

# Non-Disclosure Agreement

entered into by and between

**Grass GmbH**, Grassplatz 1, 6973 Höchst, acting for itself and all group companies\*, hereinafter referred to as „GRASS“, on the one part,

\* Grass GmbH (AT), Grass GmbH (DE), Grass Nordiska AB (SWE), Grass Italia SRL (IT), Grass Iberia S.A.U. (ES), Grass Movement Systems Ltd. (UK), Grass TR Mobilya Aksesuarları Ticaret Limited Şirketi (TR), GRASS (Shanghai) International Trading Co. Ltd (CN), GRASS ZA (PTY) LTD. (ZA), GRASS Australia/New Zealand PTY Ltd. (AUS), Grass Czech S.R.O., Cesky Krumlov (CZ), Grass America Inc. (USA), GRASS Canada Inc. (CA)

and

**Name**, address, hereinafter referred to as the „Service Provider“, on the other part;

each referred to separately as a „Party“ and together as the „Parties“ as follows:

## 1. Preamble

The Parties intend to enter into more detailed negotiations about a potential collaboration in the field of

description of the research and development project, licence agreement, etc.

and are currently evaluating the opportunities of such a project. For the purpose of such negotiations and evaluations it is necessary for both Parties [and for other group entities of the relevant Party] to disclose confidential information. This Agreement serves to maintain confidentiality of the information disclosed by either Party.

The Party who discloses confidential information to the other Party shall hereinafter be referred to as the „Disclosing Party“; the Party who receives confidential information from the other shall hereinafter be referred to as the „Receiving Party“.

## 2. Confidential information

For the purposes of this Agreement confidential information shall include the fact of conclusion of this Non-Disclosure Agreement, negotiations regarding the project described in more detail in the preamble, including without limitation the documents handed over and the information, experiences, formulae, drawings, models, technical records, process methods and other technical and/or commercial know-how communicated, irrespective of whether the same is provided in written, machine-readable, oral or visual form, by means of plans, drawings, sketches, documentation, samples, models, disks, computer programs, other records or documents, and irrespective of whether such information is deemed protected by law or is marked as confidential, or whether such information has commercial, financial, technical or non-technical contents, unless it may be assumed due to its nature that such information is confidential information.

The following shall not be deemed confidential information:

- information which is in the public domain at the time this Agreement is signed;
- information which came into the public domain at a later point in time other than due to a violation of this Non-Disclosure Agreement;
- information which was provably known by the Receiving Party prior to conclusion of this Agreement;
- information which was received by the Receiving Party from a third party who is authorised to disclose and/or pass on the information;
- or information with respect to which the Parties agree in writing that it shall not be treated as confidential.

## 3. Obligation to maintain secrecy

The Receiving Party undertakes to treat any confidential information as strictly confidential and to ensure that unauthorised third parties, in particular persons who are not involved in the project, gain no knowledge of the same. For the purposes of this Agreement the group companies of the GRASS Group shall not be deemed third parties and confidential Information may be exchanged with the same. This obligation to maintain the information obtained secret shall, in particular, include the duty not to use confidential information for purposes other than those stated in the preamble.

Any publications, be they press releases or technical publications in connection with the purposes stated in the preamble or the naming of the Party as a reference, shall require prior written consent from the Disclosing Party.

In the case that confidential information must be disclosed due to mandatory statutory requirements, the Parties undertake to immediately notify the Disclosing Party of this fact and of the scope of the confidential information to be disclosed. The Receiving Party who is under an obligation to disclose confidential information due to mandatory statutory requirements shall disclose confidential information only to the extent absolutely necessary.

#### **4. Transfer of the obligation to maintain secrecy**

The Receiving Party undertakes to disclose confidential information exclusively to those employees, selected external persons such as lawyers, tax advisors or auditors, or to other advisors or members of bodies who absolutely require access for the purposes stated in the preamble.

The Parties undertake to ensure to impose this obligation to maintain secrecy in writing on all persons (with the exception of disclosure to the auditors of the relevant patent offices) to whom confidential information as defined by this provision may be legitimately forwarded.

The employees' obligation to maintain secrecy shall be designed in such a way that the employee will be subject to confidentiality even after termination of the employment relationship to the extent permitted by law.

#### **5. Written documents**

Where written documents contain confidential information or confidential information is made available in another form, making copies shall be permitted exclusively for fulfilling the purposes stated in the preamble.

The Receiving Party shall immediately return or destroy all documents, copies made or internal records regarding confidential information and erase all electronically stored data if:

- one of the Parties is no longer interested in pursuing the purposes stated in the preamble;
- the Receiving Party is requested to do so in writing by the Disclosing Party.

Upon request the Receiving Party shall confirm to the Disclosing Party in writing that it has fulfilled its obligation. Either Party expressly acknowledges that it has no right to withhold such documents received and that it is obliged to return all documentation with no reimbursement of costs.

#### **6. Intellectual property**

The disclosure of confidential information and any transmission of relevant documents shall establish no proprietary rights or rights of use, or rights to industrial property rights, know-how or copyrights of the Receiving Party. All intellectual property rights and copyrights shall remain with the Disclosing Party.

The Parties mutually undertake not to make confidential information they receive from the Disclosing Party the subject matter of an application for a proprietary right or have the same done by third parties.

To the extent that the Receiving Party has been permitted in writing to apply for proprietary rights, grant licenses, engage in manufacturing or marketing according to the coordination and/or cooperation agreement, it shall be permitted to forward/disclose confidential information to third parties only for the purposes of applying for proprietary rights to development results arising from the coordination and/or cooperation, to license the above-mentioned proprietary rights to third parties and to manufacture and/or market products which contain the above-mentioned development results in whole or in part.

If inventions are made under this Agreement which lead to industrial property rights, GRASS shall be exclusively entitled to the same.

#### **7. Liability; Warranty**

Forwarding/Disclosure of confidential information to third parties that is not expressly permitted under this Agreement would lead to a significant disadvantage of the Disclosing Party and cause irreparable financial harm to its business, and shall therefore entitle it to demand immediate surrender or destruction of all confidential information by the Receiving Party, including all copies thereof. The Receiving Party shall immediately indemnify and hold harmless the Disclosing Party from and against any and all damages caused by a breach of this Agreement.

The Disclosing Parties exclude any liability and warranty for accuracy and completeness of the information delivered. In the case of liability this shall not include cases of wilful intent or gross negligence.

Furthermore neither of the Parties assumes liability for the consequences of unauthorised forwarding/disclosure of information by the Receiving Party. The Disclosing Party shall be informed immediately if and when any violation of confidentiality in any form whatsoever occurs.

#### **8. Contractual penalty**

For every single violation of a contractual obligation the violating party undertakes to immediately pay the Disclosing Party a contractual penalty in the amount EUR [REDACTED]. The Disclosing Party shall be entitled to claim damages exceeding the contractual penalty.

In repeated cases the Disclosing Party shall have the right to terminate any framework contract concluded between the Parties with immediate effect.

#### **9. Duration of the Non-Disclosure Agreement**

All obligations to maintain secrecy shall apply for a period of five (5) years after conclusion of this Non-Disclosure Agreement. However, the provisions of Clauses 4., 5., 6., 7., 8. und 10 shall apply for an indefinite period of time.

#### **10. Place of jurisdiction**

The court in Feldkirch having jurisdiction over the subject matter shall have exclusive jurisdiction over disputes arising out of or in connection with this Agreement. This Agreement shall be subject to Austrian law with the exception of the conflict of laws rules.

#### **11. Final provisions**

If any provision of this Agreement is or becomes ineffective, void, unlawful or unenforceable, the validity of the remaining provisions of this Agreement shall not be affected. The ineffective, void, unlawful or unenforceable provision(s) shall be replaced by a regulation which comes as close as possible to the will of the Parties to the extent permitted by law and the financial effect of which reflect that of the ineffective, void, unlawful or unenforceable provision(s) to the best possible extent. This shall also apply in the case of a gap.

This Agreement contains all agreements made between the Parties regarding the subject matter of the contract. No side agreements exist.

Modifications of or amendments to this Agreement shall be made in writing to be effective. This shall also apply to an abolishment of the requirement of written form.

Höchst, [REDACTED]

Town/City, [REDACTED]

[REDACTED]

GRASS GMBH

[REDACTED]

SERVICE PROVIDER