

CONFIDENTIALITY AGREEMENT
Version 1.1 – 05/2021

This Confidentiality Agreement is made as of the Effective Date between MOSTLY AI Solutions MP GmbH, a limited liability company incorporated under the laws of Austria, registered with the Commercial Court of Vienna under the registration number 466390v and having its corporate address at 1010 Vienna, Hegelgasse 21/3, Austria (“**MOSTLY AI**” or “**Provider**”) and the Customer which has accepted the terms and conditions of the MOSTLY AI Software License Agreement and/or Professional Services Agreement, available at <https://www.mostly.ai/terms/> (collectively, the “**Agreement**”). By executing an Order Form incorporating the terms of this Confidentiality Agreement, the Customer thereby expressly agrees to be bound by the terms hereof.

IN CONSIDERATION OF the provisions contained in this Confidentiality Agreement, the parties agree as follows:

1. DEFINITIONS

1.1 All terms not otherwise defined in this Confidentiality Agreement shall have the meaning ascribed to such terms in the Agreement.

2. CONFIDENTIALITY

2.1 **Confidential Information.** Subject to the terms hereof, the parties hereto and any third parties they may appoint shall keep in strict confidence all Confidential Information of the other party, which they obtain in the course of the performance of the Agreement. “**Confidential Information**” shall mean any information or documents and other data of a party which such party or its Affiliates (“**Discloser**”) has disclosed to the other party or its Affiliates (“**Recipient**”) in connection with the Agreement, which the Discloser has itself identified in writing or in other form as confidential information or whose confidentiality clearly results from its nature, including but not limited to, business and trade secrets of the parties. Confidential Information includes, in particular, in any case (i.e. irrespective whether it is identified/marked as “CONFIDENTIAL” or not) any information or documents concerning accounts or business transactions or products or intellectual property rights of MOSTLY AI as well as any other information, which is subject to the provisions of the applicable Act on the Protection of Personal Data.

2.2 **Manner of disclosure.** Confidential Information delivered pursuant to the Agreement shall

- (a) be used by the Recipient only for the sole purposes of the performance of the Agreement, unless otherwise expressly agreed to in writing by the Discloser; and
- (b) not be distributed, disclosed, or disseminated in any way or form by the Recipient to anyone except (i) its own or its Affiliates’ employees, officers and directors, who have a reasonable need to know such Confidential Information and who are bound to confidentiality by their employment agreements or otherwise not less stringent than under the obligations of the Agreement and (ii) persons who are bound by professional duty of confidentiality and reasonably require the information to be disclosed for purposes reasonably incidental to the Agreement; and
- (c) be treated by the Recipient with the same degree of care to avoid unauthorized disclosure to any third party as with respect to the Recipient’s own confidential information of like importance but with no less than reasonable care.

2.3 **Exceptions.** The obligations as per this Section 2 shall not apply to any information which the Recipient can prove:

- (a) is at the time of disclosure already in the public domain or becomes available to the public through no breach by the Recipient of the Agreement or the terms hereof, except that Confidential Information shall not be deemed to be in the public domain merely because any part of the Confidential Information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public;
- (b) is received by the Recipient from a third party free to lawfully disclose such information to Recipient;
- (c) was in the Recipient’s lawful possession prior to receipt from the Discloser as evidenced by written documentation;
- (d) is independently developed by the Recipient without the benefit of any of the Confidential Information as evidenced by written documentation;

- (e) is approved for release by written agreement of the Discloser; or
- (f) is required to be disclosed to comply with legally mandatory regulations, a judicial or official order or decree, provided that written advance notice of such judicial action was timely given to the Discloser.

2.4 **Liability for third parties.** As far as the performance of the obligations set forth in this Section 2 is concerned, each party assumes and undertakes liability for the acts and omissions of its and its Affiliates' employees, officers, directors, agents and subcontractors of the respective party. A breach of an obligation hereunder conducted by any of the aforementioned persons or entities shall be regarded as a breach conducted by the party itself.

2.5 **No-License.** If not explicitly agreed otherwise, the disclosure of Confidential Information and materials shall not result in any obligation to grant the Recipient any rights therein.

2.6 **Ownership, return.** All Confidential Information exchanged between the parties hereunder shall remain the property of the Discloser. Upon any termination or expiration of the Agreement, Customer and its subsidiaries shall immediately cease use of all Confidential Information of Provider. Within thirty (30) days after any termination or expiration of the Agreement, Customer shall irretrievably destroy or upon Provider's request deliver to Provider all copies of any Confidential Information of Provider in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. Customer must certify to Provider in writing that it and each of its subsidiaries have satisfied its obligations under this Section 2.6.

Subject to Customer's written request within ninety (90) days following the termination or expiration of the Agreement, Provider shall within thirty (30) days of its receipt of such request irretrievably destroy or deliver to Customer (as directed by Customer) all copies of any Confidential Information of Customer in every form, except to the extent it is legally required to keep it for a longer period in which case such return or destruction shall occur at the end of such period. In case of destruction, the Provider shall confirm in writing such destruction to the Customer.

2.7 **Termination.** The terms of this Confidentiality Agreement shall survive any termination or expiration of the Agreement (perpetual obligation).