**NON-DISCLOSURE AGREEMENT**

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| **Party 1: “[short name (abbreviated or abridged)]”** | |
| Official Name | [Company/Person Name 1] |
| Street, Number | [Street, Number] |
| ZIP Code, Location | [ZIP Code, City] |

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| **Party 2: “[short name (abbreviated or abridged)]”** | |
| Official Name | [Company/Person Name 2] |
| Street, Number | [Street, Number] |
| ZIP Code, Location | [ZIP Code, City] |

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| **Party 3: “[short name (abbreviated or abridged)]”** | |
| Official Name | [Company/Person Name 3] |
| Street, Number | [Street, Number] |
| ZIP Code, Location | [ZIP Code, City] |

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| **Party 4: “[short name (abbreviated or abridged)]”** | |
| Official Name | [Company/Person Name 4] |
| Street, Number | [Street, Number] |
| ZIP Code, Location | [ZIP Code, City] |

1. RECITALS

*The Parties are Participants of the Innovation Booster [Microtech Booster] Open Innovation Programme (“****Programme****”), which is regulated by its Terms of Service accessible in their latest version at the following link:* [*https://microtechbooster.swiss/legal/*](https://microtechbooster.swiss/legal/)

1. *Desiring further, closer and more specific confidentiality commitments for exchanging privileged information amongst themselves, the Parties decide to enter into this separate non-disclosure agreement (hereinafter “****Agreement****” or “****NDA****”) in order to pursue the Purpose stated below.*
2. PURPOSE
3. In the context of the Programme, the Parties wish to discuss a research / development collaboration or any similar relationship pertaining to the following thematic:

[DESCRIPTION OF THE THEMATIC/SUBJECT/PROJECT]

1. CONFIDENTIAL INFORMATION
   1. QUALIFICATION
2. “**Communicated Data**” refers to any idea, know-how, document, process, drawing, file or other form of information, whether or not protected or protectable by law, that is shared among the Parties as part of the Programme or, more specifically, in pursuit of the Purpose. Communicated Data should, as much as practical and whenever relevant, be documented or recorded in a dated, replicable, human-readable, disposable and transferable format (e.g. stored in a restrictively shared folder). Communicated Data may consist of Confidential Information and/or entail Intellectual Property Rights.
3. “**Confidential Information**” refers to any non-public Communicated Data of a commercial, scientific, technical, operational or strategic nature or of any other proprietary or secrecy essence that is disclosed by any Party (“**Disclosing Party**”) to another Party (“**Receiving Party**”) in the pursuit of the Purpose and that:
4. is labelled as “confidential” or as any unambiguous equivalent (e.g. “secret”); or
5. is known or should be known as confidential by a reasonable person, should the Confidential Information merely be disclosed *de visu* (visually) or *de auditu* (orally).
6. Any Confidential Information merely disclosed *de visu* or *de auditu* shall be reduced, within a reasonable time, by the Disclosing Party to a tangible form (e.g. email), then notified in such a form to the Receiving Party or to all other Parties with the label “confidential” or any unambiguous equivalent (e.g. “secret”).
   1. DISQUALIFICATION
7. Any Communicated Data is, howsoever labelled, not considered Confidential Information in the event that such Communicated Data: (a) is, or becomes, publicly available without a breach of this Agreement or of the Programme Rules; (b) was lawfully known to all other Parties, at the time of the receipt thereof from the Disclosing Party; (c) is disclosed to any Party by a third party who can disclose it lawfully and without an obligation to keep it confidential; and/or (d) is independently developed by any other Party without the use of the Confidential Information.
8. In the same vein, any Communicated Data is, howsoever labelled, not considered Confidential Information for a specific Party provided that such data or information was lawfully known to this specific Party at the time of receipt thereof from the Disclosing Party.
9. Should a Party claim that certain Communicated Data do not qualify as Confidential Information, the burden of proof lies with that Party..

OBLIGATIONS & DUTIES

1. Any obligation, commitment or guarantee under this Agreement is deemed a contractual duty within the meaning of Article 162 of the Swiss Criminal Code of 21 December 1937.
   1. CONFIDENTIALITY COMMITMENTS
2. Each Party agrees, with respect to Confidential Information received or made available by any other Party:
   1. to use such Confidential Information only in the pursuit of the Purpose;
   2. to treat such Confidential Information as strictly confidential;
   3. not to disclose such Confidential Information to any unauthorised third parties; and
   4. to confine the disclosure of such Confidential Information to employees who have a need to know the Confidential Information for pursuing the Purpose, subject to confidentiality terms consistent with this NDA.
3. Protective measures. As part of the confidentiality commitments, each Receiving Party shall take the following measures:
   1. to take reasonable steps – of organisational, technical or similar nature – to protect the Confidential Information in a way as protective as if the Confidential Information were that Party’s own;
   2. to notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of the Confidential Information;
   3. to cooperate with the Disclosing Party in such event to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it; and
   4. to take responsibility for the observance and proper performance by that Party’s employees of the confidentiality terms of this NDA.
4. Artefacts & replicates. Upon the Disclosing Party’s request, the Receiving Party shall promptly return or destroy any physical or digital support of that Disclosing Party’s Confidential Information, including samples or equivalent items. Exceptions thereto are any Receiving Party’s archive intended solely for administrative, litigation or cybersecurity (e.g. automatic backup) purposes, provided that all commitments, obligations and guarantees of confidentiality under this Agreement are uncompromisingly maintained.
   1. ASSUMPTIONS & LIMITATIONS
5. Any Communicated Data, in particular Confidential Information, is solely disclosed to the extent and for the duration necessary to jointly pursue the Purpose.
6. Any Communicated Data is provided "AS IS" and without any express or implied warranty as to its form and/or content.
7. Any Communicated Data released or disclosed as a Confidential Information by the Disclosing Party to any Receiving Party in the pursuit of the Purpose is presumed to belong to such Disclosing Party, unless indicated otherwise or rebutted by evidence to the contrary.
8. “**Intellectual Property Rights**” or “**IPR**” refers to any and all intangible assets protected by the laws on copyright and related rights, patents for inventions, the protection of designs or of plant varieties, or protected as secrets under any applicable law, such as the Swiss Criminal Code of 21 December 1937 or the Unfair Competition Federal Act of 19 December 1986:
   1. Each Party owns and will retain any and all rights, title and interest in that Party’s own IPR. The disclosure of Communicated Data in any form shall neither result nor be construed as resulting in a transfer, assignment or any explicit or implicit granting of usage rights on any IPR associated with such Communicated Data.
   2. No Party shall provide Communicated Data in infringement or violation of any third party’s IPR. Should a Party use any Communicated Information which may infringe or violate third party’s IPR, that Party solely bears all risks and accounts for that use.
9. FORMALITIES
10. Written form. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and may not be modified or supplemented unless otherwise agreed in writing by the Parties.
11. Duration. This Agreement comes into effect upon its signature by all Parties and expires three (3) years therefrom. Any obligation arising prior to the expiration of this Agreement shall survive such expiration for a period of five (5) years as from the date of expiration of this Agreement.
12. Enforcement. Each Party acknowledges that in certain instances monetary damages may not be sufficient compensation for a breach of this Agreement. Accordingly, each Party is entitled to apply, exceptionally and to no further extent, for interim measures including *ex parte* to a competent local authority, in spite of any other choice of court.
13. Governinglaw. This Agreement and any dispute or claim arising out of or in connection with it shall be governed by, construed and interpreted in accordance with the laws of Switzerland, excluding conflict of law provisions.
14. [/OPTION A; Arbitration] Dispute resolution – Arbitration. Any dispute, controversy, or claim arising out of, or in relation to, this Agreement shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules. The number of arbitrators shall be one. The seat of the arbitration shall be Bern, Switzerland. The arbitral proceedings shall be conducted in [please choose one: English, Italian, French, German, etc.] unless the Parties agree otherwise. [/OPTION B; Court Juridiction] Dispute resolution – Court. Any dispute, controversy, or claim arising out of, or in relation to, this Agreement shall be submitted [either in French or German] to the exclusive jurisdiction of the competent judiciary court in Biel/Bern, Switzerland.

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| **Party 1: [short name (abbreviated or abridged)]** | **Party 2: [short name (abbreviated or abridged)]** |
| Date: …………………………… | Date: …………………………… |
| Representative’s name: …………………………..  Signature (1): ……………………………………... | Representative’s name: …………………………..  Signature (1): ……………………………………... |
| Representative’s name: …………………………..  Signature (2): ……………………………………... | Representative’s name: …………………………..  Signature (2): ……………………………………... |

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| **Party 3: [short name (abbreviated or abridged)]** | **Party 4: [short name (abbreviated or abridged)]** |
| Date: …………………………… | Date: …………………………… |
| Representative’s name: …………………………..  Signature (1): ……………………………………... | Representative’s name: …………………………..  Signature (1): ……………………………………... |
| Representative’s name: …………………………..  Signature (2): ……………………………………... | Representative’s name: …………………………..  Signature (2): ……………………………………... |