**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#########

#########Address#########

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(Name of External Employee) (Date of Birth)

**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 within the context of my work on behalf of #######Company Name#########. This shall apply both to services performed in-house, or externally to the Company/Authority, as well (e.g. on-site with customer or sales prospects).

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

I am obliged to protect privacy of telecommunications to the extent that I participate in the provision of telecommunications services as part of my activities on behalf of #######Company Name#########.

**Obligation to Protect Trade Secrets**

I pledge to treat as secret those documents and other information not otherwise generally accessible, which I obtain in connection with my employment. I shall not use these documents and information without a prior written agreement with #######Company Name#########, nor for my own commercial purposes or on behalf of other clients.

I have been made aware of the foregoing obligations. I am aware that violation of the above-mentioned Secrets may be punishable, in particular under §§ 44, 43 Par. 2 BDSG and § 206 of the Strafgesetzbuch (StGB) [*German Criminal Code*]. I have received the Declaration of Obligation Information Sheet containing copies of all of the cited provisions. The obligation to protect secrets shall not be time-limited even beyond termination of my external activities.

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(City, date)

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

(Signature of employee) (Signature of employer)

**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 him/herself 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 Telecommunications Act (TKG) 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 commitment 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 German Criminal 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 his second in command.

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

(1) Whosoever unlawfully discloses to another a person’s information, which are subject to the postal or telecommunications secret and became known to the individual as the owner or employee of an enterprise while 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 a person’s information, which became known to the individual 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.