herein, no right or license or other intellectual property to the Confidential Information is granted under this Agreement.

## On reasonable request by the Disclosing Party, but in any event upon expiration or termination of this Agreement or the business relationship between the Parties in relation to the Project, the Receiving Party shall return all Confidential Information to the Disclosing Party and destroy any and all copies thereof. The aforementioned does not apply to documents that are subject to statutory retention obligations, neither to data which is subject to regular backup processes, if deletion of such data would require unreasonable efforts, provided that the Receiving Party keeps confidential and protects such backup files against unauthorized access by measures in accordance with the current state-of-the-art technology.

# Warranty

## Each Party warrants that it has the right to disclose the Confidential Information to the other Party and to authorize the other Party to use the Confidential Information for the purpose of evaluating or pursuing a business opportunity in connection with the Project.

# Disclaimer

## All Confidential Information is provided without any warranty, express, implied or otherwise, regarding its accuracy, reliability or completeness. Accordingly, neither Party shall be obliged to provide further Confidential Information or to update or correct Confidential Information. This provision shall not exclude any liability for fraudulent misrepresentation.

# Remedies

## The Parties acknowledge and agree that the Confidential Information is unique and valuable and that disclosure in breach of this Agreement may result in irreparable injury to the other Party for which monetary damages alone may not be an adequate or sufficient remedy. Therefore, in the event of a breach or a threatened breach of this Agreement, each Party shall be entitled to, in addition to compensation for damages, seek injunctive relief as a remedy for such breach or anticipated breach, without obligation to post bond, in addition to any other rights or remedies it may have.

# Duration

## This Agreement shall continue for a period of **two (2) years from the Effective Date**, provided however, that all obligations hereunder with respect to the confidentiality and non-disclosure of Confidential Information received prior to the expiration or termination of this Agreement shall survive such expiration or termination for a period of 1 (one) year.

# Assignment

## Company may assign this Agreement in whole or in part without the consent of the MENU to an affiliate of Company. Any other assignment of this Agreement by either Party without the prior written consent of the other Party shall be void.

# Waiver

## Failure of a Party at any time to require performance by the other Party of any provision hereof or to exercise any of its rights under this Agreement shall in no way affect the full right to require such performance or to exercise such right at any time thereafter. Waiver by a Party of a breach of any obligation hereunder will not constitute a waiver of any succeeding breach of the same obligation.

# General provisions

## This Agreement is governed by Swiss law under exclusion of private international law. Modifications to this Agreement, including this clause, require the written consent of both parties.

## The parties submit all their disputes arising out of or in connection with this Agreement to the exclusive jurisdiction of the competent courts in Zug, Switzerland.

## Any changes of this Agreement including all its Appendices shall be in writing; this shall also apply to a change of the written form requirement itself.

## In the event a provision of this Agreement is or becomes invalid or unenforceable, the remaining provisions of this Agreement shall remain unaffected. The relevant provision shall be replaced by an appropriate valid and enforceable provision that comes closest to the Parties’ intentions.

## The recitals to this Agreement shall form part of it and shall be read with this Agreement as one document. Headings of the Articles herein are for convenience only and are not to be construed as limitations to and/or interpretations of the scope of any Article.

## This Agreement may be executed in multiple counterparts, each of which when executed and delivered shall be deemed to be an original and all of which together shall constitute but one and the same agreement. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission (including PDF) is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

## The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

## For purposes of this Agreement, (a) the words “include,” “includes” and “including” will be deemed to be followed by the words “without limitation”; (b) the word “or” is not exclusive; and (c) the words “herein,” “hereof,” “hereby,” “hereto” and “hereunder” refer to this Agreement as a whole.

- *The signatures of this Agreement are on the next page* -

**IN WITNESS WHEREOF**, the Parties hereby agree to be bound by the terms and conditions of this Agreement as of the Effective Date.

## a.

|  |  |  |
| --- | --- | --- |
| For and on behalf**MENU Technologies AG****Zug,** |   | For and on behalf**,** |
|   |   |    |
|  |   |  |