



Łukasiewicz
PORT
Polski Ośrodek
Rozwoju
Technologii

-Template-

NON-DISCLOSURE AGREEMENT

made on [____] in Wrocław, hereinafter referred to as the "**Agreement**", by and between,

Łukasiewicz Research Network – PORT Polish Center for Technology Development, based in Wrocław (54-066), ul. Stabłowicka 147, operating under the Łukasiewicz Research Network Act of 21 February 2019 (Journal of Laws of 2019 item 534, as amended), entered in the register of entrepreneurs managed by the Wrocław-Fabryczna District Court in Wrocław, 6th Commercial Division of the National Court Register under KRS No. 0000850580, NIP (Tax ID): 8943140523, REGON (Business Registry Number): 386585168,

represented by: [____]

hereinafter "**ŁUKASIEWICZ - PORT**",

and

[____] based in [____] at [____], registered with [____], KRS: [____], NIP: [____], PESEL (national identification number): [____], REGON: [____]

represented by

[____]-[____] based on

hereinafter "**the Receiving Party**,"

jointly referred to as "**the Parties**" and individually as "**the Party**."

WHEREAS

- 1) The parties declare their willingness to enter into cooperation on the participation in a technical dialogue which involves obtaining advice and information for the purpose of preparing a public procurement procedure, entitled: Expert service in the scope of design, redevelopment, start-up and certification of a BLS-3 laboratory at the ŁUKASIEWICZ-PORT;
- 2) In relation to the aforementioned cooperation, the Receiving Party may obtain certain information from ŁUKASIEWICZ-PORT which it considers confidential;
- 3) The Receiving Party shall consider any such information it receives to be confidential and having competitive or business value (as defined under the Agreement's Article 2 "Confidential Information"), and having the potential to cause damage to the ŁUKASIEWICZ-PORT if disclosed to any third party;
- 4) The Receiving Party acknowledges that such information is not part of general knowledge available to third parties;
- 5) ŁUKASIEWICZ-PORT has taken the necessary steps to keep confidential any received information,

NOW, THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:

ARTICLE 1 – OBJECTIVE

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Łukasiewicz Research Network – PORT Polish Center for Technology Development
54-066 Wrocław, ul. Stabłowicka 147, Tel: +48 71 734 77 77, Fax: +48 71 720 16 00
E-mail: biuro@port.lukasiewicz.gov.pl | NIP (Tax ID): 894 314 05 23, REGON (Business Registry Number): 386585168
Wrocław-Fabryczna District Court in Wrocław, 6th Commercial Division of the National Court Register (KRS)
KRS No. 0000850580



1. This Non-Disclosure Agreement sets out the terms and conditions governing the disclosure, use and protection of Confidential Information, as defined under Article 2 hereof, as might be disclosed by ŁUKASIEWICZ-PORT to the Receiving Party. Any disclosure shall be for the purposes of Expert service in the scope of design, redevelopment, start-up and certification of a BLS-3 laboratory at the ŁUKASIEWICZ-PORT (hereinafter **"the Project"**).
2. Under this Agreement, ŁUKASIEWICZ-PORT shall only disclose to the Receiving Party the Confidential Information it considers necessary for the purposes of the Project, whereas the Receiving Party may only use the Confidential Information in connection with the Project.
3. The purpose of this Agreement is not to induce any of the Parties to disclose any Confidential Information or to establish any joint venture, association or company, or enter into any partnership agreement or other formal business organisation or agency. The disclosure of Confidential Information under this Agreement shall not constitute the proposal or acceptance or promise of any future agreement or amendment to any existing agreement.

ARTICLE 2 – CONFIDENTIAL INFORMATION

1. Confidential Information shall mean any information or data (regarding the Project) which might be disclosed by ŁUKASIEWICZ-PORT to the Receiving Party, regardless of the means and form of disclosure, including, but not limited to, any information about existing or future products, projects, business opportunities, know-how, technology, clients, employees, product sources, contracts, R&D, manufacturing plans and processes, marketing and financial data, and any other confidential information, whether disclosed in writing, personally, by electronic means or otherwise to the Receiving Party by ŁUKASIEWICZ-PORT, or by any third party acting on behalf ŁUKASIEWICZ-PORT, and in particular [____], irrespective whether disclosed prior to, or following, the date of this Agreement.
2. This confidentiality obligation shall also apply to any documents and information produced on the basis of Confidential Information.
3. Any Information disclosed verbally by ŁUKASIEWICZ-PORT shall be considered to be confidential if the Receiving Party can be reasonably expected to understand that such information should be treated as confidential, regardless of whether it was explicitly described as such.

ARTICLE 3 – RESPONSIBILITIES OF THE PARTIES

1. Throughout the term of this Agreement (as defined under Article 8, "Term", hereof), the Receiving Party agrees in relation to any Confidential Information it receives from ŁUKASIEWICZ-PORT:
 - a) to keep it safe and confidential in the same way, and with the same degree of care and protection, as its own confidential information of similar importance to the Receiving Party, but in any case at least with reasonable care that might be expected in any specific situation;
 - b) to have it disclosed internally by the Receiving Party only to its employees, contractors, or legal, financial or technical advisers (hereinafter jointly referred to as the **"Representatives"**), to the extent to which the disclosure of any such Confidential Information of ŁUKASIEWICZ-PORT is necessary for the Project work or the

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- fulfilment of obligations towards the Receiving Party, and provided that such persons have been required to keep such disclosed information confidential on terms and conditions similar to those specified hereunder;
- c) not to have it used either in part or in whole, whether directly or indirectly, for the purposes other than the Project, without prior written authorisation from ŁUKASIEWICZ-PORT;
 - d) not to disclose it, whether directly or indirectly, to any third party or any person other than those referred to in section 3.1.b) hereof, nor disclose it otherwise without prior written authorisation from ŁUKASIEWICZ-PORT, and provided that any such third party agrees in writing to comply with the same confidentiality requirements as defined hereunder;
 - e) not to have it copied or otherwise reproduced, except as necessary for the purposes described in section 3.1.b) hereof, nor to have it published, whether in part or in full, without prior written authorisation from ŁUKASIEWICZ-PORT;
 - f) not to use it for the purposes of claiming any intellectual property rights (including unlimited patent rights, copyrights and trademarks) anywhere around the world;
 - g) not to have it disassembled, reverse-engineered or decompiled, except as expressly allowed by the Disclosing Party.
2. The Receiving Party agrees not to allow its Representatives engage in any of the activities described in section 1 letters c) through g).
 3. If any Confidential Information is disclosed, the Receiving Party shall do its best to (i) notify the third parties of the confidential nature of such information and of the ownership rights of ŁUKASIEWICZ-PORT, (ii) notify ŁUKASIEWICZ-PORT of the disclosure, (iii) prevent any further disclosure, and (iv) request that the disclosed information and its copies, private notes and any correspondence related to the disclosed confidential information be returned, without prejudice to any claims which might be made by ŁUKASIEWICZ-PORT.
 4. This Agreement shall not grant the Receiving Party any licensing rights to produce, distribute or commercialise any products which could rely on any part of the Confidential Information, unless the Parties have entered into a separate licensing agreement.

ARTICLE 4 – EXCEPTIONS TO CONFIDENTIALITY REQUIREMENTS

1. No requirements imposed hereunder on the Receiving Party shall apply to the information which:
 - a) has been known to the Receiving Party before it was communicated by ŁUKASIEWICZ-PORT, and this is supported by relevant documents produced by the Receiving Party before its disclosure;
 - b) is or will become publicly available as a result of its publication or otherwise through omission or resigning from action by the Receiving Party;
 - c) is to be disclosed for the purposes of compliance with the law, a request by any administrative or supervisory authority, or any other document issued by any government administration or court order;

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- d) is to be disclosed following written authorisation from the Disclosing Party;
 - e) has been developed independently, without relying on or using any Confidential Information which might have been disclosed hereunder, and without any breach hereof.
2. It is the Receiving Party who shall be responsible for providing evidence to support any of the above-mentioned exceptions, as the case might be.
 3. If, during the term of the Agreement, the Receiving Party is required to disclose any Confidential Information for the purposes of compliance with the law, a request by any administrative or supervisory authority, any other document issued by any government administration or court order, the Receiving Party shall immediately notify ŁUKASIEWICZ-PORT of such requirement, so that ŁUKASIEWICZ-PORT can claim protection or other reasonable action, or waive the application of any provisions hereof. It is the Receiving Party who shall be responsible for demonstrating that such disclosure was necessary.

ARTICLE 5 – REPRESENTATIONS AND WARRANTIES

The Receiving Party shall:

- a) not disclose any Confidential Information of ŁUKASIEWICZ-PORT, whether in part or in full, to any third party;
- b) not use any Confidential Information of ŁUKASIEWICZ-PORT for any purposes other than those explicitly described herein without prior written authorisation from ŁUKASIEWICZ-PORT.

ARTICLE 6 – RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION

1. All Confidential Information which might have been disclosed to the Receiving Party hereunder, and any copies, reproductions and duplicates thereof shall be the property of ŁUKASIEWICZ-PORT only, without prejudice to any third party rights.
2. When the Disclosing Party no longer needs Confidential Information for the purposes of the Project, all Confidential Information, on whatever medium and in whatever form recorded, and any copies thereof or private notes which might be owned by the Receiving Party, shall be returned to ŁUKASIEWICZ-PORT or destroyed. Such return or destruction shall be confirmed by the Receiving Party in writing within 30 (thirty) calendar days of the date ŁUKASIEWICZ-PORT requested such return or destruction.
3. If any copies of any Confidential Information disclosed by electronic means have been made for routine IT backup purposes, or to follow any applicable regulations or compliance requirements, such Confidential Information shall be subject to unlimited confidentiality requirement as per this Agreement until such Confidential Information is returned or destroyed.

ARTICLE 7 – LIABILITY

1. If the Receiving Party is found to be in breach of its requirements under Article 3, "Responsibilities of the Parties", or Article 5, "Representations and Warranties", above, the Party whose rights have been affected shall be able to claim damages from the other Party based on applicable law.

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2. The Parties shall be liable for any failure to fulfil their confidentiality responsibilities by the persons referred to in section 3.1.b hereof the same way as if the failure was their own.
3. The Receiving Party shall pay to ŁUKASIEWICZ-PORT a contractual penalty of PLN 100,000.00 (one hundred thousand zlotys) per each confirmed case of disclosure of Confidential Information, and per each case of failure to fulfil their obligations referred to in Article 3 Sections (1), (2) and (3), and Article 5 hereof.
4. ŁUKASIEWICZ-PORT shall retain the right to seek damages in excess of these contractual penalty by reference to the applicable provisions of law.

ARTICLE 8 – TERM

1. This Agreement shall become effective on the day it is made.
2. The Agreement shall be concluded for the duration of the Project plus 3 (three) years thereafter, but for no less than 5 (five) years from the date the Agreement is made.
3. The Agreement may be terminated at any time on the basis of a written agreement between the Parties.
4. Following the termination, the Parties shall continue to be bound by their responsibilities related to the protection and use of Confidential Information, as described in Article 3, "Responsibilities of the Parties", Article 6, "Return or Destruction of Confidential Information" and Article 10, "Governing Law and Dispute Resolution."

ARTICLE 9 – NO ASSIGNMENT

None of the Parties hereto may transfer its rights and obligations arising hereunder to a third party without written authorisation from the other Party.

ARTICLE 10 – GOVERNING LAW AND DISPUTE RESOLUTION

1. This Agreement shall be governed by the law applicable in the Republic of Poland, and shall be construed in accordance therewith.
2. Any disputes that might arise between the Parties in relation to the Agreement shall be resolved amicably.

If a dispute is not resolved amicably within up to 60 (sixty) calendar days from the date a relevant claim is made by the affected Party against the defaulting Party, the dispute shall be resolved by the relevant court having jurisdiction over the registered office of ŁUKASIEWICZ – PORT.

3. Any amendments hereto shall be made in writing and shall otherwise be null and void.
4. This Agreement was drawn up in duplicate, with one copy, signed by the authorised representatives, for each of the Parties.

ŁUKASIEWICZ – PORT

THE RECEIVING PARTY

