

Non-Disclosure Agreement

by and between

- hereinafter referred to as **Scientist** –

and

Company

Address:

- hereinafter referred to as **Company** –.

Recitals

The contracting parties are considering a collaboration in the area of

Prior to such collaboration it may be necessary for the contracting parties to make available to each other certain confidential information. In order to protect the disclosing party, such confidential information should be subject to a general obligation of secrecy and confidentiality. This agreement shall also apply in the event that the contemplated collaboration does not materialize.

1. Definitions

INFORMATION shall be any confidential information exchanged orally, in writing or by any other medium regarding the area referred to in the Recitals. This shall include, but not be limited to data, drawings, designs, drafts, sketches, plan, descriptions, specifications, measurement results, calculations, experience, methods, processes, samples, models, specimen, knowledge, procedures and transactions including secret know-how and any applications for intellectual property rights not yet published.

2. Pledge of Confidentiality

The contracting parties undertake to hold in confidence any and all INFORMATION, and not to disclose such INFORMATION, in whole or in part, to third parties. The contracting parties undertake to take the necessary steps to prevent third parties from obtaining knowledge of such INFORMATION. In particular, the contracting parties undertake to provide access to such INFORMATION only to those employees who are obliged to observe this pledge of confidentiality.

The pledge of confidentiality shall apply also to group companies, licensees or other third parties. If COMPANY wishes to disclose INFORMATION to companies affiliated with COMPANY, COMPANY shall inform SCIENTIST prior to disclosing INFORMATION, and shall ensure that those affiliated companies comply with the provisions set forth in this Non-Disclosure Agreement.

3. Exclusions from the Pledge of Confidentiality

This pledge of confidentiality shall not apply if it can be established that INFORMATION

- was known to the receiving party prior to its disclosure, or
- was known to the public or was generally available prior to its disclosure, or
- became known to the public or became generally available after disclosure through no wrongful act or omission of the receiving party, or
- corresponds essentially to information which was disclosed or made available to the receiving party at any time by a third party who had the legal right to disclose the information to the receiving party, or
- was developed independently by the receiving party without knowledge of the INFORMATION, or whose development was commissioned by the receiving party without knowledge of the INFORMATION.

The burden of proof to establish whether or not the above exclusions apply shall lie with the receiving party.

4. Limitation of Use

The contracting parties undertake to use the disclosed confidential INFORMATION only for evaluation of a potential academic and/or commercial use. Nothing contained in this agreement shall be construed as granting or conferring any license and/or other rights of use of one party in and to the other party's confidential information, whether explicitly or otherwise.

Unless otherwise provided for in a separate agreement, the contracting parties undertake in particular not to exploit the mutually exchanged INFORMATION and not to apply for intellectual property rights therefor except with the specific written authorization of the other party. In the event of subsequent research, development and/or other agreements, any rights, licenses, and other rights of use in and to the confidential information will be provided for separately.

5. Handling of INFORMATION

Any written materials, drawings, designs, other documentation, samples, models, data storage media, materials, specimens, etc. which incorporate INFORMATION and with which one of the parties has been entrusted by the other party shall remain the property of the disclosing party. Both parties, upon written request by the other party, undertake to return such materials to the other party without delay and to destroy any copies thereof.

6. Agents

The contracting parties undertake to ensure that their employees and other persons who obtain knowledge of the INFORMATION exchanged between the parties be bound by the same obligations as the contracting parties. To the extent legally possible, such obligations shall remain effective even after termination of the employment.

7. Limitations of Obligations

No obligations shall arise from this agreement for the parties to provide specific INFORMATION to each other, to use the INFORMATION so provided in a product, to warrant the accuracy, usability and/or completeness of the INFORMATION provided, and/or to grant a contracting party licenses in and to intellectual property rights or copyrights beyond the right of use provided for in this agreement. Further, the disclosing party does not warrant that the application or use of INFORMATION does not infringe upon third party rights nor that such application or use will not result in other damage. The disclosing party shall not be liable for damage caused by infringement upon third party rights or other damage.

8. Term of the Agreement

This agreement as well as the pledge of confidentiality shall end two years after the date of the latest signature.

9. Applicable Law

This agreement shall be governed exclusively by the laws of the Federal Republic of Germany. To the extent that the Company is a *Kaufmann* [a merchant as defined in the

HGB, German Commercial Code], a public corporation or a federal special fund under German law or does not have a general place of jurisdiction in Germany, exclusive venue for any and all litigation arising out of or in connection with this agreement shall be Bayreuth. This shall not apply if an exclusive venue is prescribed by statute.

10. Formal Requirements

There shall be no supplementary agreements. Any alterations, modifications, amendments or supplements must be in writing. This shall also apply for a waiver of the written form requirement.

11. Severability

Should any provision of this agreement be or become invalid or should there be a gap in the agreement, this shall not affect the validity of the remaining provisions. Instead of the valid provision such provision shall be deemed agreed upon that comes as close as possible to the parties' economic intent; the same shall apply for any gaps.

_____, this _____

Bayreuth, this _____

Company
