Mutual Confidential Disclosure Agreement

This Agreement is entered into on [*date*] (“Effective Date”) by and between:

**NAME COMPANY/INSTITUTION,** [registration number NUMBER], having its registered office at ADDRESS and duly represented by NAME, FUNCTION (the "XXXX")

AND

**NAME COMPANY/INSTITUTION,** [registration number NUMBER], having its registered office at ADDRESS and duly represented by NAME, FUNCTION (the "XXXX")

Individually referred to as a “Party”, the "Disclosing Party" or the "Receiving Party", as the case may be.; or collectively as the “Parties”.

WHEREAS

The Parties hereto desire to submit a proposal for a collaborative project in response to the EURASTiP Exchange Programme Call three. Throughout the aforementioned discussions, Parties may share between themselves proprietary information or confidential information under the terms and covenants set forth below. (“Purpose”)

**NOW, THEREFORE**, the Parties agree as follows:

1. Non- disclosure and limited use of Information
	1. The Receiving Party accepts the Information with the sole objective of the Purpose. The Receiving Party hereby undertakes to the Disclosing Party:
2. that it will use the Information solely for the Purpose, and that it will not without the prior written consent of the Disclosing Party make any other use thereof, whether industrial or otherwise;
3. that it will treat and safeguard as strictly private and confidential all the Information received by it;
4. that it will not without the prior written consent of the Disclosing Party publish, disclose or reveal the Information to any third party or to the public generally without the written prior consent of the Disclosing Party.
	1. It is recognised that the Receiving Party may be required to disclose Information to employees, contractors, agents, students (if applicable) and consultants thereof, who are required in the course of their duties to receive and consider such Information in view of the Purpose. The Receiving Party will exercise reasonable care in the selection of such employees, contractors, agents, students (if applicable) and consultants thereof, and will fully advise all such persons of the contents of this Agreement and shall ensure that all such persons who have access to the Information adhere to the terms of this Agreement as if he or she were a party hereto.
	2. The Receiving Party is entitled to make copies of the Information only as necessary in view of the Purpose. All such authorized copies shall contain all references to the relevant ownership rights.
	3. The Receiving Party undertakes that upon the written request of the Disclosing Party, it will forthwith return to the Disclosing Party any Information of the Disclosing Party that is in written or electronically recorded form, as well as all copies thereof that are then in the possession of the Receiving Party.
	4. The Receiving Party shall protect the Information with the same degree of care as it applies to protect its own, but in no event less than with a reasonable degree of care.
5. Scope of this Agreement - Exceptions
	1. All obligations of the Receiving Party under this Agreement shall only apply to Information of the Disclosing Party: (a) that is disclosed in writing and marked as confidential at the time of disclosure, or (b) that is disclosed orally or through visual observation but designated as confidential at the time of disclosure and designated as confidential in a written memorandum sent to the Receiving Party within 30 (thirty) days of disclosure and summarizing the Information sufficiently for identification.
	2. Notwithstanding the above, the Receiving Party shall have no obligation hereunder to refrain from disclosing or using the Information for which it can reasonably prove that:
6. the Information is available to the public at the time of its disclosure;
7. the Information became part of the public domain or publicly known or available by publication or otherwise, not due to any unauthorised act or omission on the part of the Receiving Party;
8. the Information was disclosed to the Receiving Party by third parties as a matter of right;
9. the Information was at the time of disclosure already known to the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party;
10. the Information is subsequently developed independently by or on behalf of the Receiving Party, without use of the Information.

For the avoidance of doubt, the Receiving Party, invoking one of the above mentioned exceptions, shall have the burden of proof that such exception is applicable.

* 1. No Information which is specific shall be deemed to be within any of the foregoing exceptions, merely because it is embraced by more general Information which falls within any one of the foregoing exceptions. In addition, any combination of features shall not be deemed to be within any of the foregoing exceptions, merely because individual features fall within any one or more of the foregoing exceptions, but only if the combination itself falls within any one of the foregoing exceptions.
	2. In consideration of any Information received pursuant to this Agreement, the Receiving Party undertakes, in the event any Information received must be disclosed by law, governmental regulation or court order, to give the Disclosing Party prior, where reasonably possible, written notice and co-operate with the Disclosing Party in any attempt to test the requirement and/or to obtain a protective order.
1. Property of Information
	1. The Receiving Party agrees that all Information (and copies thereof) remains property of the Disclosing Party.
2. Rights, warranties and liability
	1. Neither this Agreement nor any receipt of Information hereunder shall be construed as granting, or as an undertaking to subsequently grant, to the Receiving Party any license, right, title or interest in or to any present or future patent, patent application, know-how, trade secret or any other proprietary right, and the Receiving Party will not assert any rights of prior use with respect to said Information. In any event, it is understood that none of the Parties does release the other Party from any liabilities based upon any copyright or patent or other rights it now possesses or may acquire concerning such Information.
	2. The Receiving Party agrees that any Information, including any samples or materials, is provided "as is" and no warranties, express or implied, are given or liabilities of any kind are assumed with respect to such Information, including, but not limited to, accuracy, reliability, novelty, completeness, correctness, fitness for any particular purpose or non-infringement of third party’s rights.
	3. The Receiving Party shall be solely responsible for the conduction of the performance of the Purpose hereunder and its use of the Information thereto. The Disclosing Party shall not be liable to the Receiving Party for any damages incurred by the Receiving Party in connection with such use of Information.
	4. The Receiving Party shall defend, indemnify and hold the Disclosing Party and the Disclosing Party’s officers, directors, employees, agents and advisors harmless from any loss, claim of liability, damages, expenses including attorneys’ fees (collectively, “Losses”) relating to or arising out of the Receiving Party’s use, storage, transport or disposal of any samples or materials transmitted, except to the extent that such “Losses” relate to or arise out of gross fault or wilful misconduct of the Disclosing Party.
3. The Primary Representatives of the Parties
	1. The primary representatives of the Parties in charge of co-ordinating the disclosure and receipt of Information are identified in Annex 1 hereto.
4. Term
	1. This Agreement starts as from the Effective Date for a period of one (1) year (“Term”). During this Term Information will be exchanged between the Parties. Notwithstanding the foregoing, the obligations of confidentiality and non-use set forth herein shall be in effect during the term of the Agreement and for a period of three (3) years thereafter. This Agreement also applies to Information relating to the Purpose which has been exchanged between the Parties prior to the Effective Date.
	2. If the Parties succeed in the call for proposal referred to in the preamble and sign the corresponding Grant Agreement (GA) and Consortium Agreement (CA), or enter into partnership under any other kind of collaborative agreement (COA) or association agreement (AA), the non-disclosure provisions of the CA, COA and AA shall supersede this Agreement. In the event that non-disclosure provisions are not provided for the said private agreements, this Agreement shall remain in force until the end of the collaboration undertaken.
5. Governing Law and Dispute Settlement
	1. This Agreement is governed by the laws of Belgium, without giving effect to its conflict of law rules.
	2. The Parties shall attempt to settle any dispute arising out of or relating to this Agreement in an amicable way. In the event that such attempts should fail, then the Parties agree to submit any such dispute or litigation in any way related to this Agreement exclusively to the Courts of Brussels, Belgium.
6. Miscellaneous
	1. This Agreement and its Annex constitute the entire agreement between the Parties with respect to the subject matters hereof. This Agreement may not be modified in any respect by any verbal statement, representation, or agreement made by any employee, officer, or representative of either Party, nor by any written documents unless it is signed by a dully authorized officer of both Parties.
	2. This Agreement shall not be assignable by either Party without the prior written and unambiguous consent of the other Party, except to the legal successor of the entire business, provided that the assignee shall assume all the duties and obligations of the assigning Party. Such consent shall not be unreasonably withheld. The assigning Party shall give notice to the other Party of the assignment and shall continue to be bound after assignment by the provisions of this Agreement.
	3. 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.
	4. The entering into this Agreement or any of its provisions shall not constitute an obligation to disclose Information to the Receiving Party.
	5. Nothing herein shall be construed as obligating either Party to enter into any further agreement and/or any business arrangement with the other Party.

**IN WITNESS WHEREOF, the Parties have executed two (2) original copies of this Agreement on the day and year first written above. Each Party represents to have received one (1) original copy of the Agreement and all its Annexes.**

Name:

Function:

Date:

Signature:

Name:

Function:

Date:

Signature: