

**THIS NON-DISCLOSURE AGREEMENT** is made the \_\_\_\_\_ ("the Agreement").

**BETWEEN:**

(1) **EFETnet B.V.** (company No. 34197646) whose principal offices are Keizersgracht 62 - 64, 1015 CS Amsterdam, The Netherlands (the "Disclosing Party" or "Recipient", as applicable).

and

(2) \_\_\_\_\_ (Company No. \_\_\_\_\_ )  
whose registered address is at \_\_\_\_\_  
(the "Disclosing Party" or "Recipient", as applicable);

and

**Background**

In connection with the purpose described in the Schedule to this Agreement it is necessary for the Disclosing Party, (either party, as applicable) to disclose certain confidential information to the other. Each party, as Recipient acknowledges the importance of keeping such information confidential and has therefore agreed to use and keep the information confidential upon the following terms and conditions.

**OPERATIVE PROVISIONS:**

In consideration of the Disclosing Party disclosing to Recipient the Confidential Information described below IT IS AGREED as follows:

1. Definitions

In this Agreement the following terms shall have the following meanings:

- |                            |  |
|----------------------------|--|
| "Business Purpose"         | means the purpose described in the Schedule to this Agreement.   |
| "Confidential Information" | means all information, whether commercial, financial, technical or otherwise, disclosed to Recipient by Disclosing Party or otherwise obtained by Recipient after the date of this Agreement which is contained in any form whatsoever (including data, drawings, films, documents and computer readable media), whether or not that information is marked or designated as confidential or proprietary. The Confidential Information includes, without limitation, information concerning Disclosing Party's current and future products and services, its clients and marketing plans. |
| "Relevant Parties"         | means those of Recipient professional advisors who are required in the course of their duties to receive the Confidential Information for the purpose of enabling Recipient to consider whether to enter into a  |

relationship with Disclosing Party in relation to the Business Purpose.

2. Recipient Undertakings to Disclosing Party

2.1 Recipient acknowledges that the Confidential Information includes commercial assets of considerable value to Disclosing Party.

2.2 Recipient undertakes:

- (a) to treat all the Confidential Information as confidential, regardless of when it is disclosed or obtained and the form in which it is disclosed or obtained;
- (b) not without Disclosing Party's prior written consent in each case to communicate or disclose any part of the Confidential Information to any person other than the Relevant Parties or where Recipient is ordered by a court of competent jurisdiction to do so or there is a statutory obligation to do so, and in any event, before Recipient undertakes such disclosure, to notify Disclosing Party of this intention and to generally co-operate with Disclosing Party so that any disclosure can be kept to an absolute legal minimum;
- (c) not to use or circulate the Confidential Information within Recipient's own organisation except solely to the extent necessary for the Business Purpose;
- (d) not to use the Confidential Information in any way which would be harmful to Disclosing Party;
- (e) to ensure that the Relevant Parties are made aware, prior to the disclosure of the Confidential Information by the Recipient, of the confidential nature thereof, that the Relevant Parties' owe a duty of confidence to the Disclosing Party and agree to hold the Confidential Information in confidence in accordance with the terms of this Agreement and to ensure that the Relevant Parties sign a confidentiality agreement which contains provisions having the same effect as the terms of this Agreement;
- (f) to effect and maintain adequate security measures to safeguard the Confidential Information from unauthorised access, use and misappropriation;
- (g) to notify Disclosing Party promptly of any unauthorised use, copying or disclosure of the Confidential Information of which Recipient become aware and to provide all reasonable assistance to Disclosing Party to stop such unauthorised use and/or disclosure;
- (h) while negotiations between Disclosing Party and Recipient are continuing, not to disclose the fact (other than to the Relevant Parties) that such negotiations are taking place or make any private or public statement (save as may be required by law or regulation including that of any relevant stock exchange) regarding Recipient's intentions in relation to Disclosing Party.

3. The obligations of confidentiality in Clause 2 above shall not apply to any portion of the Confidential Information where Recipient can satisfactorily document and demonstrate that the Confidential Information concerned:

- (a) is or has become publicly known through no fault of Recipient's, Recipient's employees, agents and/or Relevant Parties; or

- (b) is lawfully received from an independent third party without any restriction and without any obligation of confidentiality; or
  - (c) is independently developed by Recipient without access to or knowledge or use of the Disclosing Parties' Confidential Information.
4. All material containing the Confidential Information, including magnetic tapes, documents, manuals, specifications, flowcharts, program listings and data file printouts ("the Materials"), shall be and remain the property of Disclosing Party and shall not be reproduced, (save as a limited number of copies can be made available to the Recipients' Relevant Parties and for which consent is hereby provided by the Disclosing Party) modified or adapted in whole or part without Disclosing Party's express written consent. Any copies of the Materials shall become Disclosing Party's property and shall include a notice stating that copyright and all other intellectual property rights of whatever nature in the Materials are vested in Disclosing Party.
  5. Nothing contained in this Agreement shall be construed as granting to or conferring on Recipient any rights by license or otherwise, expressly or impliedly, for any invention, discovery or improvement made, nor any intellectual property right of whatever nature, conceived or acquired prior to or after the date of this Agreement relating to the Confidential Information. No warranty is given that the Confidential Information is complete, accurate or free from third party rights.
  6. Disclosing Party may at any time demand the return or destruction (at the option of Disclosing Party) of the Confidential Information by notice in writing to Recipient and Recipient shall within five business days from the receipt of such notice either procure the delivery to Disclosing Party of each and every original and copy of the Materials supplied by Disclosing Party or its professional advisers or destroy all such Materials and copies thereof as the case may be, and Recipient shall certify in writing within five business days thereafter that such action has been undertaken.
  7. Recipient shall not make or permit others to make any reference to this Agreement, the Confidential Information or use Disclosing Party's name in any public announcements, promotional, marketing or sales materials or efforts without the prior written consent of Disclosing Party.
  8. Disclosing Party reserves the right at its absolute discretion:
    - (a) to cease negotiations with Recipient for any reason whatsoever and without liability (without being obliged to disclose such reason) and in particular but without prejudice to the generality of the foregoing if at any time Disclosing Party considers that Recipient have breached the letter or spirit of the undertakings contained in this Agreement; and
    - (b) to reject for any reason whatsoever (without being obliged to disclose such reason) any offer to contract with Disclosing Party, which Recipient may make.
  9. Recipient shall at all times (during and after the lifetime of this Agreement) indemnify and keep Disclosing Party fully and effectively indemnified in respect of all losses, costs (including reasonable legal costs), proceedings, damages, claims and expenses of whatsoever nature, arising out of or in connection with any wrongful disclosure or misuse of the other parties' Confidential Information without prejudice to any other rights or remedies including injunctive or other equitable relief.

10. The termination for this Agreement for any reason will not affect Recipient's obligations set out in this Agreement, and for the avoidance of doubt each party as a Recipient shall hold the Disclosing Parties' Confidential Information as described in the Agreement for a period of 2 years from the effective date of termination of the Agreement.
11. This Agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.
12. The parties acknowledge that each Disclosing Party and/or any of its affiliates may be considering, and may in the future consider, business ideas, products and technologies similar to or the same as those of the Business Purpose. Nothing in this Agreement shall prevent any Disclosing Party or any of its affiliates or Related Parties from pursuing any such ideas or pursuing businesses similar to or related to the Business Purpose, either internally or through investments in or representation of third parties.
13. The parties acknowledge that a Disclosing Party and/or its affiliates and its and their Relevant Parties may from time to time use Residuals for any purpose, including without limitation, in the development, manufacture, promotion, sale and maintenance of any products or services. The term "Residuals" means any Confidential Information retained in the unaided memories of any of the Disclosing Party, its affiliates, or their Related Parties who had access to Confidential Information pursuant to the terms of this Agreement. One's memory is unaided if one has not intentionally memorised the relevant Confidential Information with the intention of retaining and subsequently using or disclosing it for purposes unrelated to the Business Purpose.
14. In scope of this Agreement, EFETnet B.V. processes the personal data of data subjects in accordance with the EFETnet B.V. privacy policy (<http://efetnet.org/Privacy-Policy>). The other party is obliged and shall ensure to inform its affected data subjects accordingly about the envisaged processing of their personal data by EFETnet B.V. or EFETnet B.V.'s subcontractors.

**WHEREBY IT IS AGREED** as follows:

**IN WITNESS** whereof the hands of the parties or their duly authorised attorneys or representatives the day and year first above written.

.....

**SIGNED FOR AND ON BEHALF OF EFETNET B.V.**

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

.....

**SIGNED FOR AND ON BEHALF OF**

NAME:

TITLE:.

.....

## **SCHEDULE**

### **BUSINESS PURPOSE**

Access to the EFETnet Central Matching Service (CMS) application for the purposes of evaluation and familiarisation.