

## **NON-DISCLOSURE AND RESTRICTED USE AGREEMENT FOR 5G-PPP [XYZ] PROJECT PROPOSAL PREPARATION**

This Agreement is entered into by and between the parties, which are listed in Annex A of this AGREEMENT

- hereinafter referred to as “PARTY” or “PARTIES” respectively ,

Whereas, the PARTIES intend to engage in discussions concerning the preparation of project proposals within the framework of *Project\_\_\_\_\_in response to the Horizon 2020 call\_* “XYZ” in the context of the 5G-PPP of the EU (“PURPOSE”);

Whereas, in the course of such activities it is anticipated that the PARTIES may wish to disclose to each other CONFIDENTIAL INFORMATION for the PURPOSE, which information the PARTIES regard as confidential;

Now therefore, the PARTIES enter into the following agreement (“AGREEMENT”):

- 1. Definitions.** “CONFIDENTIAL INFORMATION” shall mean any information (subject to the conditions of “Section 4 – Exceptions”,) and data, including, but not limited to, any kind of business, commercial or technical information and data disclosed by any one of the PARTIES, herein the “disclosing PARTY”, to any other of the PARTIES, herein the “receiving PARTY”, in connection with the PURPOSE, irrespective of the medium in which such information or data is embedded, which is – when disclosed in tangible form - marked “Confidential” by the disclosing PARTY or which is - when disclosed orally or visually - identified as such prior to disclosure and confirmed in written summary marked “Confidential” sent to the receiving PARTY within thirty days from said oral or visual disclosure. . CONFIDENTIAL INFORMATION includes any copies or abstracts made thereof as well as any apparatus, modules, samples, prototypes or parts thereof.

“proprietary PARTY” shall mean the PARTY who owns the CONFIDENTIAL INFORMATION.

“AFFILIATED COMPANY” shall mean any corporation, company or other entity, which controls, or is controlled by one PARTY or other AFFILIATED COMPANY of such PARTY, where control means ownership or control, direct or indirect, of fifty (50) percent or more of such corporation, company’s or other entity’s voting capital.

However, any such corporation, company or other entity shall be deemed to be an AFFILIATED COMPANY of one PARTY only so long as such ownership or control exists.

**2. Extent of Disclosure**

The extent of disclosure hereunder by the disclosing PARTY to the receiving PARTY of CONFIDENTIAL INFORMATION shall be entirely at the disclosing PARTY'S discretion consistent with the PURPOSE hereunder.

**3. Confidentiality. All CONFIDENTIAL INFORMATION**

a) shall be used by the receiving PARTY exclusively for the PURPOSE, unless otherwise expressly agreed to in writing by the proprietary PARTY;

b) shall not be distributed or disclosed in any way or form by the receiving PARTY to anyone except its own employees, its AFFILIATED COMPANIES' employees or another PARTY's employees, who reasonably need to know such CONFIDENTIAL INFORMATION for the PURPOSE and who are bound to protect the confidentiality of CONFIDENTIAL INFORMATION in the possession of the receiving PARTY either by their employment agreement or otherwise to an extent not less stringent than the obligations under this AGREEMENT. Prior to any disclosure to its AFFILIATED COMPANIES, the receiving PARTY must have an appropriate agreement with any such AFFILIATED COMPANY sufficient to require the AFFILIATED COMPANY to treat CONFIDENTIAL INFORMATION in accordance with this AGREEMENT. Any unauthorized disclosure or use of CONFIDENTIAL INFORMATION by AFFILIATED COMPANIES or by AFFILIATED COMPANIES' employees shall constitute a breach of this AGREEMENT;

c) shall be kept confidential by the receiving PARTY with the same degree of care as is used with respect to the receiving PARTY's own equally important confidential information to avoid disclosure to any third party, but at least with reasonable care; and

d) where appropriate shall not be reverse engineered, de-compiled or disassembled by the receiving PARTY; and

e) shall remain the property of the proprietary PARTY.

4. **Exceptions.** The confidentiality obligations shall not apply, however, to any information which:

a) was in the receiving PARTY's possession without confidentiality obligation prior to receipt from the disclosing PARTY;

b) is at the time of disclosure already publicly available or subsequently becomes available to the public through no breach by the receiving PARTY of this AGREEMENT;

c) is lawfully obtained by the receiving PARTY from a third party without an obligation of confidentiality, provided such third party is not, to the receiving PARTY's knowledge, in breach of any confidentiality obligation relating to such information;

d) is developed by the receiving PARTY or its AFFILIATED COMPANIES independently from the other PARTIES' CONFIDENTIAL INFORMATION;

e) is required to be disclosed; by the Receiving PARTY in order to comply with the requirements of binding applicable law or governmental regulation, provided that the receiving PARTY gives the proprietary PARTY prior written notice of such disclosure and takes reasonable actions to avoid such disclosure or minimize its extent, or

f) is approved for public release by written agreement of the proprietary PARTY.

The PARTY seeking the benefit of such exception shall bear the burden of proving its existence.

5. **Participation in similar H2020 projects.** In case a Party has entered or intends to enter into any similar project in response to the same Horizon 2020 call\_ ["XYZ"] in the context of the 5G-PPP of the EU in the field of [xyz] it shall inform the other Parties of such intention without undue delay.

6. **No license.** Licenses or any other rights such as, but not limited to patents, utility models, trademarks or trade names, are neither granted nor conveyed by this AGREEMENT, nor does this AGREEMENT constitute any obligation of the proprietary PARTY or disclosing PARTY to grant or convey such rights to the receiving PARTY.

7. **No remuneration; warranty/liability.** The PARTIES shall not be obligated to pay any remuneration for disclosure of any CONFIDENTIAL INFORMATION under this

AGREEMENT and agree that any CONFIDENTIAL INFORMATION is made available “as is” and no warranties (express or implied) are given or liabilities of any kind are assumed with respect to such CONFIDENTIAL INFORMATION, including, but not limited, to its fitness for any purpose, non-infringement of third party rights, or its correctness.

8. **Expiration - Termination; other contracts.** This AGREEMENT shall come into force upon execution by all PARTIES and shall have retroactive effect as from \_\_\_\_\_ (*date of first exchange of confidential information*). This AGREEMENT shall expire two (2) years later. A PARTY, who wants to terminate its participation in the PURPOSE of this AGREEMENT, shall send a written notice of termination to the other Parties. In these cases the AGREEMENT remains in force between the PARTIES, who do not wish to withdraw from the PURPOSE of this AGREEMENT. The rights and obligations and in particular the obligations of article 3 of this AGREEMENT of all PARTIES, including that of those PARTIES, who have terminated this AGREEMENT, which have accrued prior to termination and/or expiration shall, however, in any case survive the termination and/or expiration of this AGREEMENT for a period of four (4) years. The PARTIES shall not be legally obligated to conclude any other contract with regard to the PURPOSE.
  
9. **Return.** All CONFIDENTIAL INFORMATION exchanged between the PARTIES electronically and/or on record-bearing media, as well as any copies thereof, shall, upon respective request of the disclosing PARTY or proprietary PARTY, either be returned or at the requesting party’s option, be destroyed by the receiving PARTY after termination of this AGREEMENT. Such request shall be made in writing to the receiving PARTY within ninety (90) days after termination or expiration of this AGREEMENT. The receiving PARTY shall confirm in writing such destruction or return to the requesting party within fourteen (14) days after receipt of the respective request.

This clause shall not apply to routinely made back-up copies of electronically-exchanged CONFIDENTIAL INFORMATION who are bound to keep a copy under the applicable law, provided that any such copy shall be subject to an indefinite confidentiality obligation to the terms and conditions set out herein. The provision of this paragraph will continue to apply, notwithstanding termination of this AGREEMENT.

10. **Arbitration.** Unless amicably settled between the Parties, (including by mediation), all disputes arising out of or in connection with this AGREEMENT, including any question regarding its existence, validity or termination, shall be finally settled by arbitration

according to the Rules of Arbitration of the International Chamber of Commerce, Paris (“RULES“) by three arbitrators in accordance with said RULES. The seat of arbitration shall be Brussels, Belgium. The procedural law of this place shall apply where the RULES are silent. The arbitration proceedings shall be conducted in English.

Each PARTY shall be entitled to seek necessary and appropriate injunctive relief to maintain the status quo depending on the outcome of the arbitration or any other temporary measures from the courts of competent jurisdiction to enjoin the other PARTY from taking certain actions which allegedly infringe the rights of the PARTY bringing such claim, provided that any proceedings and decisions as to the merits of the dispute, including permanent injunctions, are exclusively governed and resolved by arbitration in accordance with the first paragraph of this Article 10.

11. **Governing law.** This AGREEMENT shall be subject to the substantive law in force in Belgium without reference to any other substantive law.
12. **No assignment.** This AGREEMENT may not be assigned by any PARTY without the prior written consent of the other PARTIES.
13. **Written form.** This AGREEMENT may not be modified or amended except by written amendments duly executed by authorised representatives of the PARTIES. This requirement of written form can only be waived in writing.
14. **Entire Agreement.** This AGREEMENT is the entire agreement between the PARTIES with respect to the subject matter contained herein and supersedes all prior or contemporaneous oral or written agreements concerning this subject matter. This AGREEMENT may only be modified in writing by the PARTIES. Any understanding between the PARTIES beyond the PURPOSE of this AGREEMENT shall be set forth in a separate written agreement containing appropriate terms and conditions.
15. **Export Regulations.** The PARTIES shall abide by the applicable export license regulations of the respective country(ies) and, when needed, the disclosing PARTY shall be required to apply for an export license grant prior to any transmission of CONFIDENTIAL INFORMATION and to inform the receiving PARTY sufficiently of any existing limitation.
16. **Third parties.** A person who is not a party to this AGREEMENT may not enforce any of its terms. Each PARTY shall remain liable for the compliance or non-compliance by its AFFILIATED COMPANIES with the terms and conditions of this AGREEMENT.

17. **Counterparts** : This AGREEMENT shall be executed in counterparts, two for each signing PARTY listed in Annex A of this AGREEMENT, all of which together shall constitute one and the same instrument. Each PARTY shall send its signed counterparts to the proposed co-ordinator for the [XYZ] Project, which proposed co-ordinator has an obligation to send copies of all the signed counterparts to each PARTY within sixty (60) days of receipt of the signed counterparts.

## **Annex A: List of Partners, who signed this AGREEMENT**

**A**

Authorised to sign on behalf of

**A**, having its registered office at **Toy Town**

Signature:

Name: **Dr. Anyone**

Title: **Managing Director**

**B**, having its registered office at, **Sweden**

Signature:

Name: **Dr. B**

Title: **CEO**