CONFIDENTIALITY AGREEMENT

between

(Company Name)

and

TÜRK HAVA YOLLARI A.O.

(Turkish AIRLINES INC.)

**THIS CONFIDENTIALITY AGREEMENT** (“**Agreement”**) is dated …………….and is entered into by and between:

*(1)* (Company Name) , a company established under the laws of …………………….. whose principal office is at ………………………………………(company address)……………………………... (including its successors and assigns) (hereinafter referred to as “(Company Name)”); and

*(2)* **TÜRK HAVA YOLLARI A.O.** (**Turkish Airlines INC.**), a corporation established under the laws of the Republic of Turkey whose principal office is at Genel Yönetim Binası, Atatürk Havalimanı, Yeşilköy, İstanbul, Turkey (including its successors and assigns) (hereinafter referred to as “**THY**”),

(herein after each referred to individually as a “**Party**” and collectively as the “**Parties**”).

**RECITALS:**

1. Both of the Parties are contemplating entering into discussions for the purpose of evaluation and negotiation in relation to, and furthering execution and performance of a possible business transaction in connection with ………………………………………………………………………………..(“**Purpose**”).
2. In connection with the Purpose, the Parties may provide each other with Confidential Information (as defined below) on the terms set out in this Agreement.

**THEREFORE, THE PARTIES HEREBY AGREE** as follows:

1. **DEFINITIONS**

In this Agreement:

**Confidential Information** means any and all business, technical, production, marketing, sales, trading, financial and other information, disclosed or submitted by the Disclosing Party, which the Disclosing Party considers as not generally known to the public, confidential or proprietary in nature, whether in writing, orally or by any other media, including without limitation, all ideas, improvements, inventions, methodologies, works, business plans, data, materials, products, specifications, manuals, techniques, processes, know-how, inventions, models, drawings, algorithms, source code documents and other innovations of any kind, whether or not eligible for copyright, patent, trademark, trade secret or other legal protection, whether under development or planned for development (including, without limitation, formulas, processes, databases, computer programs and their documentation, encoding techniques, marketing and new product plans, production, processes, advertising, packaging and marketing techniques, marketing plans, product plans, technical plans, business strategies, strategic alliances and partners, financial and legal information, engineering data, methodologies and processes, forecasts, studies, compilations, personnel information, customer lists, price lists, trade secrets, product design, capabilities, specifications, the identification of potential and actual customers and suppliers and all documentation, materials and media provided by the Disclosing Party) whether or not marked or indicated as “confidential”.

**Disclosing Party** means, as applicable, the Party that provides Confidential Information or on whose behalf Confidential Information is provided to the Receiving Party (as defined below).

**Receiving Party** means, as applicable, the Party and/or its Representatives that receive Confidential Information from the Disclosing Party.

**Representatives** means, in relation to a Party, any of that Party's directors, officers, employees, representatives, legal advisors who has a demonstrable need-to-know within the framework of the Purpose.

1. **NO OBLIGATION WITH RESPECT TO PURPOSE**

Nothing herein shall be construed as an indication of intent, offer, acceptance or commitment or to create any obligation to execute any further agreements including in respect to the Purpose.

1. **CONFIDENTIALITY AND USE OF INFORMATION**

3.1 The Receiving Party will ensure that both it and each of its Representatives, as applicable:

1. treat all Confidential Information in accordance with the terms of this Agreement;
2. use the Confidential Information solely in connection with the Purpose unless the Disclosing Party gives its prior written consent to such Confidential Information being used for some other agreed purpose;
3. keep the Confidential Information strictly confidential and except as provided hereunder do not disclose, transfer or otherwise make available the Confidential Information, directly or indirectly, in any manner whatsoever, in whole or in part, to any person other than to Representatives of the Receiving Party without the Disclosing Party’s prior written consent and the third party’s written undertaking to act in strict accordance with the terms of this Agreement as if it is a party hereto;
4. keep confidential the existence of the Purpose and any of the terms, discussions, conditions or other facts with respect to the Purpose;
5. ensure that Confidential Information is received in confidence;
6. ensure that each of its Representatives’ acts in strict accordance with the terms of this Agreement as if it is a party hereto;
7. take all measures to securely and properly protect Confidential Information in a prudent and careful manner, and in any event, such measures shall not be less securely and properly than the measures taken to protect its own confidential information; and
8. does not use the Confidential Information for the purposes of unfair and improper competition and agrees not to copy, alter, modify, disassemble, reverse engineer or decompile any of the Confidential Information unless the Disclosing Party gives its prior written consent.

3.2 The Receiving Party agrees that it will be primarily liable (which shall include taking all measures, at its cost, to restrain its Representatives from their respective action) for any failure to act in accordance with or breach of the terms of this Agreement by any of its Representatives. The Receiving Party shall notify the Disclosing Party promptly upon becoming aware that any of the Confidential Information has been lost or disclosed to or obtained by a third party or used without authorization (otherwise than as expressly permitted by this Agreement).

3.3 The Receiving Party agrees and acknowledges that except expressly agreed in writing, the Disclosing Party has not given (and does not give) any assurances, warranties or undertakings and has not made (and does not make) any representations, statements or assumptions, express or implied, as to the accuracy, reliability or completeness of any Confidential Information and any rights (including intellectual property rights), titles and interests in or to any of its Confidential Information. The Receiving Party further agrees and acknowledges that the Disclosing Party expressly disclaim any and all liability that may be based on the Confidential Information, errors therein or omissions therefrom or use of the Confidential Information and that the Disclosing Party shall be under no obligation to provide further Confidential Information, update the Confidential Information or correct any inaccuracies in the Confidential Information. The Receiving Party further agrees and acknowledges that the Receiving Party and its Representatives shall be entitled to rely solely on the representations and warranties made in any final definitive agreement made with respect to the Purpose, when, as and if it will be executed and subject to such limitations and restrictions as may be specified in such agreement.

1. **PERMITTED EXCLUSIONS**

4.1 Notwithstanding anything set forth herein to the contrary, the obligations contained in Clause 3 (*Confidentiality and Use of Information*) and Clause 6.1 (*Return or Destruction*) of this Agreement will be inoperative as to any particular portion of the Confidential Information:

(a) is or becomes publicly known through no wrongful action or inaction by the Receiving Party or by any of its Representatives in violation of this Agreement; or

(b) is rightfully received by the Receiving Party or by its Representatives from a third party who has such Confidential Information without acting wrongfully (for the avoidance of doubt including being in breach of any duty of confidentiality); or

(c) (as can be demonstrated by the Receiving Party’s written records or other reasonable evidence),] is in the Receiving Party’s or by its Representatives’ lawful possession prior to the disclosure and had not been obtained either directly or indirectly from the Disclosing Party; or

d) is independently developed by the Receiving Party without use or reference to any portion of Confidential Information and/or violation of this Agreement.

4.2 In any dispute with respect to above exclusions, the Receiving Party shall have the burden of proof, and such proof shall be by clear and convincing evidence.

1. **OPERATION OF LAW**

If the Receiving Party or any of its Representatives is required by law, regulation, judicial or governmental order, oral questions, interrogatories, subpoena, civil investigative demand or other similar legal process or by any competent judicial, governmental, supervisory or regulatory body to disclose any of the Confidential Information, the Receiving Party will provide the Disclosing Party with prompt written notice of such requirement including the proposed form, timing and content of the disclosure and to the extent not prohibited by law and to the extent possible prior to such disclosure so that the Disclosing Party may consider seeking a protective order or other appropriate remedy in order to, amongst others, ensure the confidentiality of such information or otherwise contest or limit the disclosure. In any case, the Receiving Party and/or any of its Representatives will cooperate with the Disclosing Party in protecting against such disclosure and/or obtaining such order or remedy. In the event that such order or remedy is not obtained, or if the Disclosing Party waives its right to seek protection, the Receiving Party will furnish only that portion of the Confidential Information that is required to legally comply and the Receiving Party will, to the extent not prohibited by law, advise the Disclosing Party in advance of what is proposed to be disclosed and will use its reasonable endeavours to obtain assurance that such information will be treated confidentially.

1. **RETURN OF CONFIDENTIAL INFORMATION**

6.1 **Return or destruction**

Subject to Clause 6.2 (*Right to retain*), if requested by the Disclosing Party, the Receiving Party will, and will ensure that its Representatives will at its own expense, accordingly and promptly:

(a) return to the Disclosing Party or destroy all the Confidential Information in any form, whether furnished by the Disclosing Party or prepared or improved by the Receiving Party or by the Receiving Party's Representatives(For the avoidance of doubt, destruction should be conducted in such a manner that the Confidential Information cannot practicably be read or reconstructed (with such destruction to be certified to the Disclosing Party)); and

(b) to the extent reasonably practicable, remove from electronic storage and delete all back-up copies of the Confidential Information.

6.2 **Right to retain**

(a) Notwithstanding Clause 6.1 (*Return or destruction*), the Receiving Party and its Representatives may retain the Confidential Information only for so long as they are required to retain for legal, regulatory or audit purposes.

(b) The terms and conditions of this Agreement will continue to apply to any retained Confidential Information.

1. **MISCELLANEOUS**

7.1 **Ownership of Confidential Information**

All Confidential Information disclosed to the Receiving Party and/or its Representatives and all rights and interests in it and any improvements to it will remain the property of the Disclosing Party. The disclosure of Confidential Information shall not be construed as granting any property rights, by license or otherwise, concerning any Confidential Information or any work based on Confidential Information.

7.2 **No waiver**

No failure or delay by either Party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, nor will any single or partial exercise preclude any other or further exercise or the exercise of any other right, power or privilege under this Agreement.

7.3 **Severability**

Any term or condition of this Agreement, which is held to be illegal, invalid or unenforceable in any applicable jurisdiction, will not affect the validity of the remaining terms and provisions of this Agreement. Any such illegality, invalidity or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by law under applicable jurisdiction, the Parties agree to replace such illegal, invalid or unenforceable term or condition by a provision which shall as closely as possible reflect the intention of the Parties.

7.4 **Amendments and Waivers**

No waiver, alteration, modification or amendment to any of the provisions of this Agreement or rights to act hereunder shall be binding unless made in writing and signed by the Parties.

7.5 **Assignment**

Neither Party may assign or transfer its rights or obligations under this Agreement, in whole or in part.

7.6 **Counterparts**

This Agreement may be executed in counterparts, each of which will be deemed an original, but all counterparts shall together constitute one and the same document.

1. **LIABILITY**

The Receiving Party hereby agrees to defend, hold harmless and indemnify the Disclosing Party and its Representatives from and against all damages, losses, claims, liabilities, costs and expenses, including reasonable attorneys’ fees and costs incurred as a result of breach of any provision of this Agreement, whether their nature being consequential, incidental, indirect, punitive, exemplary or special damages.

1. **REMEDIES**

The Parties agree that monetary damages would not be a sufficient remedy for any breach and threatened breach of this Agreement, and that without the necessity of proving actual damages each Party will be entitled to injunctive relief, specific performance and any other appropriate equitable remedies for any such breach, in addition and without prejudice to all other remedies available at law or in equity. The Party which obtained such a remedy shall be entitled to recover its costs and expenses including reasonable attorneys’ fees, incurred in obtaining such remedy.

1. **DURATION**

This Agreement shall cover Confidential Information disclosed both prior and subsequent to the date hereof. This Agreement shall automatically terminate upon the completion or termination of the Purpose, provided, however the obligations under this Agreement shall continue to be in full force and effect for an indefinite period notwithstanding any final definitive agreement executed between the Parties in connection with the Purpose and shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against the Receiving Party, nor by the rejection of any agreement between Disclosing Party and Receiving Party, by a trustee of Receiving Party in bankruptcy, or by a receiver or the equivalent of any of the foregoing under local law.

1. **GOVERNING LAW AND JURISDICTION**

Without regard to any principles or rules on its conflict of laws, this Agreement and any non-contractual obligations arising out of or in connection with this Agreement is governed by and will be construed in accordance with the laws of the Republic of Turkey. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the Bakırköy courts and execution offices in respect of any dispute, controversy, claim or proceeding arising out of or in connection with this Agreement including, without limitation, any question regarding the existence, validity, interpretation, breach or termination of this Agreement. This Agreement and any other documents, records of Türk Hava Yolları A.O. (including the computer records) shall be the valid, factual, and exclusive evidence in accordance with Article 193 of Turkish Civil Procedure Code (Law No. 6100).

1. **NOTICES**

All notices and other communications required under this Agreement shall be in writing addressed as set forth below. Until and unless a Party receives a written notice informing that the other Party’s address has changed, any notice which is sent to other Party’s previous address shall be deemed properly served. Any and all notices relating to default, termination or breach of this Agreement, notice of payment and request of compensation for any kind of loss shall be in writing and shall only be sent in accordance with Article 18(3) of Turkish Commercial Code (Law No. 6102).

All other notices and communications between the Parties relating to the performance of this Agreement may be sent by fax or by e-mail to the numbers/addresses indicated below.

(Company Name)

**Address:**

**Name:**

**Fax:**

**E-mail:**

**TürkHavaYolları A.O.**

**Address:** Genel Yönetim Binası, Atatürk Havalimanı, Yeşilköy, İstanbul, Turkey

**Name:** TÜRK HAVA YOLLARI A.O. (Turkish Airlines INC.)

**Fax:** +90 212 4744818

**E-mail:** itnda@thy.com

1. **ENTIRE AGREEMENT**

This Agreement constitutes the entire and only agreement between the Parties with respect to the subject matter hereof and shall therefore be only document applicable to the exchange of Confidential Information with respect to the Parties and the Purpose.

**IN WITNESS WHEREOF** the Parties have signed this Agreement on date first above written.

………….…………………….…………(Company Name)

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Name: Name:

Title: Title:

Date: Date:

**TÜRK HAVA YOLLARI A.O. (TURKISH AIRLINES INC.)**

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Name: Name:

Title: Title:

Date: Date: