

CONFIDENTIALITY DISCLOSURE AGREEMENT

This Confidentiality Disclosure Agreement („the Agreement“) is entered into by and between:

Diatron MI, with a principal place of business at H-1097 Budapest, Tablas u.39., Hungary including its Affiliates worldwide (“Diatron”)

and

XXX, with a principal place of business at XXX (if required for the specific project please add “including its Affiliates worldwide” in order to also apply this CDA to affiliates.).

(If required add other Parties)

and

XXX, with a principal place of business at XXX (if required for the specific project please add “including its Affiliates worldwide” in order to also apply this CDA to affiliates.).

Each referred to as a “Party” and together referred to as “Parties”. The Parties agree as follows.

§ 1.Scope of agreement

The Parties intend to carry out a joint project, having the following content (“**Purpose**”).
please insert the purpose/project.

.....
.....
.....
.....

In connection with discussions on the Purpose, the Parties will provide each other with information which the Parties regards as confidential, and because of its confidentiality such information may have a certain value for the Party providing it.

§ 2.Definitions

The following terms and expressions shall have the following meanings:“**Confidential Information**” shall mean any and all confidential or proprietary information, whether of commercial, financial or technical nature, whether or not patented or patentable, that is disclosed in writing, orally, visually, in electronic form, by demonstration or otherwise by the Disclosing Party to the Receiving Party in connection with the Purpose under this Agreement, including but not limited to, data, drawings, diagrams, methodologies, composition, formulation, procedures, processes, standards, templates, sales and marketing and business plans, specifications, documents, knowledge, know-how (including but not limited to process or manufacturer know-how), models, samples, prototypes, materials, software including any source codes thereof, results of any testing and/or evaluation, research, development, improvements, design and design applications, process designs and process models, patents and patent applications, intellectual property, ideas and intentions, information concerning costs, prices, margins, profits, markets and market opportunities, customers or competitors, which is identified at the time of disclosure as being confidential with an appropriate reference in accordance with the medium used or would reasonably be expected by the Receiving Party to be confidential based on the nature of the information contained therein and the circumstances in which the information is provided. Confidential Information includes without limitation all copies and summaries of Confidential Information and results (based on Confidential Information received from the Disclosing Party) in connection with the Purpose.

- 2.2. **“Affiliate”** shall mean in relation to a Party any other legal entity which directly or indirectly controls, is controlled by, or is under direct or indirect common control with that Party from time to time, whereby "control" means the right to exercise the vote of fifty (50) percent or more of all voting shares of a legal entity, or to appoint the majority of its directors.
- 2.3. **“Disclosing Party”** shall mean the Party, which discloses the Confidential Information to the Receiving Party.
- 2.4. **“Effective Date”** shall mean the date of commencement of the Contract set out in § 6 "Term".
- 2.5. **“Receiving Party”** shall mean the Party which, receives, directly or indirectly from the Disclosing Party the Confidential Information.
- 2.6. **“Representative”** shall mean any employee, officer, director, agent, consultant, Affiliate, attorney, and/or financial institution of a Party, as the case may be.

§ 3. Non-Disclosure

The Receiving Party, in consideration of the disclosure of Confidential Information obtained by the Disclosing Party under this Agreement, shall:

- a) solely and exclusively use Confidential Information of the Disclosing Party for the Purpose; and
- b) unless otherwise agreed by the Parties in writing, not use Confidential Information of the Disclosing Party whether directly nor indirectly for any other purpose, neither for own purposes nor in its own business model, supply and services programme, products and/or programs, products with third parties (irrespective of whether such supply and services programs or products are already existing or need to be developed). In particular, the Receiving Party will not use any Confidential Information obtained from the Disclosing Party i) for the design of an identical or similar system, equipment, device or machine or part thereof; or ii) for the direct or indirect manufacture or sale of any equipment, device, machine or part thereof; or iii) for the performance of similar work for others or similar assistance of consultancy services for any third parties; or iv) to wholly or partly disassemble, decompile, decode, redesign and/or reverse engineer it, and
- c) not make accessible any Confidential Information of the Disclosing Party to the public or any third parties (including without limitation any patent office) in any way or form without prior the prior written permission of the Disclosing Party; and
- d) be allowed to make Confidential Information of the Disclosing Party accessible only to those of its Representatives as well as to the employees, officers, and / or directors of its Affiliates on a reasonable need-to-know basis for the proper fulfilment of the Purpose under this Agreement, provided that said Affiliates and their respective employees, officers, and / or directors are bound by secrecy and non-use obligations no less strict than those that bind the Parties under this Agreement. The Receiving Party shall be liable to the Disclosing Party for any breach of said obligations by the Receiving Party's Representatives as laid out in this Agreement.
- e) treat any and all Confidential Information of the Disclosing Party as confidential and to exercise the same degree of care as in respect of its own information of similar significance, however to exercise at least a degree of reasonable care.

§ 4. Exceptions

- 4.1 The obligations specified in § 3 of this Agreement do not apply to Confidential Information of the Disclosing Party that the Receiving Party can prove by written evidence that such Confidential Information
- a) was lawfully in possession of the Receiving Party and/or its Affiliates without any duty of confidentiality, before receiving it, directly or indirectly, from the Disclosing Party; or
 - b) is or becomes public otherwise than by breach of this Agreement, or
 - c) is received from a third party, which lawfully acquired it and which is under no obligation of restricting its disclosure; or
 - d) was independently developed by the employees of the Receiving Party and/or its Affiliates without recourse to Confidential Information or in accordance with the exceptions specified in this Art. 4 a) - c).

For the purpose of this § 4 Confidential Information disclosed hereunder shall not be deemed to be within the foregoing exceptions merely because (i) such Confidential Information is embraced by more general information within the exceptions and/or (ii) individual features are within the exceptions, unless the combination itself and its principles of operation are within the exceptions.

- 4.2 In the event that the Receiving Party is requested or required by law or any regulatory authority or pursuant to legal process to disclose any Confidential Information, it is agreed that the Receiving Party will provide the Disclosing Party with a prompt prior notice of such request or requirement so that the Disclosing Party may at its option and its own expenses, seek an appropriate protective order or other remedy to ensure that the Confidential Information will be accorded confidential treatment. If it is not practicable to provide prior notice, then at the time of disclosure, written notice of the potential disclosure as the case may be, must be made to the Disclosing Party. In any such event, the Receiving Party will use its best efforts to ensure that Confidential Information will be accorded confidential treatment and shall inform the third party receiving, in writing, such information of the confidentiality obligations attached thereto.

§ 5. Return of Confidential Information

- 5.1 At any time upon the written request of the Disclosing Party, the Receiving Party shall return, erase or destroy (as directed by the Disclosing Party) all Confidential Information in hard copy and/or electronic form, including all copies, reproductions, summaries and any samples, in its possession and in the possession of its Representatives to whom it was disclosed. The Receiving Party shall undertake the return, erasure or destroy (as directed by the Disclosing Party) all Confidential Information within thirty (30) days of receipt of the request of the Disclosing Party and shall confirm the return, erase or destruction of such Confidential Information in writing.
- 5.2 Notwithstanding the foregoing, the Receiving Party may (i) retain one (1) copy of Confidential Information that it is required to retain by law or regulation, (ii) retain copies of its work carried out in connection with the Purpose under this Agreement, that contains Confidential Information for archival purposes or to defend its work and (iii) in accordance with legal, disaster recovery and records retention requirements, store such copies and derivative works of Confidential Information in an archival or back-up format, which may not be returned or destroyed; provided that in any case, all retained copies remain subject to the confidentiality provisions set forth in this Agreement until returned, erased or destroyed.

§ 6. Term

This Agreement shall enter into force as of xxxxxxxx and shall be effective for a period of [Alt. 1: one (1) / Alt. 2: three (3) / Alt. 3: five (5)] years, counted from the Effective Date. The obligations arising out of this Agreement concerning the Confidential Information received up to the end of the contractual term shall remain in full force and effect for each of the Parties for a further period of 5 (five) years from the date of termination of this Agreement.

§ 7. Governing Law and Dispute Resolution

- 7.1 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the Laws of the Federal Republic of Germany, without giving effect to any choice of law or rules that might require the application of the laws of other jurisdictions.
- 7.2 **Settlement of Disputes.** If any dispute or conflict arises out of or in connection with this Agreement, the Parties shall attempt to resolve it amicably. If the dispute cannot be settled amicably within thirty (30) days from the date on which a Party first made a written request to the other to resolve the dispute, or within such further period as the Parties may agree in writing, it shall, at the request of any of the Parties, be referred to and finally resolved by arbitration administered under the Rules of the International Chamber of Commerce (ICC) by three (3) arbitrators appointed in accordance with the said Rules. The sole and exclusive seat of arbitration shall be Karlsruhe Germany and the arbitration proceedings shall be conducted in the English language. The Parties mutually exclude recourse to ordinary courts.
- 7.3 **Injunctive Relief.** Notwithstanding the foregoing, any Party may, without waiving any other rights or remedies available to it, apply to any court of competent jurisdiction to obtain urgent measures in form of injunctive relief required to protect the confidentiality of Confidential Information, under the condition that such disputes shall finally be resolved by arbitration in accordance with this § 7.

§ 8. Miscellaneous

- 8.1 **Authority and Liability.** Each signatory Party agrees that, it has the power of authority to enter into this Agreement also on behalf of its Affiliates, if Affiliates are nominated as part to the Agreement at the beginning. Each of the signatory Parties shall ensure that its Affiliates are aware of and comply with the obligations under this Agreement. The respective signing Party shall be liable for violations of this Agreement by any of its Affiliates.
- 8.2 **Equitable Relief.** The Parties agree and acknowledge that any breach of the terms of this Agreement cannot necessarily be compensated adequately by financial damages alone, and as such Disclosing Party is entitled to seek equitable relief to restrain and/or prevent any threatened breach of this Agreement. Accordingly, the Disclosing Party shall be entitled to seek specific performance, injunctive relief, or any other forms of equitable relief as an exclusively remedy for any breach of this Agreement by the Recipient Party and their Representatives as available at law or equity.
- 8.3 **No Warranty.** The Receiving Party acknowledges that all Confidential Information received from the Disclosing Party is provided “as is” and without any representation or warranty, express or implied, including, without limitation, as to the accuracy, completeness, merchantability or fitness for a particular purpose.
- 8.4 **Ownership of Confidential Information.** The Disclosing Party shall always remain the sole owner of its own Confidential Information. Nothing contained in this Agreement shall be construed as granting or conferring any right or license, immunity or other right in the Disclosing Party’s Confidential Information, either expressly or by implication, to the Receiving Party or to its Representatives or to any other third party.
- 8.5 **Notice of Unauthorized Use.** The Receiving Party will notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of Disclosing Party’s Confidential

Information or any other breach of this Agreement. The Receiving Party will document such incidents in a detailed written notice, to enable the Disclosing Party to take any reasonable and appropriate action to end such an incident as soon as possible and to minimize any negative consequences. For the avoidance of doubts, the Receiving Party shall be liable to the Disclosing Party for any breach of its obligations under this Agreement by the Receiving Party's Representatives and Subcontractors.

- 8.6 **No Obligation.** Nothing herein shall obligate either Party to disclose to the other Party any particular information or Confidential Information. The Parties shall not be obligated to compensate each other for exchanging any Confidential Information under this Agreement. Furthermore, neither Party or its Affiliates shall be obligated by virtue of this Agreement, to enter into any further transaction or agreement with the other Party or its Affiliates. For the avoidance of doubt, both Parties and their Affiliates shall be free to work with third parties for purposes similar or equal to the Purpose or any other purpose provided that the Confidential Information of the Disclosing Party and its Affiliates is not disclosed or used in violation of this Agreement.
- 8.7 **Own Development.** Nothing herein will prohibit either Party from developing products or having products developed for it or others, that compete with the products or systems contemplated within the Purpose, provided that the development of such products or systems i) is not based on any Confidential Information of the Disclosing Party, and ii) does not constitute any breach of the confidentiality obligations set out in this Agreement. Nothing in this Agreement shall limit any Party in its business activities.
- 8.8 **Independence.** The Parties have entered into this Agreement solely as independent companies and nothing contained herein shall be construed as giving rise to a joint venture, partnership or other form of business organization.
- 8.9 **No Waiver.** The failure of any Party hereto to enforce, at any time, any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part thereof or the right of any Party thereafter to enforce each and every such provision.
- 8.10 **No Assignment.** Neither this Agreement nor any rights or obligations hereunder may be assigned by a Party, including by merger (whether that party is the surviving or disappearing entity), dissolution or liquidation proceedings, without the prior written consent of the other Party.
- 8.11 **Invalidity of a Provision.** The invalidity or unenforceability of any provision of this Agreement in whole or in part shall in no way affect the validity of the remainder of this Agreement. The Parties shall agree to substitute such invalid or unenforceable provision by a valid and enforceable new provision which shall most closely achieve the purpose of the invalid or unenforceable provision.
- 8.12 **Written Form.** No amendments, supplements and modifications to this Agreement, including amendments of this clause, shall become legally effective unless they are made in writing and signed by the duly authorized representatives of the Parties. The Parties acknowledge and agree that the counterpart of this Agreement can be delivered by facsimile, photocopying, scanned or Electronic Signature of the final and handwritten signed version of the Agreement. These counterparts shall be deemed to be an original, and consequently will be fully applicable as permitted by the relevant applicable law. "Electronic Signatures" shall mean a signature that consists of one or more letters, characters, numbers or other symbols in digital form incorporated in, attached to or associated with the electronic document, such as electronic signatures as required by Regulation (EU) 910/2014.

8.13 **Entire Agreement.** This Agreement is the exclusive statement of the terms and conditions between the Parties with respect to the matters set forth herein, and supersedes all prior agreements, negotiations, representations and proposals, written and oral.

Diatron MI

XXX

(Authorised Signatory)

(Authorised Signatory)

Print Name:

Print Name:

Title: _____

Title: _____

Date: _____

Date: _____