# PARTICIPATION AND CONFIDENTIALITY AGREEMENT

SMIC Smart Manufacturing Accelerator Program

Agreement No. _____

Concluded on _____ in _____ between:

1. **SMART MANUFACTURING INNOVATION CENTRE (SMIC)**, an association with its registered seat at Fruškogorska 1, 21101 Novi Sad, Serbia, registration number 28386451, tax identification number 114630881, represented by _____, _____ (hereinafter: **SMIC**),

and

2. _____ (company name), with its registered seat at _____, _____ (economy), registration number _____, tax identification number _____, represented by _____, _____ (hereinafter: **the Company**).

SMIC and the Company are hereinafter referred to individually as a **Party** and jointly as the **Parties**.

## Background

A. The SMIC Smart Manufacturing Accelerator Program (hereinafter: **the Programme**) is carried out under the UNIDO project Fostering Industry 4.0 for Green Transition and Circular Economy in the Western Balkans, financed by the Governments of Slovenia and Cyprus, and delivered by SMIC.

B. The Company applied to the Call for Applicants published on _____ and was selected for Stage 1 of the Programme by decision of _____.

C. The purpose of this Agreement is to set out the services the Company receives, the obligations of both Parties, and the rules for confidentiality, use and protection of the data the Company provides.

## Article 1 – Definitions

1.1 **Assessment** means the assessment of the Company's factory carried out under the UNIDO Smart Manufacturing Acceleration (USMA) methodology, including the pre-assessment questionnaire, site visit, interviews and analysis.

1.2 **Transformation Plan** means the written plan prepared for the Company on the basis of the Assessment, setting out priority actions, their order, estimated cost, effort and benefit, and indicators.

1.3 **Stage 1** means the Assessment and the Transformation Plan. **Stage 2** means the implementation support offered to companies selected after Stage 1, as described in the Call for Applicants.

1.4 **Advisor** means a person assigned by SMIC to work with the Company, whether employed or engaged by SMIC.

1.5 **Confidential Information** has the meaning given in Article 6.

1.6 **Personal Data** means any information relating to an identified or identifiable natural person, within the meaning of the applicable data protection law.

## Article 2 – Subject of the Agreement

2.1 This Agreement governs the Company's participation in the Programme and the confidentiality, use and protection of the information the Company makes available to SMIC for that purpose.

2.2 SMIC uses the Company's information only to deliver the Programme to the Company, to report on the Programme in the form set out in Article 9, and to improve the USMA methodology using anonymised data (**the Purpose**). Any other use requires the prior written consent of the Company.

## Article 3 – Services provided to the Company

3.1 In Stage 1, SMIC provides the Company with: (a) the Assessment, including a visit to the production site; (b) a benchmark showing the Company's position by area; (c) the Transformation Plan; and (d) a meeting with the Company's management to present the plan and agree next steps.

3.2 After Stage 1, the Company may request Stage 2 support. Stage 2 is offered to a limited number of companies selected by a panel of SMIC and UNIDO experts under the criteria in the Call for Applicants. Participation in Stage 1 does not give the Company a right to Stage 2.

3.3 All services under this Agreement are free of charge for the Company. The Company has no obligation to buy any product or service from SMIC, from the Advisor or from any provider introduced under the Programme.

3.4 Indicative timeline: Stage 1 from _____ to _____; selection for Stage 2 in _____; Stage 2, if selected, from _____ to _____. Dates of visits and meetings are agreed between the Advisor and the Company.

## Article 4 – Obligations of the Company

4.1 The Company shall: (a) give the Advisor access to the production site and the data needed for the Assessment; (b) make the owner or managing director available for the opening meeting and the plan discussion; (c) name a person responsible for the Transformation Plan; (d) provide data that is accurate and complete to the best of its knowledge; and (e) report on the actions taken and share key results by the end of the Programme.

4.2 The Company may decide not to provide specific information it considers critical for its business secrets or for the security of its IT/OT systems, and shall inform the Advisor of this. SMIC is not responsible for limitations of the Assessment that result from information not provided.

4.3 The Company confirms that it is entitled to make the information available to SMIC for the Purpose, and that it has informed its employees whose Personal Data may be included, as required by law.

## Article 5 – Advisors and impartiality

5.1 SMIC assigns Advisors and is responsible for their work under this Agreement. Before an Advisor receives access to Confidential Information, SMIC ensures that the Advisor is bound in writing by confidentiality obligations at least as strict as those in this Agreement.

5.2 Advisors give recommendations independently and in the interest of the Company. An Advisor who has a commercial interest in a product, service or provider relevant to the Company shall disclose it to the Company and to SMIC before giving a recommendation. The Company remains free to choose any provider.

## Article 6 – Confidential Information

6.1 Confidential Information means all information the Company makes available to SMIC or to the Advisor under this Agreement, in any form (written, electronic, visual or oral), including technical, production, financial, commercial and organisational data, IT/OT system descriptions, documents, drawings and procedures, as well as observations made during site visits, whether or not marked as confidential.

6.2 Confidential Information also includes the results of the Assessment, the benchmark, the Transformation Plan, working notes and drafts, to the extent they contain or reveal the Company's information.

6.3 Where it is unclear whether information is confidential, SMIC treats it as confidential until the Company confirms otherwise in writing.

## Article 7 – Exceptions

7.1 Article 6 does not apply to information that SMIC can show: (a) was publicly available at the time of disclosure or later became public without fault of SMIC; (b) was known to SMIC before disclosure, as shown by written records; (c) was lawfully received from a third party not bound by confidentiality towards the Company; or (d) was developed independently by SMIC without use of the Confidential Information.

7.2 SMIC may disclose Confidential Information where required by law or by a final decision of a court or public authority, provided that it informs the Company in writing without delay and, where legally possible, before disclosure, and discloses only what is required.

## Article 8 – Obligations of SMIC

8.1 SMIC shall keep Confidential Information confidential, use it only for the Purpose and not disclose it to third parties without the prior written consent of the Company, except as set out in this Agreement.

8.2 Access is limited to SMIC staff and Advisors who need the information to deliver the Programme. Where needed for the Programme (in particular for monitoring and for the Stage 2 selection panel), SMIC may share Confidential Information with UNIDO staff assigned to the project, who are bound by UNIDO rules on confidentiality. Disclosure for audit and investigation under Article 17.4 is not a breach of this Agreement.

8.3 SMIC keeps a list of persons who have access to the Company's Confidential Information and makes it available to the Company on request.

8.4 SMIC applies at least the same level of care to the Company's Confidential Information as to its own confidential information, and in any case the care of a prudent professional.

## Article 9 – Use of results, reporting and introductions

9.1 SMIC and UNIDO may use the results of the Assessment in programme reports, benchmarks and publications only in aggregated or anonymised form, so that the Company cannot be identified.

9.2 Publication of the Company's name, logo or a named case study is optional and requires the separate prior written consent of the Company, which may cover approval of the final text.

9.3 SMIC introduces the Company to technology or service providers, financial institutions or other partners only with the Company's prior consent, which may be given by e-mail, and shares with them only the information the Company approves.

## Article 10 – Personal Data

10.1 The Parties shall process Personal Data only to the extent necessary for the Purpose and in accordance with the data protection law applicable to each of them, including, for SMIC, the Law on Personal Data Protection of the Republic of Serbia and, for the Company, the data protection law of its economy. Processing of Personal Data by UNIDO is governed by Article 17.6.

10.2 The Company shall provide Personal Data only where necessary (for example, names and functions of contact persons) and shall avoid providing other Personal Data of its employees in documents made available for the Assessment.

## Article 11 – Security measures and incidents

11.1 SMIC applies appropriate technical and organisational measures to protect Confidential Information against unauthorised access, loss, alteration or destruction, including access limited to authorised persons, encryption of electronic data in storage and in transfer where available, secure storage of paper documents and backups protected in the same way as the original data.

11.2 Electronic data is stored in systems under the control of SMIC, including the USMA assessment tools, hosted in the European Union or in the Company's economy.

11.3 SMIC informs the Company in writing without undue delay, and no later than 72 hours after becoming aware of it, of any security incident affecting the Company's Confidential Information, describes the measures taken, and cooperates with the Company to limit the consequences.

11.4 On written request, and not more than once a year, SMIC provides the Company with a written description of the measures applied and of the persons with access to its information.

## Article 12 – Artificial intelligence and external services

12.1 SMIC shall not enter, upload or process the Company's Confidential Information in public or third-party artificial intelligence services, and shall not use it to train, fine-tune or test artificial intelligence or machine learning models, without the Company's prior written consent.

12.2 Article 12.1 does not prevent processing within the USMA assessment tools and other systems operated by or for SMIC under Article 11, provided that the data is not used to train models and is not made available to third parties.

12.3 SMIC shall not use the Company's Confidential Information to develop products or services that compete with the Company, or for any commercial purpose outside the Purpose.

## Article 13 – Intellectual property

13.1 The Company's data, documents and Confidential Information remain the property of the Company. This Agreement does not transfer or license any intellectual property rights of the Company to SMIC, except the right to use the information for the Purpose.

13.2 The USMA methodology, questionnaires, models, assessment tools and software remain the property of UNIDO and/or SMIC and their licensors. The Company shall not copy, modify or distribute them.

13.3 The Company may use the Transformation Plan and the Assessment results without limitation for its own purposes, including with banks, investors, public support programmes and its own advisors.

## Article 14 – Retention, return and deletion

14.1 SMIC keeps the Company's Confidential Information for as long as needed for the Programme and its reporting, and for the period during which records of the UNIDO project must be kept for audit, at the latest until _____, unless a longer period is required by law.

14.2 At the end of that period, or earlier at the written request of the Company after the end of its participation, SMIC shall, at the Company's choice, return or securely delete the Company's Confidential Information, including copies, within 30 days, and confirm this to the Company in writing.

14.3 SMIC may keep one archive copy of the Transformation Plan and of this Agreement where required for the audit of the UNIDO project or by law. The archive copy remains subject to this Agreement for as long as it is kept.

## Article 15 – Liability

15.1 The Assessment and the Transformation Plan are based on the information provided by the Company and on professional judgement. SMIC does not guarantee any financial, market or business result from implementing the recommendations. Decisions on investments and their implementation remain the responsibility of the Company.

15.2 Neither Party is liable to the other for indirect damage or lost profit, except in the case of intent or gross negligence.

15.3 Each Party is liable for damage caused by a breach of its obligations of confidentiality and protection of data in accordance with the law.

## Article 16 – Term, withdrawal and termination

16.1 This Agreement enters into force when signed by both Parties and remains in force until the end of the Company's participation in the Programme.

16.2 The Company may withdraw from the Programme at any time by written notice to SMIC.

16.3 SMIC may terminate this Agreement by written notice if the Company, after a written reminder, does not provide access, data or the participation of its management needed for the Assessment, or under Article 18.5. In that case, SMIC may offer the place to another company.

16.4 The obligations of confidentiality and data protection continue for _____ years (for example, five years) after the end of this Agreement, and for business secrets for as long as the information remains a business secret. Articles 13, 14, 15, 17, 18 and 20 also survive the end of this Agreement.

## Article 17 – UNIDO

17.1 **Status of UNIDO.** The Programme is implemented under the UNIDO project referred to in Background A. SMIC acts as implementing partner of UNIDO under _____ (agreement reference). UNIDO is not a party to this Agreement and assumes no obligations or liability towards the Company under it.

17.2 **Privileges and immunities.** Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations Industrial Development Organization,

including those under the Convention on the Privileges and Immunities of the Specialized Agencies of 21 November 1947.

17.3 **Use of name and emblem.** Neither Party shall use the name, emblem or official seal of UNIDO or of the United Nations, or any abbreviation of these names, for publicity or any other purpose without the prior written consent of UNIDO. The Company shall not state or imply that UNIDO endorses its products, services or investments.

17.4 **Audit and investigation.** Records of the Programme relating to the Company, including this Agreement, the Assessment results and the Transformation Plan, may be reviewed by UNIDO, its internal and external auditors and its Office of Evaluation and Internal Oversight. The Company shall cooperate in good faith with any audit or investigation concerning its participation in the Programme. Such review is not a breach of this Agreement, and the persons concerned are bound by the confidentiality rules of UNIDO.

17.5 **Reporting to donors.** UNIDO may report on the Programme to its governing bodies and to the donors of the project only in aggregated or anonymised form, unless the Company has given consent under Article 9.2.

17.6 **Personal data processed by UNIDO.** UNIDO processes any Personal Data it receives in connection with the Programme in accordance with its own regulations and the Personal Data Protection and Privacy Principles of the United Nations System.

17.7 UNIDO may rely on Articles 17.2 to 17.5 and Article 18 as a third-party beneficiary.

## Article 18 – Ethical standards and declarations

18.1 **Declarations of the Company.** The Company declares that: (a) neither the Company nor its owners, directors or managers are listed in the United Nations Security Council Consolidated List or subject to sanctions adopted by the United Nations Security Council; (b) it does not engage in child labour or forced labour as defined by the conventions of the International Labour Organization; (c) it is not engaged in the manufacture or sale of anti-personnel mines or their components; and (d) it has disclosed to SMIC any family or business relationship with SMIC or UNIDO staff or Advisors involved in the Programme. The Company shall inform SMIC without delay if any of these declarations ceases to be true.

18.2 **Anti-fraud and anti-corruption.** The services under this Agreement are free of charge. Neither Party shall offer, give, request or accept any payment, gift, hospitality or other benefit to or from SMIC or UNIDO staff, Advisors or any other person in connection with the selection of the Company or the services of the Programme. UNIDO applies a policy of zero tolerance towards fraud and corruption.

18.3 **Sexual exploitation, abuse and harassment.** SMIC shall take all appropriate measures to prevent sexual exploitation, sexual abuse and sexual harassment by its staff and Advisors in the course of the Programme, in line with the standards of the United Nations (ST/SGB/2003/13).

18.4 **Reporting of misconduct.** Any suspected fraud, corruption, sexual exploitation, abuse or harassment, or other misconduct in connection with the Programme may be reported to SMIC at _____ and directly to the UNIDO Office of Evaluation and Internal Oversight at _____, in confidence and without fear of retaliation.

18.5 A material breach of this Article entitles the other Party to terminate this Agreement with immediate effect by written notice. SMIC informs UNIDO of any such termination.

## Article 19 – Notices and contact persons

19.1 Notices under this Agreement are made in writing and delivered by hand, by registered mail or by e-mail to the contact persons below. A notice sent by e-mail is deemed received on the next working day after sending.

| | SMIC | Company |
|---|---|---|
| Contact person | _____ | _____ |
| Function | _____ | _____ |
| E-mail | _____ | _____ |
| Telephone | _____ | _____ |

19.2 A change of contact person shall be notified to the other Party in writing within 3 working days.

19.3 Communication and documents under the Programme are in English or in _____, as agreed between the Advisor and the Company.

## Article 20 – Governing law and settlement of disputes

20.1 **Governing law.** This Agreement is governed by the general principles of international commercial law, in particular the UNIDROIT Principles of International Commercial Contracts (2016). [Alternative: This Agreement is governed by the law of the Republic of Serbia, without prejudice to Article 20.4.]

20.2 **Amicable settlement.** The Parties shall use their best efforts to settle amicably any dispute, controversy or claim arising out of or relating to this Agreement, or its breach, termination or invalidity (a **Dispute**).

20.3 **Mediation.** If a Dispute is not settled within 30 days of a written request by either Party, either Party may propose mediation in accordance with the UNCITRAL Mediation Rules (2021). The mediation is conducted by a single mediator agreed by the Parties, in English, and may be held online.

20.4 **Arbitration.** Any Dispute not settled under Articles 20.2 or 20.3 within 60 days of the written request for amicable settlement shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then in force, including the UNCITRAL Expedited Arbitration Rules. The arbitral tribunal consists of a sole arbitrator. The appointing authority is the Secretary-General of the Permanent Court of Arbitration. The seat of arbitration is Vienna, Austria, and the language of the proceedings is English. The hearing may be held by video conference.

20.5 The arbitral tribunal has no authority to award punitive damages. The arbitral award is final and binding on the Parties, who shall carry it out without delay. The Parties waive any right to recourse against the award to the extent such waiver can validly be made.

20.6 Each Party bears its own costs of mediation. The costs of arbitration are allocated by the arbitral tribunal.

## Article 21 – Final provisions

21.1 This Agreement is the entire agreement between the Parties on its subject and replaces any previous arrangements. Amendments are valid only in writing and signed by both Parties.

21.2 If a provision of this Agreement is found invalid, the other provisions remain in force, and the Parties shall replace the invalid provision with a valid one that comes closest to its purpose.

21.3 Headings are for convenience only and do not affect the interpretation of this Agreement.

21.4 This Agreement is made in two identical copies, one for each Party. Signatures exchanged as scanned copies or by qualified electronic signature have the same effect as originals.

21.5 The persons signing this Agreement confirm that they are authorised to represent their Party.

21.6 This Agreement is made in English. Any translation is for information only; in case of discrepancy, the English text prevails.

| For SMIC | For the Company |
|---|---|
| Name: _____ | Name: _____ |
| Function: _____ | Function: _____ |
| Signature: _____ | Signature: _____ |
| Date: _____ | Date: _____ |