# Non-disclosure Agreement

**Date from which the Agreement enters into force:** [●]

**PARTIES:**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **POLPHARMA** | **COUNTERPARTY** | |
| Company’s name: | **ZAKŁADY FARMACEUTYCZNE “POLPHARMA” SPÓŁKA AKCYJNA** |  | |
| Address: | Pelplińska Street 19, 83-200 Starogard Gdański |  | |
| **A** |  | Please complete only part A, if the Counterparty is a company registered in a company register |
| Name of the court or relevant register: | District Court for Gdańsk Północ in Gdańsk,  7th Commercial Division of the National Court Register |  | |
| Register number: | 0000127044 |  | |
| Tax identification number: | 5920202822 |  | |
| Statistical identification number: | 190929369 |  | |
| Share capital\*  \*if applicable | 100 207 830,00 zlotys,  paid in full |  | |
| Represented by\*:  \*name, surname and function |  |  | |
| Contact persons: |  |  | |
| **B** |  | Please complete part B if the Counterparty is a natural person or a sole entrepreneur | |
| Name and surname / Name of the enterprise: |  |  | |
| Address: |  |  | |
| Personal identity number: |  |  | |
| Tax identification number: |  |  | |
| Statistical identification number: |  |  | |
| Represented by\*:  \*name, surname and function |  |  | |
| Contact persons: | Name: [●]  Email: [●]  Phone number [●] | Name:  Email: [●]  Phone number [●] | |

1. **PURPOSE**

In connection with the procurement process, including preparation of the offer for the Price Inquiry No. NUSI/76/PR71749/2024 and possible further collaboration involving data exchange during negotiations, offer preparation and service delivery within the scope of ongoing R&D projects (the '**Purpose**'), the Parties will share Confidential Information with each other.

1. **CONFIDENTIAL INFORMATION**
   1. “**Confidential Information**" shall mean any information disclosed by, or on behalf of, one Party (the "**Discloser**") to another Party (the "**Receiver**") in connection with the performance of the Purpose. Confidential Information is in particular information:
      1. regarding the Purpose, conclusion of the Agreement and its content,
      2. regarding the Party's enterprise or business activity, in particular, constituting its Trade Secret,
      3. of an economic, financial, commercial, marketing, scientific, technical, technological, administrative, organizational, know-how, personal (including contact information: email addresses, phone numbers, etc.), planning or strategic nature.

"**Trade secret**" is defined by the Law on Combating Unfair Competition of April 16, 1993. According to Article 11 (2), a business secret is:

technical, technological, organizational information of the enterprise or other information of economic value,

which, either as a whole or in a particular compilation and collection of their elements, are not generally known to, or not readily available to, persons normally dealing with this type of information,

as long as the person entitled to use or dispose of the information has taken steps, with due diligence, to keep it confidential.

The law and its definition may change - the current definition always applies.

* 1. The form in which the Confidential Information will be disclosed is irrelevant to its confidential nature.
  2. **Access to Confidential Information** may be granted only to:
     1. employees and associates of the Parties,
     2. Affiliates of the Parties,
     3. advisors/consultants, lawyers and tax advisors,

to whom disclosure of Confidential Information is necessary in connection with the implementation of the Purpose and who are obliged to maintain confidentiality to the same extent as specified for the Parties in the Agreement.

**"Affiliate"** means any entity that directly or indirectly controls, is controlled by, or is under common control with a Party. For these purposes, "control" refers to: (i) the possession, directly or indirectly, of the power to manage the management or policies of the entity, whether through ownership of voting shares, by contract or otherwise, or (ii) the possession, directly or indirectly, of thirty percent or more of the voting shares.

* 1. The Receiver shall be liable for the acts and omissions of the entities listed in Section 2.3 as for its own acts and omissions.
  2. If the Receiver is required to disclose Confidential Information in accordance with applicable regulations, the Receiver shall promptly notify the Discloser and shall disclose the Confidential Information only to the extent necessary. It shall also use its best efforts to minimize the damage that the Discloser may suffer as a result of the disclosure.
  3. Confidential Information shall not be information that **without breach of the Agreement**:
     1. are publicly available,
     2. the Receiver has lawfully obtained independently of the Discloser,
     3. is independently created for or on behalf of the Receiver without use of or access to the Discloser’s Confidential Information,
     4. is in response to a valid order by a court or other governmental body, was otherwise required by law, provided however that Receiver shall provide Discloser with prompt prior written notice thereof and any commercially reasonable assistance to enable Discloser to seek a protective order or otherwise prevent or contest such disclosure.

1. **DUTIES**
   1. The Parties shall:
      1. use Confidential Information solely for the realization of the Purpose,
      2. not publish, share or disclose the Confidential Information without the prior consent of the Discloser (in which the Discloser may reserve the terms of disclosure),
      3. exercise due diligence to safeguard Confidential Information from disclosure,
      4. immediately inform each other of violations of the Agreement.
   2. If the Parties decide not to pursue the realization of the Purpose, the Receiver shall immediately cease using the Confidential Information. In such event, the Receiver shall return to the Discloser or, at the Discloser's request, destroy the Confidential Information. The Receiver may retain appropriately secured Confidential Information if its retention is necessary:
      1. for technical and archival reasons (e.g. backups and e-mail archives),
      2. to secure the interests of the Parties (performance of legal and regulatory obligations, audit, court proceedings, pursuing claims from the other Party).
2. **PERSONAL DATA**
   1. In connection with the conclusion of the Agreement, the Parties, as controllers of personal data, will make personal data of the following persons available to each other:
      1. representatives signing the Agreement,
      2. employees or associates of the Parties involved in the performance of the Agreement.
   2. When fulfilling the information obligation, the Parties shall communicate to each other the content of information clauses, undertake to inform the above-mentioned persons of the processing of their personal data and to communicate to them the content of the information clause of the other Party. Polpharma's information clause is included in **Appendix No. 1** to the Agreement. The Counterparty's information clause is included in ……………………..
   3. If, in order to perform the Agreement, it is necessary to entrust the processing of personal data, the Parties shall conclude an appropriate agreement in this regard, which will constitute an appendix to this Agreement.
3. **TERM OF THE AGREEMENT**
   1. The Agreement**:**
      1. is valid for 5 (five) years from the date of its entry into force,
      2. may be terminated before the end of the term only by agreement of the Parties.
4. **EXCLUSIVITY OF RIGHTS**
   1. Confidential Information and the materials that are their carriers remain the property of the Discloser and, at its request, the Recipient is obliged to return them.
   2. Disclosure of Confidential Information will not be considered as granting any intellectual property rights. Especially:
      1. shall not be treated as granting a license or authorization to exercise derivative rights to the **Works**;
      2. shall not be equivalent to granting rights to any **Inventive Projects**, as well as any rights to patents relating thereto.

"**Work**" is defined by the Act on Copyright and Related Rights of February 4, 1994. Pursuant to Art. 1 sec. 1, the subject of copyright is any manifestation of creative activity of an individual nature, established in any form, regardless of the value, purpose and manner of expression.

The "**Inventive project**" is defined by the Industrial Property Law of June 30, 2000. Pursuant to Art. 3 sec. 1 point 6, when referring to Inventive Projects, it means inventions, utility models, industrial designs, topographies of integrated circuits and rationalization projects.

The laws and the definition may change - the current definition always applies.

1. **APPLICABLE LAW AND SETTLEMENT OF DISPUTES** 
   1. This Agreement shall be exclusively governed by and construed in accordance with the substantive laws of **Poland**, excluding its conflict of laws principles and excluding the UN Convention on Contracts for the International Sale of Goods.
   2. Any dispute arising out of or in relation to this Agreement, including regarding the validity, breach, or termination thereof, shall be resolved by arbitration in accordance with the **Swiss Rules of International Arbitration of the Swiss Arbitration Centre** in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules.
   3. The number of arbitrators shall be 1 (one) where the amount in dispute does not exceed 1 000 000 (one million) euro. Where the amount in dispute exceeds 1 000 000 (one million) euro the number of arbitrators shall be 3 (three). The amount in dispute includes the claims made in the Request for Arbitration and any counterclaims made in the Answer to the Request for Arbitration.
   4. The language of jurisdiction (including documents) will be English.
   5. The decision of the Arbitral Tribunal shall be final, and the Parties waive all challenge of the award in accordance with Art. 192 Private International Law Statute.
   6. The Place of arbitration will be Zurich, Switzerland.
2. **SANCTIONS**
   1. The Parties declare that as of the date of entering into the Agreement, the Parties, members of their bodies, and (to the best of their knowledge) employees of the Parties are not subject to sanctions imposed by the European Union, the Republic of Poland, the United States of America, or the United Kingdom.
3. **FINAL PROVISIONS**
   1. For ongoing communication related to the execution of the Agreement, contact persons are indicated in the table with the description of the Parties.
   2. Each Party may transfer the rights and obligations under this Agreement to a third party only with the prior consent of the other Party.
   3. Notifications and consents required under the Agreement as well as amendments to the Agreement may be made by the Parties only:
      1. electronically - using qualified electronic signatures or electronic signatures submitted online, using a tool selected by both Parties (e.g. DocuSign) or
      2. in writing - using handwritten signatures.

Notices, consents and amendments made in any form other than those indicated above will be null and void.

* 1. If the Agreement is signed by hand, it will be drawn up in the number of copies corresponding to the number of Parties. If electronic signatures are used, each copy of the Agreement will be its original.

/ signatures of the Parties /

**Appendix No. 1 to the Agreement -** **POLPHARMA Information Clause**

Information on the processing of your personal data by Polpharma:

* Your personal data controller is Zakłady Farmaceutyczne Polpharma S.A. with its registered office in Starogard Gdański, at Pelplińska Street 19, 83-200 Starogard Gdański, entered in the Register of Entrepreneurs kept by the District Court for Gdańsk-Północ in Gdańsk, 7th Commercial Division of the National Court Register, KRS No.: 0000127044, Tax ID No. (NIP): 5920202822 (“Polpharma”).
* Your personal data will be processed for the following purposes:
* performance of the agreement;
* making tax settlements and keeping accounting records;
* defending, establishing or asserting any potential claims between us and you;
* creation of anonymised statistical data for the purposes of the Transparency Report;
* You have the right to:
* access your personal data,
* request their rectification,
* request their removal,
* request restriction or objection to their processing,
* request data portability,
* lodge a complaint against unlawful processing of personal data with the President of the Personal Data Protection Office.
* You can obtain full information on the processing of personal data at: <https://polpharma.pl/en/clauses/> , by scanning the following QR code, by calling: +48 22 309 51 56, or it can be provided to you for inspection by Polpharma Commercial Representative.

