# **NON-DISCLOSURE AGREEMENT** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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## **FORTUNA GAME a.s.**

## and

### **[BUSINESS PARTNER NAME]**

**Non-Disclosure Agreement**

(hereinafter referred to as the “**Agreement**”)

made and entered into by and between

**FORTUNA GAME a.s.**,

a company incorporated and existing under the laws of the Czech Republic;

ID No.: 430 03 575;

having its registered office at Prague 2 - Vinohrady, Italská 2584 / 69, 120 00, Czech Republic;

entered into the Commercial Register maintained by the Municipal Court in Prague, Insert No. B 944;

E-mail address: dpo@feg.eu

(hereinafter referred to as the “**FORTUNA GAME**”)

and

**[Business Partner Name]**,

a company incorporated and existing under the laws of the [●];

ID No.: [●];

having its registered office at [●];

[entered into the Commercial Register kept by [●], Reg.No. [●];]

E-mail address: [●]

(hereinafter referred to as the “**Provider**”; FORTUNA GAME and Provider hereinafter referred to collectively as “**Parties**” or individually as the “**Party**”),

**WHEREAS:**

* + 1. Both Parties have proprietary information and non-public data of confidential nature relating to mutual cooperation linked with the provision of IT services, consulting services or delivery of business solutions (including proof of concept) agreed between the Parties (the “**Purpose**”) in any written, oral or any other form, which they are prepared to provide to each other in the course of discussions, a tender or negotiations evaluating potential cooperation for the Purpose and/or conclusion and fulfillment of an agreement regarding the Purpose (the “**Business Agreement**”).
    2. Either of the Parties is prepared to disclose or to arrange the disclosure to the other Party, of certain Confidential Information, as defined below, subject to the conditions set forth herein (the “**Disclosing Party**”).
    3. Either of the Parties has agreed to receive the Confidential Information, subject to the conditions set forth herein (the “**Receiving Party**”).

The Parties hereto have agreed as follows:

1. **SUBJECT MATTER OF THE AGREEMENT**
   1. The Parties hereby undertake not to disclose the Confidential Information, as defined in this Paragraph 1.1., unless in accordance with the stipulations set forth herein. The information to be protected under this Agreement shall be any information learned by the Receiving Party in connection with the negotiation, conclusion, performance and/or fulfilment of this Agreement and/or the Business Agreement, including information, materials, files, or other documents that the Disclosing Party communicated to the Receiving Party otherwise within the Purpose, regardless of whether the Disclosing Party explicitly designates it as confidential or not (the “**Confidential Information**”). Confidential Information is always considered to be, but is not limited to, any:
2. information resulting from the provision of services pursuant to the Business Agreement;
3. intellectual property such as proprietary knowledge, patents, trademarks, copyrights, trade secrets, and related materials;
4. banking data, financial statements, and tax-related information;
5. Personal Data, as defined below; and
6. content of this Agreement, the Business Agreement, or any other relevant data.
   1. The Confidential Information is of considerable value to each of the Parties and must therefore be protected as such.
   2. Each Party is in the position of the Disclosing Party in respect of its own Confidential Information and/or Confidential Information of its Affiliate, as defined below, and the position of the Receiving Party in respect of the Confidential Information provided by the other Party and/or its Affiliate. For the avoidance of doubt, the Receiving Party shall keep in strict confidentiality the Confidential Information of the Disclosing Party and/or its Affiliates’ regardless of having it received directly from the Disclosing Party and/or its Affiliate or through any third party (even if such third party has breached any legal obligation).
   3. For the purposes of this Agreement, the term “**Affiliate**“ shall mean, in relation to a Party, any (i) entity controlled by the Party, (ii) entity that controls the Party, and/or (iii) entity under common control with the Party. By “control” shall be understood exerting direct or indirect decisive influence over the controlled entity, specifically control involves directing the management and policies of the controlled entity, whether by contract, through ownership, voting, or otherwise, or similar interest representing at least 30% of the controlled entity’s voting rights**.** For the avoidance of doubt,in relation to FORTUNA GAME, the following entities are considered to be an „Affiliate“ of FORTUNA GAME: (i) entities establishing together with FORTUNA GAME a concern, as defined by Section 79 of Act No. 90/2012 Coll., the Business Corporations Act, as amended; and (ii) any other persons directly or indirectly controlled by, controlling, or under common control with Fortuna Entertainment Group a. s., a joint stock company organized and existing under the laws of the Czech Republic, ID No.: 14101785, having its registered office at Prague 2 - Vinohrady, Italská 2584 / 69, 120 00, Czech Republic.

For the purposes of this Agreement, the term “**Fortuna Group**” refers to a group of Affiliates in relation to FORTUNA GAME as specified above.

* 1. Each Party may share the Confidential Information with its Affiliates and Representatives (and the Affiliate’s Representatives), as defined below. In the event of any confidentiality breach by any of the parties, to which the Disclosing Party disclosed the Confidential Information, the Receiving Party shall be held liable for such breach, as if the Receiving Party itself breached its obligations under this Agreement.

1. **DATA PROTECTION**
   1. The Provider acknowledges that Personal Data of Fortuna Group are subject to applicable data protection legislation, specifically Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation or “**GDPR**”) and Personal Data protection legislation under the Applicable law, as defined below (collectively the “**Data Protection Legislation**“). The Parties undertake to comply with the Data Protection Legislation when processing of Personal Data as the case may be and shall provide each other all necessary cooperation in this regard.
   2. For the purposes of this Agreement, the term “**Personal Data**“ shall mean any information relating to an identified or identifiable natural person (data subject); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
   3. To the extent that one Party or its Affiliate is processing Personal Data on behalf of the other Party or its Affiliate as an integral part of the Purpose, the Parties agree to enter into the Data Processing Agreement (“**DPA**”). The DPA shall define, in particular, the relationship between the Parties and/or their Affiliates with respect to Personal Data control.
2. **OBLIGATIONS OF THE PARTIES**
   1. The Receiving Party undertakes not to disclose any Confidential Information, in particular:
3. not to communicate, distribute, disseminate and/or disclose any part of such Confidential Information to any unauthorized third party (whether orally or in writing, in its entirety or in part) unless such disclosure:
4. is required by an enforceable decision of a judicial or any other public administration authority in connection with a dispute between the Disclosing Party and the Receiving Party in connection with this Agreement,
5. is required by law, however, prior to any such disclosure, prompt notice to the affected Party is required whereas the Receiving Party is obliged to limit the scope of such disclosure to the minimum required by law,
6. is not a result of breach of this Agreement because such disclosed information is publicly known and/or included in publicly available documents,
7. concerns the Confidential Information which was known to the Receiving Party prior to disclosure by the Disclosing Party,
8. concerns the Confidential Information which has been rightfully obtained by the Receiving Party from a third party without any breach of a confidentiality obligation of such third party or the confidentiality obligation hereunder, and/or
9. has been permitted by express prior written consent of the Disclosing Party, in which event the Receiving Party is obliged to comply with all conditions established for such disclosure by the Disclosing Party (hereinafter the “**Qualified Consent**”); Qualified Consent shall in particular define the scope of the Confidential Information to be disclosed, term of its use, final recipient identification and purpose of the use; The final recipient shall be subject to conditions of the Qualified Consent considered as the “**authorized third party**”;

and subject to the conditions that the Receiving Party provides evidence of the circumstances mentioned, in particular, in letters c), d), e) above upon the other Party’s request;

1. to hold and maintain in strict confidentiality any Confidential Information disclosed by the Disclosing Party, as well as to treat it with the same degree of care as would be applied with respect to its own Confidential Information;
2. not to use such Confidential Information for any other reason than in connection with the Purpose, or publish, copy, circulate or otherwise make it available to any unauthorized third party;
3. to use all reasonable endeavors to safeguard such Confidential Information from unauthorized access, disclosure, use or misappropriation;
4. to ensure and maintain all necessary IT security measures for the protection of the Confidential Information as it applies to the protection of its own Confidential Information but not less than reasonable degree of care applicable to the industry of the Receiving Party and/or required under the Applicable law at the time of disclosure; and/or
5. at the request of the Disclosing Party to destroy (in the case of electronic data, use commercially reasonable efforts to delete or render practicably inaccessible) or return to the Disclosing Party all Confidential Information and all documents, copies and materials containing or reflecting Confidential Information, unless agreed otherwise with the Disclosing Party or unless otherwise required by the Applicable law.
   1. The Parties may disclose the Confidential Information to their officers, advisors, auditors, contractors, employees, and other approved third persons (the “**Representatives**”), and Representatives of their Affiliates, to all on the need-to-know basis, without the Qualified Consent of the other Party, however always to the extent necessary for achieving the Purpose. The Representatives are considered the authorized third parties.
   2. The Parties undertake to ensure that the confidentiality obligation under this Agreement apply to all the parties, to which they, as the Disclosing Party, disclosed the Confidential Information to the same extent as stipulated herein.
   3. All materials containing the Confidential Information, whether furnished by or obtained from the Disclosing Party directly or indirectly, orally or in any documented form, including but not limited to hard-copy or electronic copy, reports, data, flowcharts, program listings and data file printouts, shall be and remain the property of the Disclosing Party and shall not be copied, published, reproduced or otherwise disclosed in whole or part (the “**Copy**”) without the Disclosing Party’s Qualified Consent, however, if specifically needed for the Purpose, the Receiving Party must note such need to the Disclosing Part in advance.
   4. The confidentiality obligations under this Agreement shall commence from the date of signature hereof or since the Confidential information has been disclosed for the first time by the Disclosing Party (or its Affiliate) to the Receiving Party, whichever occurs first; and shall remain in effect until the Disclosing Party sends the Receiving Party written notice releasing it from the obligations under this Agreement or until both Parties mutually agree on termination hereof in writing. Such notice shall not apply vice versa.
   5. In the event of breach of this Agreement, the Receiving Party shall pay to the Disclosing Party the amount equal to EUR 5.000 (in words: five thousand Euro) (the “**Penalty**”) for each breach notwithstanding the right of the Disclosing Party or its Affiliate to seek damages (including damages exceeding the Penalty) or other legal remedies available as a result of such breach.
   6. The Receiving Party shall indemnify the Disclosing Party against all costs, fines, penalties, or losses incurred or suffered by the Disclosing Party and/or its Affiliates due to any failure or default by the Receiving Party to duly perform the obligations hereunder.
6. **MISCELLANEOUS**
   1. Nothing in this Agreement shall be construed as granting a license or conferring an authorization to the Confidential Information, except as expressly provided herein.
   2. The Parties are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or other similar relationship between the Parties. Neither Party is an agent or representative of the other or is authorized to make any warranties or assume or create any other obligations on behalf of the other.
   3. Neither Party shall use any names, trade-marks, service marks, logos or other identifying marks of the other Party (unless otherwise mutually agreed by the Parties in writing), nor discuss or otherwise make reference to the other Party, in any notices to third parties, promotional or marketing materials, press release or other public announcement or advertisement, however characterized, without the other Party’s prior written consent.
   4. The Parties undertake insofar as reasonable or possible to act in such a manner as not to damage and endanger the reputation of the other Party.
   5. In the event of an unauthorized use or disclosure of the Confidential Information, the Receiving Party shall immediately notify the Disclosing Party of such unauthorized use or disclosure in writing and shall take such measures that the Disclosing Party may reasonably require to mitigate or remedy the consequences of such actual or imminent breach, unless the Parties agree otherwise in writing.
   6. Should the Parties conclude the Business Agreement, any provisions relating to confidentiality obligations (including any contractual penalty or liability, as the case may be) in the Business Agreement shall prevail, provided that these are stricter than the confidentiality obligations under this Agreement.
7. **GOVERNING LAW AND DISPUTE RESOLUTION**
   1. This Agreement shall be construed, governed and interpreted in accordance with the laws of the Czech Republic (the “**Applicable law**”). Any controversy or dispute arising out of or in connection with this Agreement shall be referred to and finally settled before the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic in accordance with its Rules (the “**Rules**”) by three arbitrators appointed in accordance with these Rules. The arbitrators shall proceed according to the Rules. The place of arbitration shall be Prague; the language of the proceedings shall be Czech.
8. **COMMUNICATION**
   1. Notices under this Agreement must be made in writing by (i) registered mail; or (ii) recognized courier; or (iii) by electronic mail (requesting delivery notification and read receipt); to the addresses above or to such other address which the Party has notified to the other in writing. All notices shall be deemed to have been given immediately upon confirmed delivery by electronic mail, or if otherwise demonstrably delivered.
9. **FINAL PROVISIONS**
   1. The Parties hereby confirm that they have reached an agreement on all terms, the fulfilment of which they consider to be prerequisites of this Agreement and that this Agreement represents a complete and exclusive statement relating to the subject matter hereof.
   2. Each Party accepts the risk of a material change of circumstances. The right of each Party to request the renegotiation of this Agreement is hereby explicitly excluded.
   3. This Agreement may not be terminated prior to the termination of any Business Agreement. The termination of this Agreement, however, shall have no influence on the obligation of the Parties to maintain the confidentiality of the Confidential Information under the Applicable law.
   4. This Agreement supersedes any previous oral or written communication about the subject matter hereof. Any changes to this Agreement must be in writing signed by both Parties and with a specific reference to this Agreement.
   5. This Agreement is made in two (2) counterparts of identical wording in English, whereas each Party shall receive one (1) of them.
   6. The Agreement becomes valid and effective on the date of signing and execution hereof by the last Party hereto.

***[signing page follows]***

**Signing page:**

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| In Prague, date as per electronic signature | In…, date as per electronic signature |
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| **FORTUNA GAME a.s.** | **Business Partner Name** |
| Lukáš Fröhlich, Group Head of Legal & Compliance | *fill in the name & title of representative* |
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