Non-Disclosure Agreement Template

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| ***Disclaimer****This sample set of legal documents has been made available by the Ministry of Science and Education of the Republic of Croatia for informational purposes only and does not constitute advertising, a solicitation, or legal advice.* *Neither the transmission of these sample legal documents nor the transmission of any information contained on related websites of the Ministry of Science and Education is intended to create a lawyer-client relationship.* |

*Introductory remarks*

**The purpose of templates presented in this document is to facilitate the preparation of a non-disclosure agreement** between research organizations and parties interested in licensing a particular technology. The use of the templates is entirely voluntary, optional, and free of charge. In case of any doubt as to the use of the provisions suggested by the template, the parties are encouraged to seek professional assistance from advisor(s) duly informed about all particulars of the planned licensing cooperation and rights and interests that are to be protected by this Agreement.

**While the template was prepared in cooperation with legal experts, they do not attempt to encompass all the important topics relevant to confidentiality**. Irrespective of this template, the relevant contractual terms are to be negotiated and agreed upon on a case-by-case basis. The Parties are encouraged to take sufficient time to analyze various scenarios as well as to dedicate the effort and time necessary for comprehensive negotiations. The ultimate goal is the full mutual understanding of the meaning and consequence of each of the terms and the associated risks.

*How to use the template*

**The template contains placeholders for information that needs to be filled out on a case-by-case basis.** The placeholders are denoted by **[bold square brackets].** Additionally, the placeholders may reflect some considerations and alternatives that the Parties encouraged to take into account. The placeholders should not be part of the document (either during the negotiations with potential licensees or at the execution of the same) and the Parties should remove them as soon as the internal drafting of the document has been completed.

*<PLEASE DELETE UPON COMPLETION>*

**Non-Disclosure Agreement**

This Non-Disclosure Agreement (the **"Agreement**") is entered into on the day specified below between:

**PARTNER 1**

**[Name]**

Registered Seat: **[insert place of registration]**

ID (OIB): **[insert ID number],** incorporated under the laws of **[name of the country]**

(“**Partner 1**”)

and

**PARTNER 2**

**[Name]**

Registered Seat: **[insert place of registration]**

ID (OIB): **[insert ID number],** incorporated under the laws of **[name of the country]**

**[Insert additional Partners as required]**

(“**Partner 2**” and Partner 1 and Partner 2 together also as the “**Parties**” or individually the “**Party**”)

**Whereas:**

The Parties intend to enter into contractual relationship and cooperation in relation to **[specify the subject of the cooperation - PRODUCT, TECHNOLOGY, PROJECT]**(“**the Purpose**”).

Each of the Parties may disclose (the disclosing Party also as the “**Discloser**”) to the other (the “**Recipient**”) certain confidential information in connection with the Purpose.

For their mutual protection, the Parties wish to set out the terms and conditions for the use and maintenance of the Confidential information (as defined below) of the other Party.

The Parties agree as follows:

1. Definition of Confidential Information

## As used in this Agreement, the term “**Confidential Information**” means any information, disclosed after the effective date of this Agreement, including but not limited to information concerning the products and services, future products and services, business plans, financial information, marketing plans, current operations or research and development of the Discloser or its affiliates, or any third Party proprietary information given to the Discloser or any other information related to the Purpose and disclosed by the Discloser or its affiliates to the Recipient or its affiliates and their respective employees, consultants, or agents. Disclosure may take place in written, oral, electronic or any other form of communication. In order to be treated as Confidential Information, such information must be marked or otherwise identified as "confidential" or is such that it ought to be considered confidential having regard to its nature or from the circumstances surrounding its disclosure (including but not limited to client contact information, sales pipeline, etc.).

## Information is not considered Confidential Information if the Recipient proves that such information:

1. is known to the Recipient before receipt thereof from the Discloser, as evidenced by the Recipient’s written records;
2. is publicly available or is made public by the Discloser or is established to be a part of the public domain otherwise than as a consequence of a breach by the Recipient of its obligations hereunder;
3. can be demonstrably proven to have been independently developed by the Recipient; or
4. has been made available by the Recipient on the basis of public law obligations imposed on the Recipient (i.e., court order, injunction, and similar); or
5. the Discloser has granted a prior written consent to publish such information.
6. Standard of Confidentiality

## The Recipient shall employ the same safeguards to keep the Confidential Information confidential as it employs to safeguard its own trade secrets or other own confidential information, and in no event less than reasonable safeguards.

1. Non-Disclosure

## Except as set forth in Article 4 below, the Recipient will not disclose to any third Party, any part of the Confidential Information, except with the prior written consent of the Discloser.

1. Permitted Disclosure

## The Recipient may disclose and grant access to the Confidential Information to those of its employees, agents and consultants, or the employees, agents and consultants of its affiliates (if any) (“**Representatives**”) to whom and to the extent that such disclosure is made in connection with the Purpose, and shall ensure that each Representative is made aware of the confidential nature of the Confidential Information. The Recipient shall be fully responsible and liable for ensuring that its Representatives abide by the terms of this Agreement as if they were a Party to this Agreement.

## The Recipient undertakes to limit and control the number of Representatives with access to the Confidential Information and will implement relevant measures to avoid any leak of information in public. The Confidential Information can be accessed only by such Representatives that need to use the Confidential Information within their work-frame (on a need-to-know basis). Third parties can handle the Confidential Information only after obtaining written consent of the Discloser.

## The Recipient may disclose and grant access to the Confidential Information pursuant to law or any professional or regulatory obligation if requested by public authority. The Recipient shall inform the Discloser immediately about the fact that it has been requested to provide such Confidential Information.

1. Restrictions on Use

## The Recipient shall use the Confidential Information strictly for the Purpose. Without limiting the generality of the foregoing, the Recipient shall not use the Confidential Information to develop, directly or indirectly, any product competing with or similar in functionality to any product marketed or developed by the Discloser.

1. Disposition of Confidential Information

## All Confidential Information provided to and/or shared with the Recipient under this Agreement shall remain the exclusive property of the Provider. Upon the agreement between the Parties or upon effective notification of either Party of an intent not to further pursue realization of the Purpose (the date of such agreement or the date of delivery of such notice to the other Party hereinafter referred to as the “**End of the Cooperation**”), the Recipient is obliged to return all Confidential Information to the Provider (if possible) or delete all Confidential Information from its information systems, if technically and legally possible.

## The Recipient shall, if requested by the Discloser, certify in writing that, to the best of the Recipient’s knowledge, all originals and copies of any Confidential Information of the Discloser which were used or possessed by the Recipient have been, as directed by the Discloser, either returned to the Discloser or destroyed.

1. Required Disclosure

## The Recipient may disclose Confidential Information which is required to be disclosed by the Recipient by law, regulation or order of a competent authority, or as reasonably required to be disclosed to a professional adviser of the Recipient, provided that, to the extent practicable in the circumstances, the Recipient in each case provides the Discloser with reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same, and provided also that any professional adviser to whom Confidential Information is disclosed by the Recipient is bound by obligations of confidentiality of at least as high a standard as those imposed on the Recipient under this Agreement.

1. Liability

## To the extent permitted by applicable law, the Recipient is not liable for any indirect, incidental, punitive or special damages arising out of breach of this Agreement. The Recipient shall only be liable for any direct damages caused by the Recipient.

## The limitations of liability in Section 8.1. above shall not limit the Recipient’s liability for fraudulent acts or omissions, or willful misconduct or gross negligence.

1. Remedies

## In case of breach of the confidentiality obligation under this Agreement, the damaged Party is entitled to a contractual penalty of EUR **[insert value]** for each such a breach.

## The contractual penalty set out in Section 9.1 of this Agreement does not affect the damaged Party’s right to damages, in excess of the amount of the contractual penalty.

1. Data protection

## To the extent that, in connection with performance hereof, the Discloser shares with or transfer personal data to the Recipient and the Recipient acts as data controller, the Recipient shall be liable for processing of such personal data as provided by this Agreement. The Discloser declares to have the authority to provide such personal data to Recipient in connection with the Purpose. The Recipient declares to act in compliance with applicable data protection law, including the Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (hereinafter together “**Regulation**”).

## In any case, each Party shall implement appropriate technical and organizational measures to protect personal data against unauthorized or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure. In case of a personal data breach the Parties shall cooperate in good faith. The Recipient shall give the Discloser all the relevant information to evaluate its legal compliance. Regarding liability for any personal data breach Section 9 of this Agreement applies.

1. Final Provisions

## This Agreement becomes valid and effective on the day of signature by the last Party (the “**Effective Day**”).

## The confidentiality obligations set out herein shall apply for a period of **[insert duration]** years from **[insert condition, e.g., the End of Cooperation or the Effective Day]**.

## If any provision of this Agreement (in whole or part) is held to be illegal, invalid or otherwise unenforceable, the other provisions shall remain in full force and effect.

## This Agreement constitutes the entire agreement between the Parties related to the subject of the Agreement (i.e., treatment of Confidential Information) and supersedes all prior agreements, understandings and representations with respect to the matters covered by this Agreement. This Agreement may be executed by electronic means and by each Party signing a different copy of the same document.

## This Agreement may not be modified unless all Parties agree in writing to do so.

## This Agreement will be governed by and construed in all respects in accordance with the laws of the Republic of Croatia.

## The Parties agree to submit to the exclusive jurisdiction of the Commercial Court in **[insert court of jurisdiction, e.g., Zagreb, Croatia]** in respect of any claim or matter arising in relation to this Agreement.

## **[Alternatively consider the following dispute resolution mechanisms:** Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. Unless otherwise specified by the Parties herein, the place of mediation shall be **[insert place of mediation, .e.g., Zagreb, Croatia].** Unless otherwise specified by the Parties herein, the language to be used in the mediation shall be **[insert language of mediation, e.g., Croatian].** If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within ninety (90) days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of ninety (90) days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The arbitral tribunal shall consist of a sole arbitrator. Unless otherwise specified by the Parties herein, the place of arbitration shall be **[insert place of arbitration, .e.g., Zagreb, Croatia].** Unless otherwise specified by the Parties herein, the language to be used in the arbitral proceedings shall be **[insert language of arbitration, e.g., Croatian].** The dispute, controversy or claim referred to arbitration shall be decided in accordance with the law of the **[insert jurisdiction, e.g., Republic of Croatia].]**

## The stated agreement on jurisdiction does not prevent the Discloser to seek preliminary injunction or a comparable legal remedy against the Recipient (or in respect of any unauthorized disclosure or use of the Confidential Information involving the Recipient) before any other court of any other country.

**In witness whereof,** the Parties hereto, through their duly authorized representatives, have executed this Agreement.

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| PARTNER 1  | PARTNER 2  |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: **[insert legal name]**Function: **[insert function]**Date: **[insert date of signature]** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: **[insert legal name]**Function: **[insert function]**Date: **[insert date of signature]** |