Annex 3

Non-disclosure agreement[1]

[1] Annex 3, Non-disclosure agreement, is an integral part of Vers. 2-01/26 RTC User Agreement Contract

for the following purpose:

Provision of a defined storage space on a server for the storage of customer data (ruthmann.machines.cloud)

In the course of their business of providing defined storage space on a server for storing customer data, the Recipient may come into contact with personal data and internal operational information. With this agreement, the Holder obliges the Recipient to observe data protection and confidentiality, in particular to maintain confidentiality.

This obligation is comprehensive. The Recipient may not process the Holder's information itself without authorisation and the Recipient may not disclose or make available such data to other persons without the consent of the Holder. In case of doubt, the Holder assumes that the data is subject to the confidentiality requirements under the Act on the Protection of Trade Secrets (Gesetz zum Schutz von Geschäftsgeheimnissen, GeschGehG). The relevant legal provisions on data protection, such as the General Data Protection Regulation (GDPR) of the European Union and the Federal Data Protection Act (BDSG), apply to personal data.

The Recipient undertakes to comply with the following statutory confidentiality obligations:

- Section 23 GeschGehG
- Article 5 GDPR

The Recipient is obliged to maintain confidentiality about all facts which have become known in the course of the performance of the activity and to which access has been given. This does not apply to facts which are obvious or do not require secrecy based on their significance. The Recipient is further obliged only to obtain knowledge of third party secrets to the extent that this is necessary for the fulfilment of the purpose. If the Recipient signs this agreement on behalf of and with authority for its business, the undersigned undertakes to bind its employees in writing in accordance with the confidentiality agreement agreed to within it.

Under the General Data Protection Regulation (GDPR), breaches of the data protection provisions can be punished with imprisonment or a fine pursuant to Sections 42 and 43 of the General Data Protection Regulation (GDPR) and other criminal provisions. Data protection breaches can at the same time mean a breach of obligations under employment and services law and have corresponding consequences.

This agreement enters into force when it is signed and expires three years after the termination of the exchange of information for the purpose specified above. The obligation to maintain confidentiality shall remain unaffected by the termination of this agreement. It shall apply even if no further contract is concluded in connection with the purpose.

If the Recipient breaches the obligations arising out of this agreement, the parties agree that the Recipient shall pay the Holder a contractual penalty in an appropriate amount irrespective of fault, whereby the Holder will determine the amount at its reasonable discretion within the meaning of Section 135 BGB (Bürgerliches Gesetzbuch [German Civil Code]) and the appropriateness of the contractual penalty may be reviewed by the competent court in the event of a dispute. The right to claim further damages is reserved. The exclusive place of jurisdiction for disputes arising from or in connection with this agreement is Ahaus.

The Recipient has been informed about the obligation to maintain data secrecy pursuant to GeschGehG and GDPR and the resulting conduct and undertakes to comply with this.

Statutory provisions on the duty of confidentiality

Federal Data Protection Act (BDSG)

Section 42 BDSG Penal provisions
(1) The following actions done deliberately and without authorization with regard to the personal data of a large number of people which are not publicly accessible shall be punishable with imprisonment of up to three years or a fine:
1. transferring the data to a third party or
2. otherwise making them accessible

for commercial purposes.
(2) The following actions done with regard to personal data which are not publicly accessible shall be punishable with imprisonment of up to two years or a fine:
processing without authorization, or
fraudulently acquiring
and doing so in return for payment or with the intention of enriching oneself or someone else or harming someone.
(3) Such offences shall be prosecuted only if a complaint is filed. The data subject, the controller, the Federal Commissioner and the supervisory authority shall be entitled to file complaints.
(4) A notification pursuant to Article 33 of Regulation (EU) 2016/679 or a communication pursuant to Article 34(1) of Regulation (EU) 2016/679 may be used in criminal proceedings against the person required to provide a notification or a communication or relatives as referred to in Section 52(1) of the Code of Criminal Procedure only with the consent of the person required to provide a notification or a communication.

Section 43 BDSG Provisions on fines
(1) Intentionally or negligently engaging in the following shall be deemed an administrative offence:
1. in violation of Section 30(1), failing to treat a request for information properly, or
2. in violation of Section 30(2), first sentence, failing to inform a consumer or doing so incorrectly, incompletely or too late.

(2) An administrative offence may be punished by a fine of up to fifty thousand euros.
(3) Authorities and other public bodies as referred to in Section 2(1) shall not be subject to any administrative fines.
A notification pursuant to Article 33 of Regulation (EU) 2016/679 or a communication pursuant to Article 34(1) of Regulation (EU) 2016/679 may be used in proceedings pursuant to the Administrative Offences Act against the person required to provide a notification or a communication or relatives as referred to in Section 52(1) of the Code of Criminal Procedure only with the consent of the person required to provide a notification or a communication.

Act on the Protection of Trade Secrets (GeschGehG)

Section 23 Violation of business secrets
(1) A custodial sentence not exceeding three years or a monetary penalty shall be imposed on any person who, in order to promote their own or another person's competition, for their own benefit, for the benefit of a third party or with the intention of causing damage to the owner of a business,
1. obtains a trade secret in contravention of section 4(1)(1),
2. uses or discloses a trade secret in contravention of section 4(2)(1)(a), or
3. in contravention of section 4(2)(3), discloses, as a person employed by an undertaking, a trade secret which has been entrusted to them or has become accessible to them in the course of their employment, during the term of their employment.

(2) Any person who, in order to promote their own or another's competition, for their own benefit, for the benefit of a third party or with the intention of causing damage to the owner of an enterprise, uses or discloses a trade secret which they have acquired through an act of another in accordance with subsection (1)(2) or (3) shall also be punished.
(3) A custodial sentence not exceeding two years or a monetary penalty shall be imposed on any person who, in order to promote their own or another person's competition or for personal gain, uses or discloses, contrary to section 4(2)(2) or (3), a trade secret which is a secret document or rule of a technical nature entrusted to them in the course of business.
(8) The offence shall only be prosecuted if a complaint is filed unless the prosecuting authority deems it necessary to intervene ex officio due to the special public interest in the prosecution.

(4) A custodial sentence not exceeding five years or a monetary penalty shall be imposed on anyone who
1. acts commercially in the cases of subsection 1 or subsection 2,
2. in the cases of subsection 1(2) or (3) or subsection 2 knows at the time of disclosure that the trade secret is to be used abroad, or
3. in the cases of subsection 1(2) or subsection 2 uses the trade secret abroad.

(5) The attempt to do so is punishable.
(6) Aiding and abetting acts of a person referred to in Section 53(1), sentence 1, number 5 of the Code of Criminal Procedure shall not be unlawful if they are limited to the receipt, evaluation or publication of the trade secret.
(7) Section 5(7) of the Criminal Code shall apply accordingly. Sections 30 and 31 of the Criminal Code shall apply mutatis mutandis if the offender acts to promote their own or another's competition or out of self-interest.

General Data Protection Regulation

Article 5(1)(f) GDPR: Personal data shall be [...] processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures ("integrity and confidentiality").