Optional contractual provision: (provisions marked as “optional contractual provision” can be kept at user’s option or omitted without replacement)

[\_\_\_\_] alternative clauses and comments of industrial partners / public research institutes

[\_\_\_\_] options, alternatives

(\_\_\_\_) assistance for fill in areas, options, alternatives

\_\_\_\_\_\_\_\_\_\_\_ (to be completed by the user)

unilateral CONFIDENTIALITY AGREEMENT

concluded between

\_\_\_\_\_\_\_\_\_\_\_\_\_(university) (research institute)

represented by \_\_\_\_\_\_\_\_\_\_\_(name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(addres*s*)

(hereinafter referred to as the "**Disclosing Party**")

and

\_\_\_\_\_\_\_\_\_\_\_\_\_(party)

a company established under \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(e.g. Austrian) law

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_(commercial register number), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(competent court) having its registered office in \_\_\_\_\_\_\_\_\_\_(place)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(address)

(hereinafter referred to as the “**Receiving Party**”)

(or jointly or individually as “**Party**” or “**Parties**”)

In this **Agreement**, the male gender was used merely for reasons of simplicity and refers to both men and women equally.

# Definitions

## **Effective Date:**

**Effective Date** shall refer to the day when the **Parties** sign this **Agreement**. [**Effective Date** shall be \_\_\_\_\_\_\_\_\_\_\_\_\_(*date*).]

## **Disclosing Party:**

## **Receiving Party:**

The **Disclosing Party** shall be the **Party** disclosing information.

## **Confidential Information**:

\_\_\_\_\_\_\_\_\_\_\_\_\_(*e.g. study of an oncological drug*)

[Option] **Confidential Information** shall be any information communicated in writing, verbally or any other form whatsoever to the **Receiving** **Party** under this **Agreement**.

[Option] which is to be understood, exercising reasonable business judgment, to be of confidential nature.

[Option] which is marked as confidential at the time of its disclosure or, if not marked as such (e.g. if disclosed verbally or visually), referred to as confidential at the time of its disclosure and confirmed as such and specified in detail in writing by the **Disclosing Party** within a period of 30 (thirty) days.

[Option] which is marked as being of confidential nature, is disclosed in circumstances of confidence, or would be understood, exercising reasonable business judgment, to be confidential, including information viewed or learned by the **Receiving Party** during a visit to the **Disclosing Party's** premises.

All trade secrets pursuant to § 26 UWG (Gesetz gegen den unlauteren Wettbewerb – Unfair Competition Act) are considered **Confidential Information**.

## **Option:** Affiliated **Companies**

## **Alternative 1:**

**Affiliated Company** shall refer to any entity which directly or indirectly controls, is controlled by, or is under common control with a **Party**.

Supplemental clause of industrial partners / public research institutes:

Control shall refer to the power to, directly or indirectly, influence the management decisions of a company, be it by holding the majority of the shares in such company or by effectively exercising a controlling influence on the company’s management.]

## **Alternative** **2:**

[**Affiliated Company** shall refer to any corporation, company or other entity in which either **Party** or its ultimate parent company owns or controls, directly or indirectly, at least 50% of the issued shares/shares in the business or other voting rights entitling the holder to elect board members/managing directors; provided, however, that in any country where the local law does not permit foreign equity **investment** of at least 50%, the term **Affiliated Company** shall include any company in which either **Party** or its ultimate parent company owns or controls, directly or indirectly, the maximum percentage of such issued shares/shares in the business or voting rights permitted by local law, provided that the **Party** or its ultimate parent company exercises actual control over the **Affiliated Company´s** business operations.]

Alternative clauses of industrial partners / public research institutes:

**Alternative 3:**

**Affiliated Companies** shall be affiliated companies within the meaning of § 115 of the Limited Liability Company Act *(GmbHG)* or § 15 of the Stock Corporation Act *(Aktiengesetz, AktG)*.

[Option]: All **Affiliated Companies** of the **Parties** existing on the **Effective Date** are listed in **Annex ./1.5.**

**Alternative 4:**

**Affiliated Companies** shall refer to a) companies in whose case a **Party** indirectly or directly owns more than half of the capital or the assets of the company or can appoint more than half of the members of the managing or administrative body or the bodies appointed for legal representation or is entitled to conduct the business of the company and b) companies which indirectly or directly have the rights and means of influence mentioned under a) related to a contracting company and c) companies in whose case the contracting companies jointly have the rights and means of influence mentioned under a). Such jointly controlled companies are considered as affiliates of every contracting company.

## **Third Parties:**

**Third Parties** shall refer to all legal or natural persons excluding the **Parties**.

## **Personal Data**:

**Personal Data** are any information relating to an identified or identifiable natural person pursuant to Article 4 item 1 GDPR (General Data Protection Regulation).

# PrEamblE

## For the purpose of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (e.g. *evaluating a possible cooperation between the parties concerning …*) (hereinafter “**Purpose**”) the **Disclosing Party** discloses **Confidential Information** to the **Receiving Party.**

Alternative clause of industrial partners / public research institutes:

## 2.2. **Confidential Information** shall refer to \_\_\_\_\_\_\_\_\_\_\_\_\_(*specify what kind of information is to be disclosed by the individual Parties*).

## 2.3. To the extent that the Disclosing Party or the Receiving Party are more than two Parties, each Party to this Agreement shall have the right to disclose Confidential Information received under this Agreement from one Party to any other Party to this Agreement.

Alternative clause of industry partners/public research institutes:

2.3. To the extent that the **Disclosing Party** or the **Receiving Party** are more than two **Parties**, each **Party** to this **Agreement** shall have the right to disclose **Confidential Information** received under this **Agreement** from one **Party** to any other **Party** to this **Agreement** as **Confidential Information** within the meaning of this **Agreement**. The provisions of this **Agreement** relating to **Confidential Information** shall therefore continue to apply to any information disclosed in this manner.

# Pre-contractual exchange of information

## Prior to the **Effective Date,** a **Disclosing Party** may have disclosed the information set out in **Annex(es) .3./1.**, which is considered **Confidential Information**, and such information shall be subject to the same treatment as **Confidential Information** disclosed after the **Effective Date**.

# disclosure to affiliated companies

## The **Receiving Party** may pass on **Confidential Information** to one of its **Affiliated Companies** only subject to the prior written consent of the **Disclosing Party**. The **Parties** warrant to each other in all events that their **Affiliated Companies** will abide by the terms of this **Agreement**, and the **Receiving Party** shall fully indemnify and hold harmless the **Disclosing Party** for any breach of such obligations by an **Affiliated Company** of the **Receiving Party** and will take all steps required to stop any such breach and prevent its reoccurrence.

Supplement clause of industrial partners / public research institutes:

In particular, the **Receiving Party** shall ensure that the restrictions applicable to the passing on of information to employees and **Third Parties** pursuant to Article 5 will also be complied with by its **Affiliated Companies**.

## Variant 1:

The **Receiving Party** may pass on **Confidential Information** to those of its **Affiliated Companies** which have a need to know such **information** for the **Purpose** of this **Agreement**. The **Receiving Party** shall immediately inform the **Disclosing Party** of such passing on of information and to which **Receiving Party** exactly such information has been passed on. The **Parties** warrant to each other in all events that their **Affiliated Companies** will abide by the terms of this **Agreement**, and the **Receiving Party** shall fully indemnify and hold harmless the **Disclosing Party** for any breach of such obligations by an **Affiliated Company** of the **Receiving Party** and will take all steps required to stop any such breach and prevent its reoccurrence.]

Supplemental clause of industrial partners / public research institutes:

In particular, the **Receiving Party** shall ensure that the restrictions applicable to the passing on of information to employees and **Third Parties** pursuant to Article 5 will also be complied with by its **Affiliated Companies**.

## Variant 2:

The **Receiving Party** may **pass** on **Confidential Information** to its **Affiliated Companies**. **Affiliated Companies** may also exchange **Confidential Information** among themselves. For the purposes of this **Agreement**, the terms **Disclosing Party** and **Receiving Party** shall each comprise each **Party’s** **Affiliated Companies**. The **Parties** warrant to each other in all events that their **Affiliated Companies** will abide by the terms of this **Agreement**, and the **Receiving Party** shall fully indemnify and hold harmless the **Disclosing Party** for any breach of such obligations by an **Affiliated Company** of the **Receiving Party** and will take all steps required to stop any such breach and prevent its reoccurrence.]

## Supplemental clause of industrial partners / public research institutes:

## In particular, the **Receiving Party** shall ensure that the restrictions applicable to the passing on of information to employees and **Third Parties** pursuant to Article 5 will also be complied with by its **Affiliated Companies**.

# Disclosure to Employees and Third Parties

## Alternative 1:

## [The **Receiving Party** may pass on **Confidential Information** to those of its employees who need to know such information for the **Purpose** of this **Agreement**.]

Alternative 2:

## [The **Receiving Party** may pass **Confidential Information** exclusively to employees who need to know such information for the **Purpose** of this **Agreement** and who, in turn, are parties to a [written] non-disclosure agreement.]

## Alternative clause of industry partners/public research institutes:

## The **Receiving Party** may pass on **Confidential Information** to those of its employees who need to know such information in order to fulfil their tasks under this **Agreement** and shall ensure that its employees abide by these non-disclosure provisions while employed by the **Receiving Party** and, to the extent legally permissible, also after the termination of such employment.

## Optional additional clause for the purpose of imposing stricter regulations:

## [The **Receiving Party** shall notify the **Disclosing Party** immediately in writing of the identity of any **Third Party** to whom **Confidential Information** has been passed on.]

# NO Confidential Information

## Information shall not or no longer qualify as **Confidential Information** from the point in time that such information

1. is or becomes publicly available without breach of this **Agreement** (including disclosure by the **Disclosing Party** to a **Third Party** without a duty of confidentiality),
2. was already rightfully in the **Receiving Party‘s** possession prior to receipt from the **Disclosing Party**,
3. is received by the **Receiving Party** from a **Third Party** rightfully and without a duty of confidentiality,
4. is independently developed or ascertained by the **Receiving Party** without access to the **Confidential Information**, or
5. Option:

[is required to be disclosed by the **Receiving Party** pursuant to any order of a competent court or an administrative or governmental agency, provided that the **Receiving Party** shall give the **Disclosing Party** prompt written notice of such order and an opportunity to contest the need for such disclosure, or seek an appropriate protective order.]

[The **Receiving Party** shall have the burden of proof that any of the exceptions a) to e) applies.]

# Obligation to maintain Confidentiality

## The **Receiving Party** shall hold **Confidential Information** in confidence and

* shall neither disclose, disseminate nor publish it; and
* shall prevent the unauthorized use, dissemination or publication of **Confidential Information** by using the same [in any case no less than a reasonable] degree of care it uses to protect its own information of similar confidential nature; [shall take all reasonable measures to protect its secrecy and avoid disclosure to prevent it from falling into the public domain. Such measures shall include, but not be limited to, the highest degree of care that the **Receiving Party** uses to protect its own **Confidential Information** of a similar nature, but in any event no less than a reasonable degree of care;] and
* shall refrain from any form of reverse engineering.

Option:

[shall keep the existence and the terms of this **Agreement** and the fact that discussions relating to its subject matter are taking place between the **Parties** in strict confidence;]

shall only use it for the **Purpose** of this **Agreement** [shall only use it for the **Purpose** of this **Agreement** but in any case not for any commercial exploitation whatsoever].

Supplemental clause of industrial partners / public research institutes:

Unless upon explicit written consent by the **Disclosing Party** to the contrary, the **Receiving Party** shall hold **Confidential Information** in strict confidence and shall neither disclose, disseminate nor publish it, and shall not use **Confidential Information** in any manner whatsoever for any purposes other than the one specified in performance of this **Agreement**.

## The **Receiving Party** shall notify the **Disclosing Party** in writing of any actual or suspected misuse, loss or unauthorized disclosure of **Confidential Information** which may come to the **Receiving Party's** attention [without delay and stating all the relevant facts related to any actual or suspected misuse].

# Duration of Confidentiality

## The obligations of the **Parties** concerning **Confidential Information** disclosed under this **Agreement** shall terminate \_\_\_\_(number) years after the **Effective Date** of this **Agreement**.

## Alternative:

## [The obligations of a **Receiving Party** concerning **Confidential Information** disclosed under this **Agreement** by the **Disclosing Party** shall expire \_\_\_\_(number) years from the end date of this **Agreement**. The term of this **Agreement** shall be \_\_\_\_(number) [months] [years] from the **Effective Date**. It may be terminated by either **Party** upon written notice to the other for good cause, which includes, but is not limited to, breach of contractby the other **Party**. Provided, however, that all provisions of this **Agreement** relating to the rights and obligations concerning **Confidential Information** disclosed during the term of this **Agreement** shall survive such termination for \_\_\_\_(number) years.]

# Return, destruction of Confidential Information, Copies

## Upon the **Disclosing Party‘s** request, the **Receiving Party** shall either return all **Confidential Information** to the **Disclosing Party** or confirm in writing to the **Disclosing Party** that all documents containing **Confidential Information** have been destroyed and **Confidential Information** stored on media has been deleted; [provided, however, that the **Receiving Party** may retain a single archival copy of the **Confidential Information**, solely for the purpose of evidence.]

## A **Receiving Party** shall not make copies or reproductions of the **Confidential Information** except to the extent reasonably necessary for the **Purpose** of this **Agreement**. [Any permitted reproduction of **Confidential Information** shall contain the same confidential or proprietary legends which appear on the original. The **Receiving Party** shall keep a log identifying by number each copy of each item of **Confidential Information** that is made, together with the name, company name, address and department name of the individual to whom such copy was given.]

Supplemental clause of industrial partners / public research institutes:

## 9.3. Immediately upon termination of this **Agreement**, a **Receiving Party** shall, upon request by the **Disclosing Party**, return all documents and material given to it in relation to **Confidential Information** or verifiably destroy any copies made of, or its own documentation related to, **Confidential Information**. The **Receiving Party’s** \_\_\_\_(e.g. legal counsel/legal department) may retain a single archival copy of the **Confidential Information**, solely for the purpose of evidence.

# Warranty, Liability

## The **Disclosing Party** does not accept any warranty or liability as to the correctness, usability or completeness of any **Confidential Information** it discloses[, or that such information is free of any rights of **Third Parties**].

## The **Disclosing Party** furthermore does not accept any warranty or liability should the application or use of the information result in rights of **Third Parties** being infringed or other loss or damage being caused.

## By concluding this **Agreement**, neither **Party** shall be under any obligation to disclose any specific information.

# PLACE OF JURISDICTION, APPLICABLE LAW

## The [exclusive] place of jurisdiction for any and all disputes arising from and in connection with this **Agreement**, including disputes as to its existence and disputes arising after its termination, shall be the court competent for commercial matters in \_\_\_\_\_\_\_(place). The **Agreement** shall be governed by Austrian law, excluding the conflict-of-law rules. Application of the United Nations Convention on Contracts for the International Sale of Goods shall be explicitly excluded.

[Alternative: Arbitration]

## Any dispute, controversy or claim arising under, out of or relating to this **Agreement** and any subsequent amendments of this **Agreement**, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules.

## The arbitral tribunal shall consist of a sole arbitrator. The place of arbitration shall be \_\_\_\_\_\_\_(place). The language to be used in the arbitral proceedings shall be \_\_\_\_\_\_\_(e.g. German). The dispute, controversy or claim shall be decided in accordance with the law of \_\_\_\_\_(country).

[Alternative: Arbitration and Mediation]

Any dispute, controversy or claim arising under, out of or relating to this **Agreement** and any subsequent amendments of this **Agreement**, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be \_\_\_\_\_\_\_(place). The language to be used in the mediation shall be \_\_\_\_\_\_\_(e.g. German).

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within 60 (sixty) days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules.

Alternatively, if, before the expiration of the said period of 60 (sixty) days, either Party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other Party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The arbitral tribunal shall consist of a sole arbitrator. The place of arbitration shall be \_\_\_\_\_\_\_(place). The language to be used in the arbitral proceedings shall be \_\_\_\_\_\_\_(e.g. German). The dispute, controversy or claim shall be decided in accordance with the law of \_\_\_\_\_(country).

# No license, no PRIOR use, rights in results (if any)

## Under this **Agreement**, the **Receiving Party** does not acquire any right, nor right(s) in intellectual property rights, except for the limited right, granted under this **Agreement**, to use the **Confidential Information**.

Alternative clause of industrial partners / public research institutes:

## 12.1. Under this **Agreement**, the **Receiving Party** does not acquire any right to register **Confidential Information** of the **Disclosing Party** for IP right protection, nor any rights in intellectual property rights, except for the limited right, granted under this **Agreement**, to use **Confidential Information**.

## The disclosure of **Confidential Information** shall not give the **Receiving Party** any right of prior use thereof within the meaning of pertinent provisions under patent law.

Supplemental clause of industrial partners / public research institutes:

## The **Receiving Party** undertakes to make the results of all the work carried out using the **Disclosing Party’s** **Confidential Information** available to the **Disclosing Party**. All rights in the **Confidential Information** and the results shall belong exclusively to the **Disclosing Party**.

# data protection

## If the **Disclosing Party** discloses to the **Receiving Party** **Personal Data** or the **Receiving Party** got otherwise knowledge of personal data of the **Disclosing Party** and – provided the **Personal Data** are not processed by the **Receiving Party** as a data processor – these **Personal Data** may exclusively processed in performance of this **Agreement** and not processed for any other purposes, except as provided by the law. Specifically, these **Personal Data** may not be disclosed to **Third Parties** nor analysed for own purposes or used for profiling purposes.

## The **Receiving Party** ensures that **Personal Data** of the **Disclosing Party** are only provided to those of his employees who have a need to know them in the performance of this **Agreement**.

## The **Receiving Party** establishes its internal organisation in a way that it can ensure compliance with the applicable data protection laws, including but not limited to technical and organisational measures taken to prevent **Personal Data** from misuse or loss. Employees that have access to **Personal Data** must be made subject to a confidentiality obligation that continues to apply after termination of the employment.

## The **Receiving Party** does not acquire any rights in the **Personal Data** disclosed and is obliged to correct, delete and/or restrict as provided by law the processing of **Personal Data**. Any retention rights in **Personal Data** are prohibited.

## In addition to the legal requirements the **Receiving Party** is to inform the **Disclosing Party** immediately but not later than 24 hours of any infringement of protection of **Personal Data** including but not limited to loss of data. Upon termination of this **Agreement** the **Receiving Party** is to return or delete the **Personal Data** including any copies as provided by law.

# FINAL PROVISIONS

## Any and all rights and obligations arising from this **Agreement** must not be transferred to **Third** **Parties** without the consent of the respective other **Party**.

## This **Agreement** shall constitute the entire agreement between the **Parties** regarding the object of the **Agreement**. There are no supplementary arrangements. Drafts, correspondence exchanged prior to signing, etc. may not form the basis for interpreting this **Agreement**.

## Any changes or amendments of this **Agreement** must be made in writing (transmission via fax or e-mail shall not suffice) in order to take effect. This shall also apply to any waiver of this requirement of written form.

## Should individual provisions of this **Agreement** be or become invalid, void, illegal or unenforceable, this shall not affect the validity of the remaining provisions of this **Agreement**. The invalid, void, illegal or unenforceable provision(s) shall be replaced by (an) alternative provision(s) which most closely correspond(s) to the original intent of the **Parties** to the extent that this is legally possible and whose economic effect best correspond(s) to the effect intended by the invalid, void, illegal or unenforceable provision(s). The same applies if loopholes are detected that need to be filled.

## 2 (two) copies of this **Agreement** shall be signed and each shall be deemed an original, with one being handed out to each of the **Parties**.

# CONTACT PERSONS

Any and all correspondence shall be addressed to:

For \_\_\_\_\_\_\_\_\_\_\_\_\_(*Disclosing Party*)**:**

Date: \_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*[Name and title/position] [Signature]*

For \_\_\_\_\_\_\_\_\_\_\_\_\_(*Receiving Party*):

Date: \_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## *[Name and title/position] [Signature]*

Supplemental clause of industrial partners / public research institutes:

Any change of contact persons and contact details is to be communicated to the respective other **Party** without delay; otherwise any and all declarations, statements, notices and communications made shall be deemed duly served.

# **ANNEXES**

Annes ./3.1. Precontractually exchanged information.

All annexes form an integral part of this Agreement.

# **SIGNATURES**

For the University/the Research Institute:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_       \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Place, Date]                   [Signature]

For the Industrial Partner:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_      \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Place, Date]                [Signature]