**Model Non Disclosure Agreement**

**Voorblad**

Deze modelovereenkomsten zijn opgesteld door het team Bedrijfsjuristen van de Universiteit Twente en dienen als

startpunt voor overeenkomsten, in dit geval voor geheimhoudingsverplichtingen. Let bij gebruik svp op de

volgende punten:

1. Dit is slechts een model: De naar de wederpartij te sturen tekst zal steeds vooraf afgestemd moeten

worden met de juridische afdeling van de Universiteit Twente.

2. Wie tekent namens de Universiteit Twente? Dit dient een rechtsgeldig tekenbevoegd persoon te zijn.

U kunt dit checken bij de juristen.

3. Zorg ervoor dat wijzingen/commentaar altijd worden aangebracht aan de hand van ‘wijzigingen

bijhouden’ in Word. Zet op conceptdocumentatie altijd dat het een concept betreft en van welke

datum het concept is.

4. Laat de laatste conceptversie altijd beoordelen door het team Bedrijfsjuristen van de Universiteit Twente

voorafgaand aan definitieve ondertekening.

5. Deze model NDA UT is beschikbaar in vier (4) versies, te weten:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Te gebruiken NDA: | 2 partijen + UT deelt wél vertrouwelijke informatie. | 2 partijen + UT deelt géén vertrouwelijke informatie. | 3 (of meer) partijen + UT deelt wél vertrouwelijke informatie. | 3 (of meer) partijen + UT deelt géén vertrouwelijke informatie. |
| Model NDA UT – ***Two*** Parties (**with** fine) | Afbeeldingsresultaat voor vinkje symbool |  |  |  |
| Model NDA UT – ***Two*** Parties (**without** fine) |  | Afbeeldingsresultaat voor vinkje symbool |  |  |
| Model NDA UT – ***Multiple*** Parties (**with** fine) |  |  | Afbeeldingsresultaat voor vinkje symbool |  |
| Model NDA UT – ***Multiple*** Parties (**without** fine) |  |  |  | Afbeeldingsresultaat voor vinkje symbool |

6. Gelieve per situatie bovenstaande tabel raadplegen en dit voorblad te **VERWIJDEREN**.

7. De geel gearceerde delen in dit concept dienen nog ingevuld te worden.

NON DISCLOSURE AGREEMENT

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This Non Disclosure Agreement (“Agreement”) is between:

**University of Twente**, whose registered office is at Drienerlolaan 5, 7522 NB Enschede, The Netherlands, duly represented by [name]

and

**[Company name]** having address at [address/place], [country] duly represented by [name],

hereinafter also referred to as “Party(ies)”.

Both Parties agree that disclosed confidential information, as defined below, provided by the disclosing Party, ("Owner"), to the receiving Party, ("Recipient"), for the purpose stated, shall be treated fully in accordance with the following provisions:

1. Confidential Information; limited purpose(s):

The Parties agree, as Recipients of confidential information hereunder, that they will not disclose without permission any confidential information received from the other Party, will not use the other Party’s confidential information for any purpose other than for the limited purpose(s) of this Agreement and will use the same degree of care to protect the confidential information received from the other Party as it uses to protect its own confidential information.

Confidential information (“Confidential Information”) required to be held in confidence hereunder, may include, by way of example, but without limitation, performance test results, data, know-how, patent applications, patents pending, specifications, formulations, processes, designs, drawings, samples, models, reports, studies, photographs, findings, inventions, ideas, business plans, marketing information, customer lists, pricing information, and software. Information required to be held in confidence hereunder will be provided in writing and/or via e-mail, clearly marked “**Confidential**”. Any information disclosed orally or visually shall be confirmed as confidential in writing and/or via e-mail to the Recipient within thirty (30) days from the date of disclosure.

The limited purpose(s) of this Agreement is (are):

(for example) To investigate the desirability and feasibility of a possible cooperation between the Parties with regard to ……………………………………………………………………………………………

2. Disclosing Period:

This Agreement governs only that Confidential Information disclosed by Owner to Recipient during the disclosing period (“Disclosing Period”):

from: ……………

to: ……………

All disclosure of Confidential Information under this Agreement shall be made during the Disclosure Period.

3. Surviving Obligation:

Recipient’s obligation to maintain the confidentiality of Owner’s disclosed Confidential Information shall survive termination of the Agreement for a period of five (5) years.

4. Other Sources Exemptions:

Recipient’s obligations hereunder will not apply, or shall cease to apply, to that Confidential Information which Recipient can establish through written documents:

1. was rightfully known to the Recipient prior to disclosure hereunder to Recipient;
2. was known to the public, or generally available to the public, prior to disclosure hereunder to Recipient;
3. becomes known to the public, or generally available to the public, other than by act of Recipient, subsequent to disclosure hereunder to Recipient;
4. is received by Recipient without an obligation to hold the same in confidence from a third party who has a bona fide right to disclose or make available the same to Recipient;
5. is independently developed by employees of Recipient without access to the Confidential Information disclosed hereunder; or
6. all mandatory exceptions provided by the Trade Secrets Directive (EU) 2016/943.

5. Standard of Care:

Recipient shall protect the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, as it uses to safeguard its own confidential or proprietary information of a like nature from unauthorised use, disclosure, or dissemination. Recipient shall not copy, distribute, or disseminate any of the Confidential Information to any unauthorised persons or entities without the Owner's express prior written consent and Recipient shall limit access to the Confidential Information to only those authorised employees or agents having a need to know. Recipient shall ensure that all of its employees receiving such Confidential Information are aware of the obligations established by this Agreement and are bound by confidentiality provisions at least as protective as the provisions of this Agreement.

6. Return of Materials:

Promptly following Recipient's receipt of Owner's written request for same, all of Owner's Confidential Information and all copies thereof in Recipient’s possession or control shall be returned to Owner or destroyed by Recipient at Owner's instruction. At Owner’s request, Recipient shall then certify the same in writing and that no copies have been retained by Recipient, its employees or agents.

7. Mandatory Disclosure Exemptions:

Nothing herein shall restrict Recipient's right to disclose the Confidential Information where such disclosure is required by written order of a judicial, legislative, or administrative authority of competent jurisdiction, or is necessary to establish its rights under this Agreement, provided, however that, in each case, Recipient will first notify Owner of such need or requirement to allow Owner to limit the scope of the proposed disclosure.

8. Equitable Relief Availability:

Recipient acknowledges that an unauthorized disclosure of the Confidential Information may cause irreparable harm to Owner for which no adequate remedy at law exists and that, in addition to any other remedies which may be available, Owner shall be entitled to seek injunctive relief to enforce the terms of this Agreement.

9. Fine:

A Recipient that violates one or more terms of this Agreement forfeits to the Owner an amount of € 100,000,- ("Fine"). This amount shall be paid immediately following discovery of the violation concerned and upon the date of written notice thereof to the Owner including legal interest from last mentioned date. The Owner concerned shall be entitled to claim the Fine without detriment to its rights to claim full compensation for its total damages, caused by the relevant violation.

10. No Rights or Licences Extended:

No rights or licences whatsoever, either express or implied, are granted hereunder by one Party to the other Party as to any patents or patent applications, copyrights, trade marks, trade secrets, or other intellectual property now or hereafter acquired, developed, or controlled. Owner retains all rights and remedies afforded under any applicable laws for protecting confidential, proprietary, or trade secret information.

11. No Waiver of Rights:

If one Party breaches this Agreement then the failure of the other Party to enforce any rights under this Agreement shall not be deemed a waiver of any such rights. The rights and remedies of the Parties, as set forth in this Agreement, are not exclusive and are in addition to any other rights and remedies provided by law. Additionally, the invalidity in whole or in part or condition of this Agreement shall not affect the validity of any other part or condition.

12. Confidential Information provided “as-is”:

With respect to the Confidential Information disclosed, Owner provides information “as is” and makes no representation or warranty, express or implied, to Recipient as to its condition, satisfactory quality, design, operation or fitness for a particular purpose or use. Owner further warrants that it has the right to disclose the Confidential Information to Recipient and therefore has granted Recipient lawful access to the Confidential Information for the limited purposes so stated.

13. No Relationship Established:

It is understood that both Parties do not intend that any agency or partnership relationship be created between them by this Agreement. Neither Party has any further obligation hereunder to transact any business whatsoever with the other Party.

14. Written Modifications:

All modifications to this Agreement must be made in writing and must be signed by both Parties.

15. Specifications:

Under the terms of this Agreement, each Party specifically agrees not to disclose to third parties without the other Party’s prior written consent: (i) the fact that the Parties are working together for the limited purpose(s) of this Agreement, (ii) any business plans relating to the Confidential Information or to the limited purpose(s) of this Agreement, if applicable and (iii) the origin of any sample received hereunder, if applicable.

16. No transfer or assignment:

Neither Party may transfer or assign any or all of its rights and/or obligations or delegate the performance of any or all of its obligations under this Agreement, directly or indirectly, through acquisition, merger or otherwise, without the prior written consent of the other Party.

17. Term of this Agreement; termination:

This Agreement enters into force on the date of its signature and expires at the last date of the Disclosing Period. This Agreement can be terminated at any time by either Party prior to its expiration date by written notice to the other Party.

18. Governing Law; place and court of jurisdiction:

This Agreement is made under and shall be construed under and interpreted by the laws of The Netherlands. The Parties shall endeavour to settle possible disputes amicably. Should they fail to do so the court of jurisdiction shall be the District Court in Overijssel, The Netherlands.

19. Entire Understanding:

This Agreement sets out the entire understanding between the Parties and supersedes all prior discussions between them regarding the exchange of Confidential Information, as defined above.

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement by their authorized

representatives. Each Party agrees that this Agreement will be executed in electronic PDF format

only and each Party explicitly acknowledges and agrees that its signature in such format shall be

regarded as an original signature and that this Agreement shall be effective upon delivery by

electronic mail to the other Part(y)(ies) and thereafter shall be deemed an original signed agreement,

irrespective of whether the signatures are on the same page or on separate pages.

**University of Twente**

Name:

Title:

Date:

Place:

**……………….**

(signature)

**Company:**

Name:

Title:

Date:

Place:

**……………….**

(signature)