**Declaration of Obligation to Maintain Confidentiality according to Section 5 of the Federal Data Protection Act [*Bundesdatenschutzgesetz (BDSG)*]
to Protect Privacy of Telecommunications according to Section 88 of the Telecommunications Act [*Telekommunikationsgesetz (TKG)*],
and to Protect Trade Secrets**

#######Company Name#########

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(Employee's Name)

**Obligation to Maintain Confidentiality under Section 5 BDSG**

I am prohibited from the unauthorised collection, processing or use of personal data which become known to me during my employment. This shall apply both to services performed in-house, as well as externally to the Company/Authority (e.g. on-site with customer or sales prospects).

**Obligation to Protect Privacy of Telecommunications under Section 88 TKG**

I am obliged to maintain privacy of telecommunications to the extent that I participate in the provision of telecommunications services as part of my activities.

**Obligation to Protect Trade Secrets**

I must protect the confidentiality of all of the Company's affairs, for example details about the organization, business processes and internal accounting figures, to the extent these have not become generally known to the public. This includes all operations of third party companies with which I have dealings. I have been specifically made aware of the statutory provisions regarding unfair competition.

All records, certified copies, corporate documents and photocopies of administrative or business operations which are given to me or prepared by me in the course of my employment must be protected from the view of unauthorised persons.

I have been made aware of the foregoing obligations. The duty to protect the above-mentioned secrets shall apply without time limit beyond the termination of the employment or service relationship. I am aware that violation of confidentiality, privacy of telecommunications or trade secrets can be punishable, in particular under §§ 44, 43 Par. 2 of the Bundesdatenschutzgesetz (BDSG) [*Federal Data Protection Act*], § 206 of the Strafgesetzbuch (StGB) [*German Criminal Code*] and under § 17 Gesetz gegen den unlauteren Wettbewerb (UWG) [*Act against Unfair Competition*]. I have received the Declaration of Obligation Information Sheet containing copies of all of the cited provisions.

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(City, date)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Employee's signature) (Employer's signature)

**Declaration of Obligation Information Sheet**

**Section 5 Federal Data Protection Act (BDSG) Confidentiality**

Persons employed in data processing shall not collect, process or use personal data without authorisation (confidentiality). Such persons, when employed by private bodies, shall be obligated when taking up their duties to maintain confidentiality. The obligation of confidentiality shall continue after their employment ends.

Section 43 (2) Federal Data Protection Act (BDSG) Administrative Offences

An administrative offence shall be deemed to have been committed by anyone

who, whether intentionally or through negligence

1. collects or processes personal data which are not generally accessible without authorisation,

2. makes available personal data which are not generally accessible by means of automated retrieval without authorisation,

3. retrieves personal data which are not generally accessible without authorisation, or obtains such data for themselves or others from automated processing operations or non-automated files without authorisation,

4. obtains transfer of personal data, which are not generally accessible by providing false information,

5. in violation of Section 16 (4) first sentence, Section 28 (5) first sentence, also in conjunction with Section 29 (4), Section 39 (1) first sentence or Section 40 (1), uses transferred data for other purposes,

5a. in violation of Section 28 (3b) makes the conclusion of a contract dependent on the consent of the data subject,

5b. in violation of Section 28 (4) first sentence processes or uses data for purposes of advertising or market or opinion research,

6. in violation of Section 30 (1) second sentence, Section 30a (3) third sentence or Section 40 (2) third sentence combines a feature referred to there with specific information, or

7. in violation of Section 42a first sentence, fails to notify or fails to do so correctly, completely or within the prescribed time limit.

**Section 44 Federal Data Protection Act (BDSG) Criminal offences**

(1) Anyone who wilfully commits an offence described in Section 43 (2) in exchange for payment or with the intention of enriching him/herself or another person, or of harming another person shall be liable to imprisonment for up to two years or to a fine.

(2) Such offences shall be prosecuted only if a complaint is filed. Complaints may be filed by the data subject, the controller, the Federal Commissioner for Data Protection and Freedom of Information and the supervisory authority.

**Section 88 Telekommunikationsgesetz (TKG) [*Telecommunications Act*]Privacy of Telecommunications**

(1) The content and detailed circumstances of telecommunications, in particular the fact of whether or not a person is or was engaged in a telecommunications activity, shall be subject to telecommunications privacy. Privacy shall also cover the detailed circumstances surrounding unsuccessful call attempts.

(2) Every service provider shall be obliged to maintain telecommunications privacy. The obligation to maintain privacy also applies after the end of the activity through which such obligation arose.

(3) All persons with obligations according to subsection (2) shall be prohibited from procuring, for themselves or for other parties, any information regarding the content or detailed circumstances of telecommunications beyond that which is necessary for the commercial provision of their telecommunications services, including the protection of their technical systems. Knowledge of facts which are subject to telecommunications privacy may be used solely for the purpose referred to in sentence 1. Use of such knowledge for other purposes, in particular, passing it on to other parties, shall be permitted only insofar as provided for by this Act or any other legal provision and reference is made expressly to telecommunications activities. The reporting requirement according to section 138 of the Penal Code shall have priority.

(4) Where the telecommunications system is located on board a ship or an aircraft, the obligation to maintain privacy does not apply in relation to the captain or second in command.

**Section 206 German Criminal Code (StGB) Violation of the Postal and Telecommunications Secret**

(1) Whosoever unlawfully discloses to another person’s information, which are subject to the postal or telecommunications secret and which became known to the individual disclosing the information as the owner or employee of an enterprise in the business of providing postal or telecommunications services, shall be liable to imprisonment not exceeding five years or a fine.

(2) Whosoever, as an owner or employee of an enterprise indicated in subsection (1) above unlawfully

1. opens a piece of sealed mail which has been entrusted to such an enterprise for delivery or gains knowledge of its content without breaking the seal by using technical means;

2. suppresses a piece of mail entrusted to such an enterprise for delivery; or

3. permits or encourages one of the offences indicated in subsection (1) or in sections 1 or 2 above,

shall incur the same penalty.

(3) Subsections (1) and (2) above shall apply to persons who

1. perform tasks of supervision over an enterprise indicated in subsection (1) above;

2. are entrusted by such an enterprise or with its authorisation, to provide postal or telecommunications services; or

3. are entrusted with the establishment of facilities serving the operation of such an enterprise or with performing work thereon.

(4) Whosoever unlawfully discloses to another person information, which became known to the individual disclosing the information as a public official outside the postal or telecommunications service on the basis of an authorised or unauthorised infringement of the postal or telecommunications secret shall be liable to imprisonment not exceeding two years or a fine.

(5) The immediate circumstances of the postal operations of particular persons as well as the content of pieces of mail are subject to the postal secret. The content of telecommunications and their immediate circumstances, especially the fact whether someone has participated in or is participating in a telecommunications event, are subject to the telecommunications secret. The telecommunications secret also extends to the immediate circumstances of unsuccessful attempts to make a connection.

**Section 17 Act Against Unfair Competition (UWG) Disclosure of Trade and Industrial Secrets**

(1) Whoever as the employee of a business communicates, without authorisation, a trade or industrial secret with which the employee was entrusted, or to which the employee had access, during the course of the employment relationship to another person for the purposes of competition, for personal gain, for the benefit of a third party, or with the intent of causing damage to the owner of the business shall be liable to imprisonment not exceeding three years or to a fine.

(2) Whoever for the purposes of competition, for personal gain, for the benefit of a third party, or with the intent of causing damage to the owner of the business, acquires or secures, without authorisation,

1. a trade or industrial secret

 a) by using technical means;

 b) by creating an embodied communication of the secret; or

 c) by removing an item in which the secret is embodied;

 or

2. without authorisation, uses or communicates to anyone a trade secret acquired through one of the communications referred to in subsection (1), or through an act of the individual or a third party pursuant to number 1, or which the individual has otherwise acquired or secured without authorisation

shall incur the same liability.

(3) An attempt shall incur criminal liability.

(4) In particularly serious cases the sentence shall consist in imprisonment not exceeding five years or a fine. A particularly serious case shall usually exist in circumstances where the perpetrator

1. acts on a commercial basis;

2. knows at the time of the communication that the secret is to be used abroad; or

3. personally effects a use pursuant to subsection (2), number 2, abroad.

(5) The offence shall be prosecuted upon application only, unless the criminal prosecution authority considers that it is necessary to take ex officio action on account of the particular public interest in the criminal prosecution.

(6) Section 5, number 7, of the German Criminal Code shall apply mutatis mutandis.