Confidentiality Agreement

- Mutual -

**(1) ODE B.V.**

**- and -**

**(2) Add Company name**

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“**Agreement**”) is made on Month xx, 202x (“**Effective Date**”) by and between:

**ODE B.V.** a privately held company with limited liability incorporated under the laws of the Netherlands, having its registered offices and principal place of business at L.J. Zielstraweg 2, 9713GX Groningen, the Netherlands. ODE B.V. operates under the name Open Diagnostics;

and

Add Company name, a add legal structure, incorporated under the laws of add country, having its registered offices and principal place of business at add address, postcode, city, country

Hereinafter each party may also individually be referred to as a “Party” and collectively

as the “Parties”.

BACKGROUND

A The Parties wish to have discussions in relation to a project in the field of add description, in which potential areas of collaboration will be evaluated, hereinafter called “the Project”.

B In the course of those discussions there will be disclosure of Confidential Information.

C The Confidential Information has a unique commercial value to the Discloser and may be the basis of applications for patents.

D The Discloser will be prejudiced by any unauthorized use or disclosure of the Confidential Information, may be precluded from being granted patents, and may suffer financial loss as a result of unauthorized disclosure or unauthorized use of the Confidential Information.

**Now therefore,** to assure the protection and preservation of the Confidential Information to be disclosed, the Parties agree as follows:

# DEFINITIONS

## In this Agreement, the following words have the following meanings:

* “**Authorized Representative**” means a director, officer, employee, consultant, or subcontractor of the Recipient and/or an affiliated company thereof who has a “need to know” the Discloser’s Confidential Information to achieve the Purpose.
* “**Confidential Information**” means all information relating to the Project including inventions; discoveries; facts; data; ideas; chemical composition or formulation; techniques; products; processes; names; know how; routines; specifications; trade secrets; technology methods; computer programs; and other knowledge; The Confidential Information also includes information which the Recipient or an Authorized Representative becomes aware of by observation, deduction, reasoning, inspection, and overhearing.
* “**Discloser** means a Party to this Agreement who discloses Confidential Information to the other Parties to this Agreement.
* **Project**means the respective research and development projects, technologies and activities of the Parties including any potential collaborations or commercialization of those projects by or between the Parties.
* **Purpose** means the Recipient evaluating the Confidential Information to enable the Parties to explore a commercial relationship in relation to the Project.
* **Recipient** means a Party to this Agreement to whom Confidential Information is disclosed.

# DISCLOSURE OF CONFIDENTIAL INFORMATION

2.1 The Discloser will disclose the Confidential Information to the Recipient as soon as practicable after the signature by the Parties of this Agreement.

2.2 The Discloser will disclose to the Recipient only so much of the Confidential Information as the Discloser decides.

# USE OF CONFIDENTIAL INFORMATION

3.1 The Recipient may use the Confidential Information only for the Purpose and may not use the Confidential Information for any other purpose.

3.2 The Recipient may not lodge any patent application or any other application for the statutory protection of the Confidential Information, without the prior written consent of the Discloser.

# DISCLOSURE BY RECIPIENT TO AUTHORIZED REPRESENTATIVES

4.1 The Recipient may only disclose Confidential Information to an Authorized Representative who is bound by obligations of confidentiality to the Recipient at least to the extent imposed upon the Recipient by this Agreement.

# CONFIDENTIALITY

5.1 The Recipient must keep the Confidential Information secret and confidential.

5.2 The Recipient must not disclose to any third party or make known in any manner to any third party any part of the Confidential Information.

5.3 The Recipient must keep the Confidential Information in a secure place so as to ensure that unauthorized persons do not have access to the Confidential Information.

5.4 The Recipient acknowledges that damages may be an inadequate remedy to the Discloser in the event of any breach of this Agreement occurring, and that only an injunction might be adequate to properly protect the interests of the Discloser.

# WRITTEN CONSENT

6.1 The Discloser may consent to the Recipient making a disclosure or relieve the Recipient from complying with the whole or any part of this Agreement. Such a consent can only be in writing.

6.2 The Discloser may consent pursuant to clause 6.1 subject to conditions, including a condition that the person to whom the Recipient proposes to disclose executes in favor of the Discloser a Confidentiality Agreement upon the same terms as this Agreement.

# ENDING OF OBLIGATION OF CONFIDENTIALITY

7.1 The Recipient shall be relieved from the Recipient's obligations of confidentiality in this Agreement in respect to any part of the Confidential Information which:

* the Recipient can show was lawfully in the possession of the Recipient as at the date of the disclosure; or
* the Recipient can show is or becomes part of the public domain otherwise than by a breach of this Agreement; or
* the Recipient can show was received in good faith from a person entitled to provide it to the Recipient; or
* the Recipient can show was independently developed by the Recipient, by employees who did not have access to the Confidential Information.

7.2 If parts or elements or features of the Confidential Information are in the public domain, or otherwise fall within one of the categories mentioned in clause 7.1, but the combination of those parts or elements or features is unique, the Recipient may not take the benefit of clause 7.1.

# DISCLOSURE BY REASON OF LEGAL OBLIGATION

8.1 If the Recipient is required by law to make a disclosure of any part of the Confidential Information the Recipient must immediately notify the Discloser of that requirement and provide full particulars relating to the requirement to disclose, and its extent.

8.2 The Recipient must postpone any disclosure required pursuant to clause 8.1 for as long as the Recipient is able to, without prejudicing the Recipient’s own position.

8.3 Unless the Discloser is able to secure some relief to the Recipient to any legal obligation to disclose the Confidential Information, the Recipient is relieved from its obligations in this Agreement, but only to the extent of the legal obligation to disclose, and not further.

# OWNERSHIP OF CONFIDENTIAL INFORMATION

9.1 The Recipient acknowledges that all of the Confidential Information, including any intellectual property rights that subsist in any part of the Confidential Information, shall at all times remain the absolute property of the Discloser.

# NO RIGHTS TO CONFIDENTIAL INFORMATION

10.1 Nothing in this Agreement confers upon the Recipient any right or license to any part of the Confidential Information or any of the intellectual property rights in the Confidential Information.

# INFRINGEMENT OF CONFIDENTIALITY

11.1 If the Recipient shall learn or believe that:

* any unauthorized person has come into possession of any part of the Confidential Information;
* any unauthorized person is doing anything in contravention of rights that attach to and arise from the Confidential Information;

the Recipient must immediately report full particulars to the Discloser, and must provide to the Discloser all reasonable assistance and information it may request with respect to that information.

# TERM

12.1 This Agreement shall be effective as of the Effective Date. The Parties acknowledge that the obligations upon the Recipient in this Agreement continue to subsist for a period five (5) years from the date of the disclosure of Confidential Information, or until one of the events set out in this Agreement ending the obligation of confidentiality occurs, whichever occurs first.

# RETURN OF CONFIDENTIAL INFORMATION

13.1 The Discloser may at any time by notice in writing to the Recipient require the return to it of the Confidential Information.

13.2 Within seven (7) days of receipt of such a notice the Recipient must deliver to the Discloser all Confidential Information in its possession disclosed or provided by the Discloser together with all copies of all Confidential Information in its possession:

* provided by the Discloser; or
* which the Recipient has for any reason made.

13.3 Any part of the Confidential Information which cannot conveniently be returned by the Recipient to the Discloser shall be completely destroyed in such manner and at such time as directed by the Discloser, including by deletion from all computer records and electronic or magnetic storage devices. This will be confirmed in writing. However the Recipient shall be entitled to retain one (1) archival copy of such Confidential Information strictly for legal purposes.

# INDEMNITY

14.1 The Recipient indemnifies and agrees for the term of this Agreement to keep the Discloser indemnified from and against any direct damage arising out of any unauthorized use or disclosure of any Confidential Information by:

* the Recipient;
* any of the Recipient’s Authorized Representatives;
* any person in respect to whom the Discloser consents to the Recipient making a disclosure of the Confidential Information.

14.2 The obligation to indemnify the Discloser is a continuing obligation separate and independent of other obligations, and shall survive the expiration or termination of this Agreement.

14.3 NO PARTY SHALL BE LIABLE TO THE OTHER PARTIES FOR INDIRECT, INCIDENTIAL OR CONSEQUENTIAL DAMAGES ARISING OUT ANY TERMS AND CONDITIONS OF THIS AGREEMENT OR WITH RESPECT TO ITS PERFORMANCE HEREUNDER EXCEPT TO THE EXTENT SUCH DAMAGES WERE CAUSED BY GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH PARTY.

# ASSIGNMENT

15.1 The Parties’ rights and obligations under this Agreement will bind and inure to the benefit of their respective successors, heirs, executors and administrators and permitted assigns. None of the Parties shall assign or delegate its obligations under this Agreement either in whole or in part without the prior written consent of the other Parties, which shall not be unreasonably withheld.

# NO WARRANTIES

16.1 The Discloser makes neither warranty nor any representation that the Confidential Information:

* is fit for any, or any particular purpose
* does not infringe the rights of any other person.

16.2 None of the Parties makes any warranty or representation in relation to:

* the Confidential Information
* the likelihood or otherwise of the Recipient being granted any rights in relation to the Confidential Information
* the likelihood of the Parties entering into any further agreement of any type.

# CHANGES AND ADDITIONS TO THIS AGREEMENT

17.1 This Agreement sets forth the entire agreement between the Discloser and the Recipient as to its subject matter. None of the terms of this Agreement shall be amended except in writing signed by the Parties.

17.2 If any provision of this Agreement is found by a proper authority to be unenforceable, the remainder of this Agreement will continue in full force and effect.

# GOVERNING LAW

**18.1** This Agreement shall be governed by the laws of the Netherlands. Any claim or controversy arising out of or related to this Agreement or any breach hereof shall be submitted to the competent courts of Arnhem, the Netherlands, and each Party hereby consents to the exclusive jurisdiction and venue of such court.

# LANGUAGE

**19.1** This Agreement has been prepared in the English language and the English language shall control its interpretation.

# NOTICES

**20.1** Any notices required or permitted hereunder shall be given to the appropriate Party at the address specified above or at such other address as the Party shall specify in writing. All notices shall be sent by e-mail and confirmed by registered or certified mail to the Parties within three (3) business days.

\* \* \* \*

The Parties hereto have caused this Agreement to be executed by their duly authorized representatives:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **ODE B.V.** | |  | **Client name** | |
| Date : | Month xx, 202x |  | Date : |  |
| By : | Signature |  | By : |  |
| Name : | FirstName LastName, PhD |  | Name : |  |
| Title : | Director of xxxx |  | Title : |  |