**CONFIDENTIALITY AGREEMENT**

This confidentiality agreement (the “Agreement”) is made by and between:

**[XXX]**, a company organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_, having its registered offices at \_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as " XXX ")

and

**Zakłady Farmaceutyczne “POLPHARMA” S.A.,** a joint stock company with its principal office at ul. Pelplińska 19, Starogard Gdański, Poland, enrolled in the list of entrepreneurs in the National Court Register held by the District Court Gdańsk-Północ in Gdańsk, under the No. KRS 0000127044, NIP 592-02-02-822, initial capital 100 207 830 PLN (fully paid in); represented by duly authorized representatives, as undersigned below (hereinafter referred to as "POLPHARMA")

[**XXX**] and POLPHARMA are also referred to as "Party" or "Parties", respectively.

***WHEREAS,*** the Parties in connection with the intention to prepare a bid in the purchase procedure **JODO/26/PR97811/2025** regarding service consisting in the transfer of manufacturing technology, transfer of analytical procedures, manufacturing batches for the purposes of clinical and registration studies, as well as performance of stability studies of an innovative drug product (containing category OEB 3 antiseptic active substance) in the form of preservative-free eye drops. (hereinafter referred to as the ”purpose”), whereby each Party possesses valuable information, technical knowledge, experience and data of a secret and confidential nature which may be regarded as assets of scientific, clinical or commercial value, and is willing to disclose such information to the other Party in anticipation of a possible business engagement (hereafter referred to as the “Purpose”).

***THEREFORE,*** the Parties hereto, intending to be legally bound in consideration of the mutual covenants and agreements set forth herein, hereby agree and contract as follows:

1. **DEFINITIONS**
	1. **“Affiliates”** shall mean (i) any corporation or business entity, which fifty percent (50%) or more of shares or voting stocks is owned directly or indirectly by a Party; or (ii) any corporation or business entity which directly or indirectly owns fifty percent (50%) or more of shares or voting stocks of a Party or (iii) any corporation or business entity under the direct or indirect control of such corporation or business entity as described in (i), (ii) or (iv); (iv) any corporation or business entity having the power to direct or cause the direction of the management and policies of a Party, whether through the ownership of voting stock, by contract or otherwise.
	2. **“Authorised Recipients”** shall mean, in the case of each Party, such Party’s directors, officers, consultants, employees and Affiliates, and/or any individual or organisation engaged by them to assist in the Purpose, provided that each such company, individual and organisation is legally bound to keep confidential any of the Confidential Information disclosed by the Disclosing Party on terms no less onerous than those set out herein.
	3. **"Confidential Information”** shall mean all Product-related information of commercial value revealed by Disclosing Party directly or indirectly (in particular through Disclosing Party’s Affiliates) in connection with accomplishing the Purpose, whether it be technical, commercial, financial, business, competitively sensitive or scientific or any other information in oral written or other tangible form such as audio tapes, video tapes, computer discs, machines, prototypes, designs, specifications, articles of manufacture, drawings, human or machine readable documents and/or the Parties’ activities, such as inventions, discoveries, techniques, processes, know-how, trade secrets, ideas, concepts, marketing plans, financial plans, business plans, or technical information of any kind whether in existence at the date hereof or hereafter to come into existence, if only such information has been conspicuously designated as "Confidential". Information disclosed orally shall only be considered Confidential Information if confirmed in writing within seven (7) days of disclosure.
	4. **“Disclosing Party”** shall mean the Party disclosing its Confidential Information directly or indirectly to the other Party pursuant to this Agreement.
	5. **“Effective Date”** shall mean the date of last Party`s signature under the Agreement.
	6. **“Receiving Party ”** means the Party receiving the Confidential Information of the other Party.
2. **UNDERTAKING**
	1. In consideration of the disclosure to the Receiving Party by the Disclosing Party of Confidential Information the Receiving Party undertakes :
		1. to treat as strictly confidential and not to disclose to any third party any of the Confidential Information,
		2. not to make use of any such Confidential Information for any purpose other than the Purpose,
		3. to process received data containing or comprising out of Confidential Information in a way that secures safety and confidentiality of Confidential Information, in particular that no tools or instruments, including informatic or AI tools will be used for processing which may not fully secure safety and secrecy of such data,
		4. to treat all Received Information as being property of the Disclosing Party, unless Disclosing Party informs otherwise and to acknowledge that property of the information provided by the Disclosing Party shall remain to be Disclosing Party’s at all times, unless Parties agree otherwise in writing.

Neither Party shall also disclose to any third party:

1. the existence of this Agreement and its terms, and
2. the fact that it is in discussion with the other Party and evaluating another Party's Confidential Information, or the nature of the discussions, and
3. in the event of a dispute under this Agreement, also the fact the dispute occurred and the resolution of such dispute (whether this would be an agreement or settlement concluded between the Parties or an arbitration award issued in the course of arbitration proceedings).

This information will be deemed and treated as Confidential Information under the terms of this Agreement.

* 1. The Receiving Party agrees only to disclose the Confidential Information received by it:
		1. to those of its Affiliates and/or Authorised Recipients who need to know the Confidential Information for the Purpose and who are made aware of the obligations of confidentiality herein, are directed to keep in confidence the Confidential Information and the nature of the discussions and are bound to the Receiving Party by obligations of confidentiality at least as restrictive as the terms of this Agreement. Each Party shall be responsible for any breach of this Agreement by such Affiliates and/or Authorised Recipients,
		2. upon acquiring prior written consent of the Disclosing Party,
		3. when the disclosure, to the extent demanded, is required by law or award or order of a competent court or governmental agency or authority, provided the required Party promptly (as is practicable under the circumstances) provides to the disclosing Party/Parties notice of such disclosure request, so that the disclosing Party/Parties may seek an appropriate protection order or otherwise prevent such disclosure. The Receiving Party shall however remain obliged to maintain the confidentiality of the information as far as is reasonable given the specific circumstances. Any such disclosure shall also not relieve the Receiving Party of its obligations contained herein.
1. **LIMITATION**

The obligation of confidentiality shall not extend to any part of the Confidential Information which falls within one of the following exceptions:

* 1. information which at the time of disclosure is part of the public domain;
	2. information which, after disclosure, during the term of this Agreement, becomes part of the public domain by publication or otherwise, except by breach of this Agreement proven by the Disclosing Party;
	3. information which was in the possession of the Receiving Party at the time of disclosure or which the Receiving Party receives on a non-confidential basis from a third party that is entitled to disclose it on a non-confidential basis, unless Disclosing Party will establish by adequate proof that such information was obtained directly or indirectly, from the Disclosing Party under any obligation of confidentiality;
	4. information which was or is independently developed or discovered by or for the Receiving Party or its Authorised Recipients without the use of the Confidential Information, as established by competent written evidence.
1. **RETURN OF CONFIDENTIAL INFORMATION**
	1. The Parties shall not copy, duplicate, extract or otherwise reproduce by any means, all or any part of the Confidential Information.
	2. All documents containing Confidential Information in tangible or electronic form which are in the possession of the Receiving Party under this Agreement shall remain the property of the Disclosing Party, and all such documents, together with any copies or excerpts thereof, shall be returned to the Disclosing Party or destroyed upon the receipt of Disclosing Party’s written request, in 3 (three) months from receiving such request, except that each Party may retain :
		1. (one) copy of the other Party's Confidential Information in archival form solely for purposes of determining its obligations hereunder and under applicable law;
		2. any electronic copies of Confidential Information that are created pursuant to IT back-up, disaster recovery procedures or otherwise, which copies shall remain confidential and shall not be accessed for any purpose other than for deletion or destruction.
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 **Annex No. 1** to the Agreement. The XXX’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. **GENERAL**
	1. The Disclosing Party is and shall remain the exclusive owner of its Confidential Information and all patent, copyright, trade secret, trademark and other intellectual property rights therein. No right or license, either expressed or implied, under any patent is granted hereunder to the Receiving Party. Further, while each Party hereto shall act in good faith in disclosing the Confidential Information which is accurate and adequate for the purpose set forth herein, neither Party provides any warranty or representation as to the accuracy and completeness of the Confidential Information disclosed by it hereunder. The Disclosing Party shall have no liability to the Receiving Party in connection with the Receiving Party’s use of the Disclosing Party’s Confidential Information. The Receiving Party shall have no liability to the Disclosing Party in connection with its use of the Disclosing Party's Confidential Information consistent with the Purpose.
	2. The Parties expressly represent that they are the owner of or have control over and that they have the full right and authority to disclose the Confidential Information to each other; the Parties do not have any obligation to any third party which would interfere with its ability to comply with the terms of this Agreement.
	3. The Parties shall not be obliged to enter into any further agreement and each Party at its sole and absolute discretion can terminate any discussions and/or negotiations with the other Party at any time.
	4. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.
	5. This Agreement sets forth the entire agreement among the Parties as to the subject matter hereof, and shall supersede any previous confidentiality agreements relating to the Purpose. None of the terms of this Agreement shall be amended or modified except in writing signed by the Parties hereto. For such purpose the written form shall include, besides the exchange or transmission, as applicable, of original documents in handwritten form, the exchange of transmission of documents signed in documentary form, by means of the electronic signatures compliant to eIDAS Regulation (EU) 2014/910 e.g. DocuSign.
	6. This Agreement will bind, benefit and be enforceable by and against the Parties and their successors. This Agreement is not assignable by either Party except with the written consent of the other Party; provided, however, that (a) either Party may assign this Agreement to any of its Affiliates without the consent of the other Party, but upon providing a written notice, and (b) either Party may assign or transfer this Agreement to a successor to all or substantially all of the assets of such Party through merger, reorganization, consolidation or acquisition, provided that, such successor is not a direct competitor of the other Party and such Party provides a written notice to the other Party.
	7. This Agreement shall enter into force as from the Effective Date and shall remain in full force and effect for a period of \_\_\_\_\_\_\_\_ . Each Party’s obligations of confidentiality and non-use hereunder shall continue for a period of five (5) years from the expiration of this Agreement.
	8. In the event that any provision of this Agreement is invalid or unenforceable it is mutually agreed that this Agreement shall continue in effect except for the part declared invalid or unenforceable, provided it might be reasonably deemed that the Parties would enter into this Agreement even without such invalid, illegal or unenforceable provision. The Parties shall use it commercially reasonable efforts to replace such invalid or unenforceable provision with new provision reflecting its original intention as closely as possible.
4. **GOVERNING LAW, ARBITRATION**
	1. This Agreement shall be exclusively governed by and construed in accordance with the substantive laws of **Switzerland**, 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 City of Zurich, Switzerland.
5. **SANCTIONS CLAUSE**
	1. The Counterparty represents that, as at the date of entering into the Agreement with the Company, neither the Counterparty nor any of its subsidiaries, parties otherwise linked to the Counterparty by personal, capital or organisational connections, members of governing bodies or, to the best of the Counterparty’s knowledge, any employee of the Counterparty are subject to economic or financial sanctions, trade embargoes or other sanctions imposed, administered or enforced by the European Union, the Republic of Poland, the United States of America or the United Kingdom, in particular, they are not included in any list of persons subject to the above-mentioned sanctions (the “Sanctions”) (“Sanctioned” persons, entities, goods, etc.).
	2. Additionally, the Counterparty declares that, during the term of the Agreement with the Company:
		1. the Counterparty is and will be operating in accordance with the applicable Sanction regulations;
		2. the Counterparty does not and will not violate the applicable Sanction regulations;
		3. no proceedings have been initiated against the Counterparty in connection with a breach of the Sanctions, nor has the Counterparty been involved in any practices intended to circumvent or evade the Sanctions; and
		4. the Counterparty will actively monitor entities subject to the Sanctions (i.e. included in the applicable lists of Sanctioned entities) and will not, directly or indirectly, provide any funds or economic resources to or for the benefit of Sanctioned entities, and that such funds or resources will not be used for the benefit of such entities to the extent that such actions are prohibited under the applicable Sanction regulations.
	3. The Counterparty is required to immediately notify the Company if and when any of the above circumstances change.
	4. The Company reserves the right to terminate the Agreement concluded with the Counterparty with immediate effect, without any financial consequences to the Company, if it is determined that the Counterparty or a party linked to the Counterparty (as referred to in Clause 1 above) is Sanctioned or is at reasonable risk of being considered Sanctioned.
	5. The Company reserves the right to not perform or to temporarily refrain from performing any or all provisions of the Agreement if, due to a change in Sanction regulations, the performance of the Company’s contractual obligations would result in a breach of such regulations. In such case, the Company will not be liable for any damages arising from the non-performance or temporary refrainment from performance of the Agreement.
	6. In the event of any breach of the Agreement by the Counterparty that could result in liability under the Sanctions towards the Company for any loss, damage or penalties imposed as a result of the Sanctions, the Company will be entitled to claim damages from the Counterparty on a general basis.

***IN WITNESS WHEREOF,*** the Parties hereto have caused this Agreement to be executed by their respective representatives in two (2) original copies, as of the Effective Date. ///////////

***IN WITNESS WHEREOF,*** the Parties hereto have caused this Agreement to be executed in documentary form, by means of the electronic signatures compliant to eIDAS Regulation (EU) 2014/910 as of the Effective Date.

**Annexes:**

* *Polpharma’s Information clause*

**POLPHARMA [XXX]**

|  |  |
| --- | --- |
| Signature: | Signature: |
| Name:  | Name: |
| Title:  | Title:  |

**Annex no. 1**

**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/klauzule/> , by scanning the QR code below, by calling: +48 22 309 51 56, or it can be provided to you for inspection by Polpharma Commercial Representative.

