

# FlexUp Non-Disclosure Agreement – General Conditions (NDA-GC)

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## **Preamble**

The present FlexUp Non-Disclosure Agreement – General Conditions ("**NDA-GC**") sets out the general terms governing all non-disclosure and protection of Confidential Information between the Parties. It applies uniformly worldwide, ensuring consistency, legal certainty, and modularity across jurisdictions.

The NDA-GC is incorporated by reference into each Non-Disclosure Agreement – Special Conditions ("**NDA-SC**"), which identifies the Parties, specifies the applicable documents, and defines the parameters of the confidential relationship, whether unilateral or mutual.

All templates and documents composing the Agreement are published and maintained by FlexUp and distributed under the FlexUp Licence ([www.flexup.org](http://www.flexup.org)).

## **Article 1. Composition of the Agreement**

- 1.1 The Agreement may include the following documents, listed in descending order of priority:
  - a) the FlexUp Non-Disclosure Agreement – Special Conditions ("**NDA-SC**"), which identifies the Parties and the specific parameters of the Agreement,
  - b) one or more FlexUp Non-Disclosure Agreement – Additional Conditions ("**NDA-AC**"), if applicable, which supplement or adapt the Agreement to the relevant context or jurisdiction,
  - c) the FlexUp Non-Disclosure Agreement – General Conditions ("**NDA-GC**"), the present document,
  - d) the FlexUp General Conditions ("**FlexUp-GC**"), which applies to all FlexUp contracts that refer to it.
- 1.2 The Agreement is composed of the documents listed in Article 1.1 that are expressly designated as applicable in the NDA-SC, together with any additional documents expressly incorporated therein. The applicable documents form an inseparable contractual whole and are collectively referred to as the "**Agreement**".

The NDA-GC is to be read together with the FlexUp-GC, which sets out the general terms applicable to all Agreements under the FlexUp contractual framework.

In the event of any inconsistency between these documents, the order of priority set out in Article 1.1 shall apply.
- 1.3 For clarity, the following terminology applies:
  - a) "**Special Conditions**" refers to the NDA-SC.
  - b) "**General Conditions**" refers to the NDA-GC, the FlexUp-GC, and, where applicable, the NDA-AC.
- 1.4 The documents composing the General Conditions are incorporated by reference and are not required to be appended to the Agreement.
- 1.5 For each document composing the General Conditions, the applicable version is the latest version published on the FlexUp website ([www.flexup.org](http://www.flexup.org)) as of the date of signature of the NDA-SC, subject to the update mechanisms described in the General Conditions.

## Article 2. Definitions

In this Agreement, capitalised words are defined terms, whose definitions are given in this Article or, if not here, elsewhere in the documents composing the Agreement or in the FlexUp Glossary (available on [www.flexup.org/glossary](http://www.flexup.org/glossary)).

- 2.1 "**Scope**" means the subject matter and activities in connection with which Confidential Information is disclosed between the Parties, as further specified in the applicable NDA-SC, including without limitation any discussion, negotiation, evaluation, transaction, partnership, commercial collaboration, or performance of any agreement between the Parties.
- 2.2 "**Confidential Information**" means any information or material disclosed by or on behalf of the Disclosing Party or its Representatives to the Recipient or its Representatives, in connection with the Scope, whether before or after the signature of this Agreement, that:
- a) is designated as confidential or proprietary at the time of disclosure; or
  - b) would reasonably be understood to be confidential given its nature or the circumstances of its disclosure,
- regardless of the form or medium of disclosure, including tangible documents, electronic files, visual presentations, oral communications, or observation at any facility.
- Without limitation, Confidential Information may include business plans, strategies, financial data, technical specifications, product or service information, manufacturing or operational processes, marketing and distribution activities, client and contact lists, pricing, intellectual property and know-how, personnel and compensation information, regulatory or compliance data, and any other non-public information relating to the Disclosing Party's business or activities.
- 2.3 "**Disclosing Party**" means the Party that discloses Confidential Information under this Agreement. Where the Agreement is mutual, either Party may be the Disclosing Party with respect to its own Confidential Information.
- 2.4 "**Recipient**" means the Party that receives Confidential Information under this Agreement. Where the Agreement is mutual, either Party may be the Recipient with respect to the other Party's Confidential Information.
- 2.5 "**Representative**" means any director, officer, employee, agent, contractor, or advisor including without limitation lawyers, accountants, consultants, bankers, and financial advisors, of a Party or any of its affiliates.
- 2.6 "**Contact**" means any specifically identified person or entity introduced by the Disclosing Party to the Recipient in the course of discussions under this Agreement and in connection with the Scope.

## Article 3. Object of the Agreement

- 3.1 The purpose of this Agreement is to establish the rights and obligations of the Parties governing the disclosure, use, and protection of Confidential Information exchanged in connection with the Scope, as defined in the NDA-SC, including the conditions for access, sharing, return, and destruction of Confidential Information upon expiry or termination of this Agreement.
- 3.2 This Agreement may be configured as unilateral or mutual, as specified in the applicable NDA-SC. In a unilateral configuration, one Party acts exclusively as Disclosing Party and the other exclusively as Recipient. In a mutual configuration, each Party may, in respect of any specific disclosure, act as Disclosing Party with respect to its own Confidential Information and as Recipient with respect to the other Party's Confidential Information. The obligations of this Agreement then apply symmetrically and independently to each Party in each capacity, such that a breach by one Party in its capacity as Recipient shall not affect or limit that Party's rights in its capacity as Disclosing Party.

## Article 4. Confidentiality Obligations

- 4.1 **Obligations of Recipient.** The following obligations apply to Recipient. Where the Agreement is mutual, each Party is bound by these obligations independently in its capacity as Recipient with respect to the other Party's Confidential Information. Recipient undertakes, on behalf of itself and its Representatives, and remains responsible for any breach of this Agreement by any of them, to:
- a) exercise at least reasonable care to preserve the confidentiality of the Confidential Information, and in any event not less than the care it applies to protect its own confidential information of a similar nature;
  - b) use the Confidential Information solely for the purposes of the Scope;
  - c) disclose the Confidential Information only to the minimum number of Representatives who have a strict need to know due to the Scope, provided that such Representatives are informed of its confidential nature before disclosure and are bound by confidentiality obligations no less protective than those set out in this Agreement;
  - d) not disclose Confidential Information to any third party without the prior written consent of the Disclosing Party;
  - e) not attempt to obtain any intellectual property rights from the Confidential Information, including by filing patents, trademarks, or copyrights, or by publishing articles or other works based on the Confidential Information; and
  - f) implement and maintain appropriate technical and organisational measures designed to protect Confidential Information against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or unauthorised access to, such Confidential Information, and notify the Disclosing Party without undue delay after becoming aware of any actual or reasonably suspected security incident affecting Confidential Information received under this Agreement and, where such incident involves personal data, within the timeframe required by applicable data protection laws.
- 4.2 **Exclusions.** The obligations in 4.1 do not apply to information that Recipient can demonstrate, by written evidence, that:
- a) has fallen into the public domain before or after its disclosure, through no act or omission of Recipient or its Representatives;
  - b) was already in Recipient's possession at the time of disclosure, without any obligation of confidentiality;
  - c) was obtained from a third party without breach of any confidentiality obligation by that third party or by Recipient; or
  - d) was independently developed by Recipient by persons who have not had access to the Confidential Information and without use of or reference to such information.
- 4.3 **Compelled disclosure.** If either Party or any of its Representatives are required by law, regulation, or court order to disclose any Confidential Information received under this Agreement, that Party shall, to the extent permitted by law:
- a) notify the Disclosing Party as soon as legally permitted and, where possible, before any disclosure takes place;
  - b) cooperate reasonably with the Disclosing Party in seeking a protective order or other appropriate relief; and
  - c) disclose only the minimum portion of the Confidential Information that is legally required and, where available, use reasonable efforts to obtain confidential treatment for the disclosed information.

## Article 5. Relations Between Parties

- 5.1 Nothing in this Agreement grants either Party any licence, patent right, copyright, trademark, or other intellectual property right of any kind over the other Party's Confidential Information.
- 5.2 Nothing in this Agreement obliges either Party to enter into any transaction or further relationship in connection with the Scope. Each Party reserves the right, in its sole discretion, to discontinue discussions at any time without liability.
- 5.3 No disclosure of Confidential Information, and no document or communication provided to Recipient in the course of the discussions, shall constitute an offer to enter into a contract or to incorporate or participate in any joint venture or other business arrangement. Any business relationship between the Parties shall be governed by a separate contract.
- 5.4 The Disclosing Party makes no representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. The Disclosing Party shall not be liable to Recipient for any reliance on the Confidential Information, except in case of fraud or wilful misconduct.

## Article 6. Return or Destruction of Confidential Information

- 6.1 All Confidential Information disclosed under this Agreement, in whatever form or medium, shall remain the property of the Disclosing Party that disclosed it. Any analyses, compilations, summaries, notes, or other materials prepared by Recipient based on that Confidential Information shall, to the extent they contain or reflect Confidential Information, remain subject to this Agreement.
- 6.2 Upon written request by the Disclosing Party, or upon expiry or termination of this Agreement, Recipient shall, within 15 (fifteen) business days, cease using the relevant Confidential Information and, subject to Article 6.3:
  - a) return to the Disclosing Party all Confidential Information in tangible or electronic form in Recipient's possession or control; or
  - b) permanently destroy all such materials in Recipient's possession or control and confirm destruction In Writing to the Disclosing Party.
- 6.3 **Retained Copies.** Recipient may retain copies of Confidential Information to the extent required by applicable law, regulation, court order, professional retention rules, bona fide internal compliance requirements, or automated computer back-up, disaster recovery, security, journaling, or archival systems, provided that:
  - a) any retained Confidential Information remains subject to the terms of this Agreement for as long as it is retained;
  - b) Recipient shall not access or use retained Confidential Information except to the extent required for the purpose justifying its retention or as otherwise permitted under this Agreement; and
  - c) where Confidential Information is retained only in routine back-up or archival systems, Recipient shall not be required to isolate, delete, or destroy such copies until deletion occurs in the ordinary course of those systems.

For clarity, Recipient's legal files, internal compliance records, and electronically stored records created in the ordinary course that contain or reflect Confidential Information may be retained to the limited extent permitted under Article 6.3 and shall continue to be treated as Confidential Information under this Agreement.

## Article 7. Non-Poaching

- 7.1 **Activation and levels.** This Article constitutes an optional and separate obligation, independent from the confidentiality obligations under this Agreement. It applies only if and to the extent expressly activated in the NDA-SC. The NDA-SC may provide for one of the following levels:
- a) **None**, which is the default if the NDA-SC does not expressly activate this Article;
  - b) **Basic non-poaching**, neither Party shall, during the term of this Agreement and for the period specified in the NDA-SC following its expiry or termination or, if no period is specified there, for 12 (twelve) months, directly solicit, recruit, or offer employment to any employee, officer, or key contractor of the other Party with whom it had material contact in connection with the Scope, without the prior written consent of that other Party;
  - c) **Strict non-poaching**. If the NDA-SC activates the strict level, neither Party shall, during the term of this Agreement and for the period specified in the NDA-SC following its expiry or termination or, if no period is specified there, for 12 (twelve) months, directly or indirectly solicit, recruit, or offer employment to any employee, officer, or key contractor of the other Party, without the prior written consent of that other Party.
- 7.2 **Common exclusions.** Articles 7.2a) and 7.2b) do not prevent:
- a) general advertisements or recruitment campaigns that are not specifically targeted at the other Party's personnel;
  - b) the hiring of any person who approaches the hiring Party without prior solicitation in breach of this Article; or
  - c) the continuation of any recruitment process or relationship that was already active before the Effective Date, as evidenced by contemporaneous business records.

## Article 8. Non-Circumvention

- 8.1 **Activation and levels.** This Article constitutes an optional and separate obligation, independent from the confidentiality obligations under this Agreement. It applies only if and to the extent expressly activated in the NDA-SC. The NDA-SC may provide for one of the following levels:
- a) **None**, which is the default if the NDA-SC does not expressly activate this Article;
  - b) **Basic non-circumvention**: Recipient shall not, directly and without the prior written consent of the Disclosing Party, negotiate with, solicit business from, or enter into any commitment or transaction with any Contact introduced by the Disclosing Party in connection with the Scope: or
  - c) **Strict non-circumvention**: Recipient shall not, directly or indirectly and without the prior written consent of the Disclosing Party, bypass the Disclosing Party in relation to any Contact introduced by the Disclosing Party in connection with the Scope, including by negotiating with, soliciting business from, entering into any commitment or transaction with, or otherwise using any affiliate, Representative, intermediary, or third party to deal with that Contact in connection with the Scope.
- If activated, this Article applies only to Contacts introduced by the Disclosing Party to the Recipient in connection with the Scope.
- 8.2 **Pre-existing relationships.** The obligations in this Article do not apply to any Contact with whom Recipient had a pre-existing relationship, opportunity, or active commercial discussion before the date of introduction by the Disclosing Party, provided that Recipient can demonstrate that prior relationship, opportunity, or discussion by contemporaneous written records.
- 8.3 **Remedies.** In the event of a breach of this Article:

- a) Disclosing Party shall be entitled to claim compensation for the damage actually suffered, including any remuneration, fee, or economic benefit that would have been payable or attributable to the Disclosing Party absent the circumvention;
  - b) Disclosing Party may seek injunctive or other equitable relief without being required to demonstrate actual financial loss; and
  - c) where actual damages cannot be reasonably quantified, Recipient shall account for and pay to the Disclosing Party any profits, fees, or other economic benefits derived from the circumventing transaction.
- 8.4 **Duration.** If the NDA-SC activates either the basic level or the strict level, the obligations in this Article apply for the period specified in the NDA-SC from the date on which the relevant Contact was introduced and survive the expiry or termination of this Agreement. In the absence of any specification in the NDA-SC, that period shall be 12 (twelve) months from the date of introduction of the relevant Contact.

## Article 9. Data Protection

- 9.1 Each Party shall comply with applicable data protection laws in connection with any personal data processed under or in connection with this Agreement. Unless otherwise expressly agreed In Writing in the NDA-SC or in a separate data processing agreement, each Party acts as an independent controller of the personal data it receives or accesses under this Agreement and shall independently determine the purposes and means of its processing.
- 9.2 Each Party shall ensure that any disclosure of personal data under this Agreement is limited to what is necessary for the Scope, is supported by an appropriate legal basis, and is accompanied by any notices required by applicable data protection laws. Disclosing Party remains responsible for the lawfulness of its disclosure of personal data to Recipient.
- 9.3 Each Party shall implement and maintain appropriate technical and organisational measures designed to protect personal data against accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data, taking into account the nature of the personal data and the risks presented by the processing.
- 9.4 Without prejudice to the security incident notification obligation in Article 4.1(f), if a Party becomes aware of a personal data breach, within the meaning of applicable data protection law, affecting personal data received from the other Party under this Agreement, it shall notify the other Party without undue delay and provide reasonably available information necessary for the other Party to comply with its own legal obligations, to the extent the breach is relevant to the other Party.
- 9.5 Neither Party shall transfer personal data received under this Agreement to a third country or international organisation unless an adequate level of protection is ensured in accordance with applicable data protection laws. Where such transfer requires a transfer mechanism or supplementary measures, the transferring Party shall ensure that an appropriate mechanism is in place before the transfer occurs.
- 9.6 Each Party shall reasonably cooperate with the other Party, at the other Party's cost to the extent legally permitted, in relation to requests from data subjects, regulators, or courts concerning personal data shared under this Agreement, to the extent such cooperation is necessary for the other Party to comply with applicable data protection laws.

## Article 10. Non-Competition

- 10.1 **Definitions.** For the purposes of this Article, the following defined terms apply and are specified in the NDA-SC:
- a) "**Restricted Activities**" means the specific activities, products, services, or fields designated as restricted in the NDA-SC;

- b) "**Territory**" means the geographic area within which the non-competition obligation applies;
- c) "**Non-Competition Period**" means the period during which the non-competition obligation selected in the NDA-SC applies; and
- d) "**Affected Party**" means the Party whose Restricted Activities are the subject of a proposed competing activity by the other Party.

10.2 **Activation and levels.** This Article constitutes an optional and separate obligation, independent from the confidentiality obligations, and shall be interpreted restrictively. It applies only if and to the extent expressly activated by a completed Non-Competition section in the NDA-SC. The NDA-SC may provide for one of the following levels:

- a) **None**, which is the default if the NDA-SC does not expressly activate this Article;
- b) **Basic non-competition:** each Party undertakes, during the Non-Competition Period and within the Territory, not to directly carry on Restricted Activities that compete with Affected Party within the Scope and to the extent necessary to protect the legitimate interests identified in the NDA-SC, without the prior written consent of Affected Party; or
- c) **Strict non-competition:** each Party undertakes, during the Non-Competition Period and within the Territory, not to directly or indirectly develop, carry on, participate in, engage in, or provide material assistance in Restricted Activities that compete with Affected Party within the Scope and to the extent necessary to protect the legitimate interests identified in the NDA-SC, without the prior written consent of Affected Party. For the purposes of this Article, indirect participation includes:
  - i. acting as a director, officer, employee, consultant, agent, or partner of any entity engaged in Restricted Activities;
  - ii. holding a controlling or materially influential interest in any entity engaged in Restricted Activities; or
  - iii. providing financial, technical, or strategic resources to any entity engaged in Restricted Activities.

10.3 If the NDA-SC activates either the basic level or the strict level, it shall also specify:

- a) Restricted Activities;
- b) Territory;
- c) Non-Competition Period; and
- d) connection to the Scope.

In the absence of such completed section, this Article creates no obligation on either Party.

10.4 **Acknowledgment.** Each Party acknowledges that this Article, if activated, reflects a freely negotiated arrangement, that each Party has had the opportunity to take independent professional advice, and that it is intended to protect legitimate business interests specifically identified in the NDA-SC in connection with the Scope. The obligations set out herein shall be interpreted narrowly and only to the extent proportionate to those legitimate interests.

10.5 **Common exclusions.** Nothing in this Article restricts either Party from:

- a) continuing any commercial activity carried on as at the date of signature of the NDA-SC, as evidenced by that Party's business records at that date; or
- b) holding passive investments representing less than 5% (five per cent) of the share capital of a publicly listed company.

10.6 **Ancillary and limited nature.** The non-competition obligation in this Article is ancillary to and strictly necessary for the protection of the Scope, the Confidential Information disclosed in connection therewith, and any other legitimate interests expressly identified in the NDA-SC. It applies exclusively to

the Restricted Activities within the Territory and does not create any general restriction on competition between the Parties beyond what is expressly identified in the NDA-SC.

- 10.7 **Duration and Territory.** The Non-Competition Period and Territory shall be as specified in the NDA-SC. The Non-Competition Period shall in no event exceed 24 (twenty-four) months following the date of expiry or termination of this Agreement, regardless of any longer period specified in the NDA-SC. If applicable law in a given jurisdiction requires a shorter maximum period or a more limited territorial scope, the obligation shall be automatically reduced to that maximum, without prejudice to the remainder of this Article.
- 10.8 **Remedies.** The Parties acknowledge that a breach of this Article would cause irreparable harm to Affected Party for which monetary damages alone would not constitute an adequate remedy. Affected Party shall be entitled to seek injunctive or other equitable relief in addition to any other remedy available under this Agreement or applicable law. The Parties may specify a pre-agreed liquidated damages amount in the NDA-SC as a genuine pre-estimate of the minimum loss arising from a breach of this Article, without prejudice to Affected Party's right to claim additional damages where actual loss exceeds that amount, subject to applicable law.
- 10.9 **Independence.** This Article is independent of the confidentiality obligations set out in Article 4. The invalidity or unenforceability of this Article, or of any provision hereof, in any jurisdiction shall not affect the validity or enforceability of Article 4 or of this Article in any other jurisdiction. Where any provision of this Article is held invalid or unenforceable, it shall be modified to the minimum extent necessary to make it valid and enforceable, and the Parties shall cooperate in good faith within 30 (thirty) days to substitute an equivalent provision achieving the same commercial purpose to the extent permitted by applicable law.

## Article 11. Survival

Without prejudice to the articles "Effects of Cessation" and "Survival" of the FlexUp-GC, the following provisions shall survive the Cessation of this Agreement in accordance with their respective terms:

- a) Article 4 (Confidentiality Obligations), for 5 (five) years from each disclosure of the relevant Confidential Information, except that any trade secrets shall remain protected for so long as they retain trade secret status under applicable law;
- b) Article 6 (Return or Destruction of Confidential Information), until fully performed, and thereafter Article 6.3 for so long as any Confidential Information is retained under that Article;
- c) Article 7 (Non-Poaching), if activated, for the period set out therein;
- d) Article 8 (Non-Circumvention), if activated, for the period set out therein;
- e) Article 9 (Data Protection); and
- f) Article 10 (Non-Competition), if activated, for the period set out therein.