

MUTUAL NON-DISCLOSURE-AGREEMENT

This Mutual Non-Disclosure-Agreement (the “Agreement”) is dated _____ (the “Effective Date”) and entered into by and between:

Kickscale FlexCo, a company incorporated under the laws of the Republic of Austria, with its seat in Vienna and its business address Stella-Klein-Löw-Weg 8, 1020 Vienna, Austria, registered with the companies’ register of the Commercial Court of Vienna (*Handelsgericht Wien*) under the docket no. FN 535151 m

(„the Company“);

and

_____, a company incorporated under the laws of _____, with its seat in _____ and its business address _____, registered with _____ under the docket no. _____

(„the Customer“);

(The Company and the Customer are each a "Party" or collectively the "Parties").

Each Party may act as a disclosing party (“Disclosing Party”) or a receiving party (“Receiving Party”) with respect to Confidential Information under this Agreement.

1. Preamble

- 1.1 WHEREAS the Parties wish to exchange Confidential Information in connection with evaluating and pursuing a prospective business relationship and/or customer contract between them, including in particular in the context of a trial phase and any subsequent productive use of the Company’s SaaS platform (the “Purpose”), and each Party considers certain information it may disclose to the other Party in this context to be proprietary and confidential;
- 1.2 WHEREAS the Parties wish to define the terms and conditions under which such Confidential Information shall be exchanged and protected;
- 1.3 NOW THEREFORE, the Parties hereby agree as follows:

2. Definitions

- 2.1 “Affiliates” mean (1) with respect to a person, any member of such person’s family; (2) with respect to an entity, any employee, officer, director, agent, shareholder, partner or investor of or in such entity or of or in any affiliate of such entity; and (3) with respect to a person or entity, any person or entity which directly or indirectly or through one or more intermediaries Controls or is Controlled by or is under common Control with such person or entity and for the purposes of this definition, “Control” means the possession of power to direct or cause the direction of management or policies (whether through ownership of voting securities, by agreement or otherwise, directly or indirectly).
- 2.2 “Confidential Information” means all information and know-how relating to the Disclosing Party, the Third Party and/or any of their Affiliates that is proprietary and/or confidential and not in the public domain, whether the information is provided or obtained prior to or

after the Effective Date in oral, visual (obtained by visiting sites) or written form or is recorded or in electronic, digital or any other form and whether the information is provided by or obtained directly or indirectly, provided that such information (a) is marked or otherwise designated in writing as "confidential", "proprietary" or with a similar legend at the time of disclosure, or (b) if disclosed orally, visually or in any other non-tangible form, is identified as confidential at the time of disclosure and confirmed in writing within thirty (30) days thereafter, or (c) by its nature or content would reasonably be understood by a prudent recipient to be confidential or proprietary. Confidential Information shall be deemed to include, but shall not be limited to the following: (1) commercial, financial and legal information; (2) personnel, customers, suppliers or other contracting partners; (3) inventions, processes, methods, products, patent applications, and other proprietary rights and know-how; (4) specifications, drawings, sketches, models, samples, tools, computer programs, technical information, or other related information; (5) audio, video and call recordings, transcripts and any data derived therefrom; (6) any content generated through automated processing, artificial intelligence or machine learning tools, including but not limited to summaries, analyses, insights, reports, evaluations and metadata; (7) all notes, memos, reports, calculations, compilations, analyses, forecasts, conclusions or summaries or other material derived or produced partly or wholly from any of the Confidential Information or containing or reflecting any Confidential Information and any or all computer records (including, but not limited to, data, copies, models, reproductions and recordings) derived or produced partly or wholly from any of the Confidential Information (the "*Derived Information*"); and (8) Derived Data (as defined in Section 2.3 below).

- 2.3 "*Derived Data*" means any information, data, insights, analyses, reports or other output that is derived or generated from Confidential Information, including through automated processing, machine learning or artificial intelligence tools.
- 2.4 "*Disclosing Party*" shall be the Party disclosing information.
- 2.5 "*Personal Data*" are any information relating to an identified or identifiable natural person pursuant to Article 4 item 1 GDPR (General Data Protection Regulation).
- 2.6 "*Receiving Party*" shall be the Party to which information is disclosed. As mentioned above, each Party may act as a Disclosing Party or a Receiving Party with respect to Confidential Information under this Agreement.
- 2.7 "*Third Party*" means individuals or companies with whom the Parties have entered into a Non-Disclosure-Agreement and whose Confidential Information may be disclosed to one of the Parties.

3. Preservation of Confidentiality

- 3.1 Secrecy. The Parties undertake not to disclose this Agreement, its existence and the details thereof to third parties.
- 3.2 Confidentiality Obligation. Each Receiving Party shall:
- 3.2.1 hold all Confidential Information in strict confidence, keep all Confidential Information secret, protect and preserve the confidential nature and secrecy of all Confidential Information, and will not (except as required by applicable law, regulation or legal process, and only after compliance with Section 3.6 below), in any case without prior written consent of the Disclosing Party, disclose the existence or the content of the Confidential Information or the fact that the Confidential Information has been made available to the Receiving Party in any manner whatsoever;

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- 3.2.2 establish and maintain effective security measures to safeguard all Confidential Information from unauthorized access, use, reproduction or disclosure by the Receiving Party, its Affiliates or any person who, for whatever reason, has access to the Confidential Information and use the same degree of care and diligence the Receiving Party would use to protect its own Confidential Information, which shall in no case be less than a reasonable degree of care;
 - 3.2.3 not use any Confidential Information or Derived Data for any other purpose whatsoever other than in connection with the Purpose. The Receiving Party shall not use such Confidential Information or Derived Data for its own benefit or for the benefit of a third party, or to use such Confidential Information for any service or to use it for any kind of commercial or non-commercial use, without the prior written consent of the Disclosing Party;
 - 3.2.4 disclose Confidential Information only to those own employees or employees of Affiliates who must have knowledge of the information in order to perform their tasks in connection with the Purpose and who are contractually obliged to keep the Confidential Information secret;
 - 3.2.5 promptly notify the Disclosing Party in writing upon becoming aware of any actual or suspected unauthorized access, use, or disclosure of Confidential Information, and cooperate with the Disclosing Party in investigating and remedying any such breach.
- 3.3 Transmission of the Confidentiality Obligation. Each Receiving Party shall ensure that each of its Affiliates who has access to Confidential Information disclosed under this Agreement is informed of its proprietary and confidential nature and is required to abide by the terms of this Agreement.
- 3.4 No detrimental or adverse use. No Confidential Information will be used in any manner by one of the Parties that is detrimental or adverse to one of the Parties or the Third Party's operations or businesses.
- 3.5 Exceptions to the Confidentiality Obligation. Notwithstanding the foregoing, the Parties agree that information shall not be deemed Confidential Information and the Receiving Party shall have no obligation to hold in confidence such information, where such information:
- 3.5.1 is or becomes publicly available without breach of this Agreement (including disclosure by the Disclosing Party to a Third Party without a duty of confidentiality);
 - 3.5.2 was already rightfully in the Receiving Party's possession prior to receipt from the Disclosing Party;
 - 3.5.3 is received by the Receiving Party from a Third Party rightfully and without a duty of confidentiality;
 - 3.5.4 is independently developed or ascertained by the Receiving Party without access to the Confidential Information.
- 3.6 Notification of disclosure. In the event that the Receiving Party is required pursuant to applicable law, regulation or legal process to disclose any of the Confidential Information, the Receiving Party must provide evidence of the facts justifying an exception referred to in Section 3.5 and shall notify the Disclosing Party of these facts promptly so that the Disclosing Party may seek a protective order or other appropriate remedy or, in its sole discretion, waive compliance with the terms of this Agreement. In the event that no such

protective order or other remedy is obtained within seven (7) business days of the receipt by the Disclosing Party of the said notice, or that the Disclosing Party does not waive compliance with the terms of this Agreement, the Receiving Party will furnish only that portion of the Confidential Information which is advised by suitably qualified legal counsel as being legally required to be furnished and the Receiving Party shall inform the Disclosing Party exactly what Confidential Information the Receiving Party will furnish and the Receiving Party will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information and matters so furnished. Nothing in this paragraph shall prevent the Receiving Party from making such disclosure if Notice has been given and the Disclosing Party had failed to prevent such disclosure or (as the case may be) refused to waive such compliance and the Receiving Party is still so compelled to disclose.

- 3.7 Right of development outside Confidential Information. The terms of this Agreement shall not be construed to limit either Party's right to develop independently or acquire products without use of the other Party's Confidential Information. Each Party acknowledges that the other Party may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Nothing in this Agreement will prohibit either Party from developing or having developed for it products, concepts, systems, or techniques that are similar to or compete with the products, concepts, systems, or techniques contemplated by or embodied in the Confidential Information provided that such Party does not violate any of its obligations under this Agreement in connection with such development.
- 3.8 Prohibition on Reverse Engineering. Neither Party shall attempt to replicate, reverse engineer, disassemble, decompile or copy the other Party's Confidential Information, nor assist any third party to do the same, without the prior written consent of the Disclosing Party.
- 3.9 Pre-Contractual Information. Any Confidential Information that was disclosed by either Party to the other Party prior to the Effective Date of this Agreement, in connection with the Purpose, shall be subject to the same obligations of confidentiality and non-use as Confidential Information disclosed after the Effective Date.

4. Duration

- 4.1 Duration and termination. This Agreement shall enter into force on the Effective Date and shall remain in effect for 3 years, unless terminated earlier by either Party upon thirty days prior written Notice to the other Party.
- 4.2 Continuation of Confidentiality Obligation. Notwithstanding termination of this Agreement for any reason, the obligations of confidentiality and non-use set out in this Agreement shall survive termination and shall remain in full force and effect for a period of five (5) years from the date of termination of this Agreement. Notwithstanding the foregoing, obligations with respect to information that constitutes a trade secret under applicable law shall survive termination without limitation in time, for as long as such information retains its status as a trade secret.

5. Return of Confidential Information

- 5.1 Property of Disclosing Party. All Confidential Information disclosed under this Agreement shall be and remain the property of the Disclosing Party and nothing contained in this Agreement shall be construed as granting or conferring any proprietary rights or other right or license in relation to such Confidential Information to the Receiving Party or to any other party to whom the Receiving Party discloses the Confidential Information in

accordance with this Agreement.

- 5.2 Destruction or return of Confidential Information. The Receiving Party shall, upon termination of this Agreement or at written request of the Disclosing Party, as promptly as possible, but not later than during fifteen (15) working days from receiving the termination note or the request, destroy all Confidential Information and Derived Data and permanently delete or erase copies of all Confidential Information and Derived Data stored or recorded in any electronic or other device or system utilized by the Receiving Party, including Derived Information. Alternatively, at the request of the Disclosing Party, the Receiving Party will promptly deliver to the Disclosing Party at the Receiving Party's expense all copies of all Confidential Information and Derived Data stored or recorded in any electronic or other device or system utilized by the Receiving Party, including Derived Information, in the possession of the Receiving Party.
- 5.3 No obligation to contract. The Parties agree that there is no obligation to enter into any further agreements in connection with the Confidential Information.
- 5.4 No Intellectual Property Rights. Nothing in this Agreement grants the Receiving Party any right to apply for registration of any intellectual property right (including without limitation any patent, trademark or design right) in respect of any Confidential Information of the Disclosing Party. The disclosure of Confidential Information under this Agreement shall not give the Receiving Party any right of prior use within the meaning of applicable patent law.

6. Data Ownership

- 6.1 Ownership of Customer Data and Derived Data. All data, content and information provided by the Disclosing Party in connection with this Agreement, including any aggregated or derived data generated from such data through the use of any platform, software or service (including any SaaS platform), shall remain the exclusive property of the Disclosing Party. The Receiving Party shall not acquire any ownership rights, title or interest in such data, aggregated data, or Derived Data by virtue of this Agreement or its performance thereof.
- 6.2 Limitation on AI Training. The Receiving Party shall not use any Confidential Information or Derived Data of the Disclosing Party as primary training data for the purpose of training or fine-tuning external artificial intelligence or machine learning models intended for use beyond the scope of this Agreement, without the prior written consent of the Disclosing Party. For the avoidance of doubt, this clause does not restrict the Receiving Party from using its own proprietary AI tools for internal processing purposes in connection with the Purpose.
- 6.3 No Secondary Use. The Receiving Party shall use Confidential Information and Derived Data primarily for the purpose of evaluating or pursuing the prospective business relationship between the Parties. The Receiving Party shall not use such information for unrelated commercial purposes or to gain a competitive advantage against the Disclosing Party, without the Disclosing Party's prior written consent.
- 6.4 Aggregated and Anonymised Data. Where the Receiving Party aggregates or anonymizes data originating from the Disclosing Party, the Disclosing Party retains its ownership rights over the underlying data. The Receiving Party shall not commercially exploit such aggregated or anonymized data in a manner that is inconsistent with the Purpose of this Agreement.

7. Data Protection and GDPR Compliance

- 7.1 Purpose Limitation. Any Personal Data shared under this Agreement may only be processed for the purpose of evaluating or pursuing the prospective business relationship between the Parties, and for no other purpose without the prior written consent of the data subject or as otherwise permitted by applicable law.
- 7.2 No Unauthorized Processing. Neither Party shall process Personal Data received from the other Party for its own commercial purposes, for profiling, or for any purpose other than as expressly permitted under this Agreement.
- 7.3 Data Processing Agreement. To the extent that the exchange or processing of information under this Agreement involves the processing of Personal Data by one Party on behalf of the other Party (in particular in the context of a SaaS platform or similar service), the Parties shall enter into a separate Data Processing Agreement in accordance with Article 28 GDPR prior to any such processing.
- 7.4 Compliance. Each Party shall comply with all applicable data protection and privacy laws and regulations, including Regulation (EU) 2016/679 (the General Data Protection Regulation, “GDPR”) and any applicable national implementing legislation, in connection with any Personal Data processed under or in connection with this Agreement.

8. No obligation to deliver Confidential Information

- 8.1 No duty to supply. This Agreement is applicable only to a possible exchange of Confidential Information and neither Party is obliged to supply any Confidential Information to the other Party at any time by virtue of the execution of this Agreement.

9. No representation or warranty

- 9.1 The Disclosing Party accepts no responsibility for and makes no representation or warranty, express or implied, as to the accuracy, completeness or reasonableness of any Confidential Information. Liability for, or any remedy in respect of fraud or fraudulent misrepresentation is not excluded. The Disclosing Party will not be liable to the Receiving Party or any other person in respect of any Confidential Information or its use.

10. Indemnification

- 10.1 Each Receiving Party will indemnify the Disclosing Party and keep the Disclosing Party harmless against all costs, losses or expenses resulting from any breach or non-performance by the Receiving party of any of its obligations under this Agreement.

11. Waiver

- 11.1 Waiver. Each Party agrees that no failure or delay by the other Party in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

12. Notices

- 12.1 Form of Notice. Any statement of legal significance, notice or other declaration (heretofore and hereinafter referred to as “Notices” and each of them as a “Notice”) in connection with this Agreement shall be made in writing (including e-mail).

13. Governing law and jurisdiction

- 13.1 Governing Law. This Agreement shall be governed by and interpreted and construed in accordance with the laws of the Republic of Austria without giving effect to its rules on conflict of laws.
- 13.2 Jurisdiction. The exclusive place of jurisdiction for all disputes arising out of or in connection with this Agreement shall be the competent court for commercial matters for Vienna, Inner City.

14. Miscellaneous

- 14.1 Severability. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall not affect the other part of that provision or the other provisions of this Agreement, all of which shall remain in full force and effect. Any provision found to be invalid or unenforceable shall be reformed, construed and enforced to the maximum extent permissible so as to give effect to the original intent of the Parties. If such reformation is not possible, the invalid or unenforceable provision shall be deemed replaced by a valid and enforceable provision that, to the greatest extent possible, achieves the economic and legal purpose that the Parties intended to achieve by the invalid or unenforceable provision. The foregoing shall apply mutatis mutandis in the event that this Agreement is found to contain any unintentional gaps or omissions.
- 14.2 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof.
- 14.3 Amendments. Amendments or changes to this Agreement shall be made in writing and require the unanimous consent of the Parties to this Agreement. The validity of implied amendments to this Agreement shall not be assumed.
- 14.4 No partnership. Nothing in this Agreement shall be construed to constitute an agency, partnership, joint venture or other similar relationship between the Parties.
- 14.5 Headings. Headings of Sections are inserted only for convenience and are in no way to be construed as a limitation on the scope of the particular Sections to which they refer.
- 14.6 Counterparts. This Agreement is executed in two counterparts duly signed and having equal legal force, one for each Party.

_____, _____
[location, date]

Kickscale FlexCo

_____, _____
[location, date]

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Name and position of signing person: