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## MUTUAL NON-DISCLOSURE AGREEMENT

Effective Date:

by and between \_\_\_\_\_ representing and binding \_\_\_\_\_ companies  
hereafter referred as ("Company"),  
and \_\_\_\_\_ hereafter referred as ("Recipient"),

1. **Purpose.** Company and Recipient wish to explore a business opportunity of mutual interest and in connection with this opportunity, each party may disclose its Confidential Information (as defined below) to the other. This Agreement is intended to allow the parties to discuss and evaluate this Relationship while protecting each party's Confidential Information against unauthorized use or disclosure.

2. **"Confidential Information"** means any oral, written, graphic or machine-readable information including, but not limited to, that which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, business plans, agreements with third parties, services, customers, marketing or finances of the disclosing party, which Confidential Information is designated in writing to be confidential or proprietary, or if given orally, is confirmed in writing as having been disclosed as confidential or proprietary within a reasonable time (not to exceed thirty (30) days) after the oral disclosure. Information given while conducting joint market and business case exploration and during the joint development of operational, business and financial model of the business opportunity under scrutiny shall automatically without further notice be deemed confidential. Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other, which the receiving party can prove:

- was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party;
- is disclosed with the prior written approval of the disclosing party;
- was independently developed by the receiving party without any use of the Confidential Information of the disclosing party and by employees of the receiving party who have not had access to the Confidential Information, as demonstrated by files created at the time of such independent development;
- becomes known to the receiving party, without restriction, from a source other than the disclosing party without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights;
- is disclosed generally to third parties by the disclosing party without restrictions similar to those contained in this Agreement; or
- is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice of such court order or requirement to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

3. **Non-Use & Non-Disclosure.** The Company and Recipient each agree not to use any Confidential Information disclosed to it by the other party for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Relationship. Neither party shall disclose or permit disclosure of any Confidential Information of the other party to third parties or to employees of the party



receiving Confidential Information, other than specific employees, consultants and agents explicitly approved by both parties who are required to have the information in order to carry out the discussions regarding the Relationship.

Each party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the receiving party utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care.

Both parties agree to not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided per this Agreement.

Each party agrees to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information of the disclosing party which may come to the receiving party's attention.

**4. No Obligation.** Nothing herein shall obligate Company or Recipient to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.

**5. No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS-IS." COMPANY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.

**6. Return of Materials.** Any materials or documents that have been furnished by one party to the other in connection with the Relationship shall be promptly returned by the receiving party, accompanied by all copies of such documentation, within ten (10) days after (a) the Relationship has been rejected or concluded or (b) the written request of the disclosing party.

**7. No License.** Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of either party, nor shall this Agreement grant either party any rights in or to the other party's Confidential Information other than the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the Relationship.

**8. Independent Contractors.** The Company and Recipient are independent contractors, and nothing contained in this Agreement shall be construed to constitute the Company and Recipient as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

**9. Term.** This Agreement shall survive until such time as all Confidential Information disclosed hereunder becomes publicly known and made generally available through no action or inaction of Recipient, or it shall continue for a period terminating on the later to occur of the date (a) five (5) years following the date of this Agreement or (b) three (3) years from the date on which Confidential Information is last disclosed under this Agreement.

**10. Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the Denmark, without giving effect to principles of conflicts of law.

**11. Remedies; Indemnification.** The Company and Recipient each agree that its obligations set forth in this Agreement are necessary and reasonable in order to protect the disclosing party and its business.

The Company and Recipient each expressly agree that due to the unique nature of the disclosing party's Confidential Information, monetary damages would be inadequate to compensate the disclosing party for any breach by the receiving party of its covenants and agreements set forth in this Agreement. Accordingly, the Company and Recipient each agree and acknowledge that any such violation or threatened violation shall cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled (a) to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages, and (b) to be indemnified by the receiving party from any loss or harm, including but not limited to attorney's fees, arising out of or in connection with any breach or enforcement of the receiving party's obligations under this Agreement or the unauthorized use or disclosure of the disclosing party's Confidential Information.

**12. Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

**13. Miscellaneous.** This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto.

**14. Amendment & Waiver.** Any term of this Agreement may be amended with the written consent of the Company and Recipient. Any amendment or waiver effected in accordance with this Section shall be binding upon the parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

**15. Entire Agreement.** This Agreement is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.