

– Mutual Non-Disclosure Agreement

between

Vertragspartner | bitte mit Rechtsform und vollständiger Adresse einfügen

and

Fraunhofer-Gesellschaft zur Förderung der angewandten Forschung e.V. | HansasträÙe 27c,
80686 München

for its

Institut | bitte vollständige Adresse einfügen

hereinafter referred to individually as »Contracting Party«
and collectively as »Contracting Parties«

1 Subject Matter

The Contracting Parties intend to cooperate in the field of:

[Eingabe]

With respect to the discussions about a planned cooperation in the aforementioned field (hereinafter referred to as »Purpose«), it may be necessary to disclose confidential information to one another before a project agreement is concluded. This Non-Disclosure Agreement serves to protect the confidential information of the Contracting Parties.

2 Definitions

- a) »Confidential Information« (i.e. information that must not be disclosed), within the meaning of this Agreement, refers to any and all information that was disclosed during the term of this Agreement in oral, written, electronic or other form to the other Contracting Party in connection with the Purpose and that was hereby identified as being confidential. (The term »Information« includes, but is not limited to, written documents, prototypes, software, templates, substances as well as other materials).
- b) »Disclosing Party« refers to the Contracting Party disclosing Confidential Information under this Agreement.
- c) »Receiving Party« refers to the Contracting Party receiving Confidential Information under this Agreement.

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Duties

- a) The Receiving Party agrees not to disclose the Disclosing Party's Confidential Information and agrees to use such information only for the Purpose and to take all actions necessary in order to prevent third parties from gaining access to such information.
- b) The Receiving Party may not disclose to third parties either in whole or in part any of the Disclosing Party's Confidential Information without the prior written consent of the Disclosing Party given in writing or *via* email. The internal disclosure of Confidential Information is permitted only to the extent that it is required for the Purpose (on a "need to know" basis) and it is assured that the Confidential Information will be received only by employees who – to the extent permitted by law - were or are subject to obligations that are similar to the obligations set forth in Section 3.
- c) The Contracting Parties agree not to exploit any received Confidential Information without the prior written consent of the Disclosing Party, and specifically not to file any industrial property registrations. Proprietary, license and usage rights to Confidential Information, the know-how related thereto or any industrial property rights registered or granted thereon will not be granted on the basis of this Agreement. The disclosure of any Confidential Information will not establish any right based on prior use rights in favor of the Receiving Party.
- d) Without the prior written consent of the Disclosing Party, the Receiving Party is not entitled to copy the Confidential Information, either in whole or in part, unless such action is required for the Purpose.
- e) At the request of the Disclosing Party, which must be made in writing no later than three (3) months after the expiration of this Agreement, all received Confidential Information and any

copies made thereof must be either returned or, upon mutual agreement between the Contracting Parties, destroyed/deleted, within fourteen (14) days following the request.

- f) The obligation to return or destroy/delete as well as the prohibition to copy do not apply to routinely made backup copies of the electronic data transfer and to Confidential Information and copies thereof that the Receiving Party is required to store pursuant to the applicable laws. These copies and retained Confidential Information will continue to be governed, however, by the terms and conditions of this Agreement.
- g) This Agreement will not be construed to limit either Contracting Party's right to independently develop or acquire, manufacture, sell, license or maintain products, services or technology without use of the other Contracting Party's Confidential Information, including products, services or technologies that are similar to or competitive with the other Contracting Party's Confidential Information.

4 Exemptions from the duty of non-disclosure

The duties prescribed in Section 3 will not apply if and insofar as the Confidential Information can be shown

- a) to have been known by the Receiving Party prior to disclosure or
- b) to have been known to the public or generally accessible by the public prior to its disclosure or can be shown to have become known to the public or generally accessible by the public following disclosure without the Receiving Party having breached this Agreement, or
- c) to match the information that is disclosed or made accessible to the Receiving Party by a third party with no imposition of a duty of confidentiality, unless the Receiving Party knew that the third party's disclosure breaches a duty of confidentiality, or
- d) to have been independently developed by an employee of the Receiving Party, who had no knowledge of the disclosed Confidential Information.

If a government authority or a court orders the disclosure of Confidential Information, then the Receiving Party will be authorized to make a disclosure insofar as the order demands such disclosure, provided that the Receiving Party – to the extent allowed by law - informs the Disclosing Party without undue delay about any such order for purposes of protecting its rights and provided that the Receiving Party limits the disclosure to the requisite minimum and informs about the confidentiality of the Confidential Information at the time of the disclosure. Section 3 remains otherwise unaffected thereby.

5 Liability / warranty disclaimer

Confidential Information provided under this Agreement is provided »AS IS«. The Disclosing Party does not represent or warrant that the Confidential Information it discloses is accurate, devoid of mistakes, free and clear of any third-party rights, complete and/or usable. In this respect, there will be no liability, except in the case of an intentional act or omission (*Vorsatz*).

The Contracting Parties agree that a breach of this Agreement by the Receiving Party may cause irreparable harm and damage for which monetary compensation will not be fully adequate, and the Disclosing Party will thus be entitled to seek injunctive relief, in addition to any other legal remedies.

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Entry into force / term

This Agreement will enter into force upon its signature, and has a term of twelve (12) months. The obligations set forth under Section 3 will remain binding for up to five (5) years after the term of this Agreement ends.

7

Entire agreement / modifications / waiver / counterparts

This Agreement constitutes the entire agreement between the Contracting Parties and supersedes all prior agreements of the Contracting Parties relating to the subject matter of this Agreement.

Any side agreements to, modifications of or supplements to this Agreement must be made in writing in order to be effective. The foregoing also applies to any deviation from this written form requirement.

Failure to enforce any provision of this Agreement will not constitute a waiver of any provision of this Agreement. Waiver of any breach of any provision of this Agreement will not constitute a waiver of any subsequent breach of the same or any other provision of this Agreement.

This Agreement may be signed in one or more counterparts, which together will be deemed to be one original.

8

Governing law / export control

The laws of the Federal Republic of Germany apply, except for its rules on conflicts of law. Each Contracting Party shall comply with the export laws and regulations to which it is subject.

9

Prohibition against assignment / legal succession

None of the Contracting Parties may assign this Agreement or transfer individual rights or obligations under this Agreement to a third party without the prior written consent of the other Contracting Party.

The Contracting Parties agree that the rights and duties under this Agreement should also apply to legal successors of both Contracting Parties. The Contracting Parties are therefore obligated to impose the terms and conditions of this Agreement upon their legal successors accordingly.

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Relationship of the parties

This Agreement governs the use and non-disclosure of Confidential Information only and does not create a joint venture, partnership, agency or commercial relationship between the Contracting Parties, nor does it bind either Contracting Party to enter into any further relationship.

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Severability clause

Should any provision of this Agreement be or become invalid or unenforceable, then the validity or enforceability of the remaining provisions hereof will not be affected thereby. The Contracting Parties agree to replace the invalid or unenforceable provision with a valid and enforceable provision that reflects the meaning and purpose of the invalid or unenforceable provision. The foregoing also applies in the event there is an unintended contractual gap.

Ort, "TT Monat JJJJ"

Fraunhofer-Gesellschaft e.V.

Name, Position

Name, Position

Signature

Signature

— Ort,

Vertragspartner

Name, Position

Name, Position

Signature

Signature