

MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is dated and effective as of [insert date], and made and entered into by and between:

Euro Support [.....], a company, incorporated under the laws of the Netherlands having its registered office at Kortegracht 26, 3811 KH Amersfoort, the Netherlands (hereinafter “**Euro Support**” or “**Party**”); and

[.....], a company, incorporated under the laws of [.....] having its registered office at [.....] (hereinafter “[.....]” or “**Party**”),

WHEREAS Parties are interested in exchanging certain Information for [.....] (hereinafter called the “**Project**”).

WHEREAS, in the course of their exchange, each Party, at each Party’s sole discretion, will disclose valuable Information and/or samples which so disclosed or provided, may be confidential and proprietary in nature.

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES AS FOLLOWS:

1. Definition Information

- 1.1. For the purpose of this Agreement the term “**Information**” shall mean and refer to all technical, commercial and/or business Information in tangible or non-tangible form which is disclosed between the Parties for the purpose of conducting the Project. This Information may include, but is not limited to, Results, formulae, compositions, ideas, production methods, processes, techniques, quality control and testing methods and other technical and/or business data as well as product samples, covered or not covered by patents or restricted know-how.
- 1.2. Information shall also include any findings and observations obtained by one Party under this agreement during visits and/or demonstrations in research and development laboratories and/or production facilities of the other Party.
- 1.3. For the purpose of this Agreement the term “**Results**” shall mean and refer to the technical and/or commercial findings, data, conclusions and other pertinent Information, including technical and/or commercial assessment reports, and further including inventions, obtained as a result of conducting the Project.

2. Confidentiality and Restricted Use

- 2.1. Each Party and/or its Affiliates (the “**Recipient**”) shall keep in strict confidence the Information received or otherwise learned from the other Party and/or its Affiliates (the “**Provider**”) hereunder and shall, subject to the provisions of Article 2.3 below, not without the prior written consent of the Provider
 - 2.1.1. use such Information for any purpose other than the purpose of conducting the Project, except pursuant to a future agreement with the Provider; nor
 - 2.1.2. disclose such Information or part thereof and/or the existence, terms and conditions of this Agreement to any third party; nor

- 2.1.3. disclose such Information to any officers or employees other than to those who require access to the Information for conducting the Project and then only to the extent required for this purpose; nor
 - 2.1.4. make any commercial use of such Information, nor use such Information for filing any patent application; nor
 - 2.1.5. analyse samples or products received from the Provider other than analyses agreed upon in order to control results of the Project.
- 2.2. “**Affiliate**” means any corporation, company or other legal entity that a Party now or hereafter Controls, is Controlled by or is under common Control with; where “**Control**” means the direct or indirect ownership of more than fifty percent (>50%) of the shares or similar ownership interests entitled to vote for the election of directors or other persons performing similar functions. An entity may be considered an Affiliate only so long as such ownership or control exists. Each Party shall be liable for any failure of its Affiliates to abide by the provisions of this Agreement as if such failure was the act or omission of such Party.
- 2.3. The restrictions provided in Article 2.1 above shall not apply to any Information for which it can be reasonably demonstrated that such Information
- 2.3.1. at the time of disclosure hereunder was, or thereafter becomes, part of the public domain through no act or omission of the Recipient; or
 - 2.3.2. was already in the Recipient’s possession at the time of disclosure hereunder as documented by the Recipient’s written record predating disclosure hereunder, and was not acquired from the Provider or from a third party under an obligation of confidence and/or non-use to the Provider; or
 - 2.3.3. is hereafter lawfully received by the Recipient on a non-confidential basis from a third party having rightful possession of such Information and the legal right to disclose it to the Recipient; or
 - 2.3.4. is hereafter independently developed by an employee of the Recipient who is shown not to have received or had available to him such Information or part thereof.

Specific items of Information shall not fall within any exception merely because they are embraced by more general Information falling within any exception. Likewise, any combination of specific items of Information shall not fall within any exception merely because the specific items itself fall within any exception, but only if the combination itself, and its principles of operation, fall within any exception. The burden of proving the applicability of any or more of the above exceptions shall at all times be with the Recipient.

- 2.4. Each Party shall be solely responsible for its use of Information and the conduction of the Project hereunder. Furthermore, each Party shall, unless otherwise agreed upon, bear its own costs and expenses incurring through conducting the Project hereunder.
- 2.5. The Parties agree to advise each other in writing of their Results obtained as a result of conducting the Project upon its completion.
- 2.6. Upon the Provider’s request, the Recipient shall (a) return to Provider, or procure the return of, all documents and electronic or other storage media received hereunder and containing INFORMATION, including without limitation all unconsumed samples, and shall (b) destroy (including without limitation permanent deletion from electronic or other storage media), or procure the destruction or deletion of, all copies, reproductions, summaries, notes, memoranda and other tangible documents to the extent containing Provider's Information. This request may be submitted at any time, but not later than three (3) months after termination of this Agreement. However, Recipient is entitled to retain one copy in its confidential files in order to be able to administer its liabilities under this agreement.

3. Liabilities and Property Rights

- 3.1. The Recipient agrees that all confidential Information transmitted hereunder shall at all times remain the property of the Provider and cannot be used in any way by the Recipient without written consent of the Provider.
- 3.2. No representations or warranties are made whether express or implied, and all Information is provided “as-is”. Provider shall not have any liability resulting from or in connection with the accuracy or completeness or suitability of its Information.
- 3.3. The Parties agree that unless otherwise provided herein
 - 3.3.1. neither this Agreement nor any Information transmitted in accordance herewith shall be construed as granting, or as an undertaking to subsequently grant, to the other Party any license, right, title or interest in or to any present or future patent, patent application, know-how or any other proprietary right, and the Recipient will not assert any rights of prior use with respect to said Information; and
 - 3.3.2. the disclosure of any Information hereunder will not be considered a publication thereof for patent or copyright purposes, nor will it constitute release of said Information into the public domain; and
 - 3.3.3. nothing in this Agreement shall be construed as preventing a Party from itself using in any manner or disclosing to third parties any and all of its own Information; and
 - 3.3.4. nothing in this Agreement shall be construed as obligating either Party to enter into a further agreement and/or a business arrangement with the other Party.
- 3.4. It is expressly understood that in case Recipient seeks to obtain a new patent or other protection of property rights for any improvement, discovery and/or invention developed by Recipient as a result of access to Information received from Provider (“**Invention**”), Recipient needs for such an application the prior written consent of Provider.

4. Term and Termination

This Agreement shall become effective as of the day and year first above written and shall remain in full force for the period of one (1) year. Thereafter it shall automatically be extended for periods of one (1) year, unless terminated by either Party by giving the other Party a written notice of at least sixty (60) days prior to the expiry date of the original or extended period. The Parties hereto shall continue to be bound to the obligations of confidentiality and non-use set forth herein for a period of five (5) years from the date of termination of this agreement. Furthermore termination of this agreement shall not affect any continuing rights and obligations pursuant to articles 3 and 5, as may apply.

5. Severability and Dispute Resolution

- 5.1. Should any of the provisions of this Agreement become or prove to be null and void this will be without effect on the validity of this Agreement as a whole. Both Parties will, however, endeavour to replace the void provision by a valid one, which in its economic effect complies most with the void provision.
- 5.2. This Agreement is to be governed by and construed in accordance with the laws of The Netherlands without giving effect to its conflict of laws rules. All disputes arising in connection with this Agreement shall be finally settled by arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance

with the said rules. The place of arbitration shall be The Hague, The Netherlands. The award of the arbitration shall be final and binding upon both Parties.

- 5.3. In the event of a substantial breach of this Agreement, the recovery of monetary damages may be an insufficient and inadequate remedy and Provider may, notwithstanding the foregoing and without waiving any other rights or remedies, apply to any court of competent jurisdiction for an injunction or other equitable relief to protect its Information, and to prevent or restrain the breach of this Agreement.
- 5.4. No failure or delay of either Party in insisting upon or enforcing any of the provisions of this Agreement, or in exercising any right, power, privilege or remedy hereunder, and no partial or single exercise thereof, shall be construed or constitute a waiver or subsequent waiver of such right, power, privilege, remedy or of any other rights hereunder.

IN WITNESS WHEREOF, the Parties hereto have duly executed this agreement of the day and year first above written.

For
Euro Support [.....]

For
[.....]

.....

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Name:
Title:
Place:

Name:
Title:
Place: