

MEMORANDUM OF UNDERSTANDING AND NON-DISCLOSURE AGREEMENT (Template)

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MEMORANDUM OF UNDERSTANDING

A Memorandum of Understanding (MoU) in FP7 is an agreement that defines the framework of the negotiations among the partners of a consortium and that is generally concluded in the very beginning of the negotiations on the involvement in a project, even before submitting a proposal. It expresses a convergence of will between the parties, indicating an intended common line of action, helping to explain any protocols for communication, information exchange, reporting, confidentiality issues, and modifications and conditions for terminating the agreement.

A MoU is an agreement that can be used among the participants of a project and which purpose is outlining the collaborations to be exchanged and actions to be performed within a specific period of time. It can be very useful as a tool for facilitating effective collaboration and linkages as a commitment by the parties, become a beneficial agreement that joins parties together in order to achieve a specific outcome, and help to solidify partnership among the partners of a consortium.

Concluding, MoUs are used as synonymous of letters of intent that express an interest from the participants in performing services or the intention of taking part in activity but that do not legally obligate any party. It is just agreed in good faith among the signatories, on the basis that it is a fair and honest representation of their intentions.

MoUs are agreements in the form of legal documents. However, they are not fully binding in the way that contracts are, but they are stronger and more formal than a traditional gentleman's agreement.

This template should be used taking into consideration that it should be adjusted to the concrete situation or needs of the partner signing it. Some of the terms and conditions are essential requirements of the MoU, while others should be included only when appropriate. A good rule is to include that which appears reasonable.

MEMORANDUM OF UNDERSTANDING AND NON-DISCLOSURE AGREEMENT

BETWEEN:

[insert name of the potential participant], a company registered in *[insert country]* under the registered number *[insert number]* and having its registered address at *[insert address]*, represented by *[insert name of the person signing this MoU in representation of the potential participant]*, *[insert title of the person]*, hereinafter referred to as [...],

AND:

[insert name of the potential participant], a company registered in *[insert country]* under the registered number *[insert number]* and having its registered address at *[insert address]*, represented by *[insert name of the person signing this MoU in representation of the potential participant]*, *[insert title of the person]*, hereinafter referred to as [...],

[Add the identification of all the potential participants]

Individually referred to as a Party or collectively as the Parties.

WHEREAS

The Parties initiated contacts between themselves with the intention to submit a proposal (hereinafter referred to as the Proposal) for a collaborative project in response to the call *[identify the call]* under the Seventh Framework Programme (hereinafter referred to as FP7);

The Parties have agreed to name this collaborative project as *[insert the name and acronym]* (hereinafter referred to as the Project);

The Parties, provided that the Proposal has a positive evaluation, wish to negotiate with the European Commission the signature of a Grant Agreement and between them a Consortium Agreement;

The Parties acknowledge that a Party may at any time wish to stop its involvement in the preparation of the Proposal and the negotiations of a Grant Agreement and Consortium Agreement and no longer sign or accede to the Grant Agreement;

For the purpose of the submission of the Proposal and for the negotiation of a Grant Agreement and a Consortium Agreement, the Parties intend to disclose information to each other, which they wish to keep confidential;

THE PARTIES AGREE AS FOLLOWS:

1. Proposal preparation

- 1.1. The Parties wish to prepare and submit together a Proposal for a collaborative project in response to the call [*identify the call*], whose deadline is [*insert the deadline*], under FP7;
- 1.2. The Parties agree that each Party shall not prepare or submit any additional proposal under the same call identified in clause 1.1. of this Memorandum of Understanding and Non-Disclosure Agreement (hereinafter referred to as MoU and NDA);
- 1.3. The Parties designate [*insert the name of the participant*] as the Coordinator of the project (hereinafter referred to as the Coordinator) to represent the Parties towards the European Commission and to submit the Proposal in due time.
- 1.4. With the purpose to prepare and submit the Proposal in due time, the Parties agree:
 - i) to meet or correspond as necessary to prepare and decide the details of the Proposal;
 - ii) that each Party shall use its best endeavours to prepare all the documents, data and information necessary for the preparation of the Proposal and to provide them to the Coordinator in due time. In particular, each Party shall provide the Coordinator with its participant identification code (PIC), its indirect cost model (ICM) and the funding rate that it will claim for the European Commission contribution during the Project for the research activities.
- 1.5. The Coordinator agrees not to modify, without previous consent, any document, data or information supplied by the other Parties.
- 1.6. The Coordinator shall keep the Parties informed of the progress of the Proposal's preparation and, at any Party's request, it shall make available a copy

of all letters, emails or any other documents concerning the Proposal that were sent to the European Commission or received from it before the submission of the Proposal.

2. Negotiations with the European Commission

- 2.1. Provided that the Proposal has a positive evaluation and that the Parties are invited to negotiate the Grant Agreement with the European Commission, the Parties wish to collaborate with the purpose to conclude a Grant Agreement with the European Commission.
- 2.2. The Parties agree that the Coordinator shall be responsible for conducting the negotiations foreseen under the clause 3.1.
- 2.3. The Coordinator shall keep the Parties informed of the progress of the negotiations and, at any Party's request, it shall make available a copy of all letters, emails or any other documents concerning the negotiations that were sent to the European Commission or received from it before the signature of the Grant Agreement. The Coordinator shall, in any case, send to the other Parties a copy of the negotiation mandate.
- 2.4. Upon request of the Coordinator, the Parties shall attend the meetings with the European Commission.
- 2.5. The Parties agree to assist the Coordinator in the negotiations and to provide it with the necessary documents, data and information in order to allow the signature of the Grant Agreement in due time.
- 2.6. Any substantial adaptation or modification of the Project as it was submitted in the Proposal shall be negotiated in good faith by the Parties. Notwithstanding the aforementioned, any adaptation or modification concerning the work packages shall be accepted by the Coordinator only with the prior written agreement of the Party concerned.

3. Negotiations of the Consortium Agreement

- 3.1. Provided that the Proposal has a positive evaluation and that the Parties are invited to negotiate the Grant Agreement with the European Commission, the Parties wish to collaborate with the purpose to conclude a Consortium Agreement before the signature of the Grant Agreement. The conclusion of such an agreement is dependent on the mutual consent and must be reduced to written form.

3.2. The Parties agree that the negotiation of the Consortium Agreement will be based in the following principles:

- [...]

[the Parties may include, whenever possible, the current intentions that they have in terms of the content to be included in the Consortium Agreement in order to avoid future misunderstandings. In terms of intellectual property rights, you may already include the current ideas in terms of ownership, transfer, protection, use and dissemination of foreground and access rights. Another option, is to define that the negotiations of the Consortium Agreement shall be based on one of the available models, which should in this case be attached to this MoU and NDA]

4. **Confidentiality Agreement**

- 4.1. For the purpose of this agreement Confidential Information shall mean any and all information, which is supplied or disclosed, directly or indirectly, in writing or in any other means, by each Party to the other including, but not limited to any documents, drawings, sketches, designs, materials, samples, prototypes, data, know-how, and which at the time of its disclosure or supply is identified as confidential. Oral information shall be recorded in writing by the Party disclosing it within fifteen (15) days after disclosure, and the resulting document shall specifically state the date of disclosure and designate the information as confidential.
- 4.2. For the purpose of this agreement the Recipient shall mean the Party receiving the Confidential Information disclosed by the other Party.
- 4.3. Each Party intends to disclose Confidential Information to the other Party in the framework of the FP7 call [*identify the call*] for (i) the preparation and submission of a proposal and (ii) negotiation and conclusion of a Grant Agreement and Consortium Agreement (hereinafter referred to as the Purpose). Nothing in this agreement shall be regarded as compelling a Party to disclose any Confidential Information.
- 4.4. The Recipient shall:
- undertake to keep the Confidential Information confidential and not to disclose it nor to permit the disclosure of it to any third party, except in accordance with clause 4.7. of this agreement, and not to make it available to the public or accessible in any way, except with the prior written consent of the Party disclosing it;

- ii. undertake to use the Confidential Information solely for the Purpose of this agreement and not to make any other use, whether commercial or non-commercial, without the prior written consent of the Party disclosing it.
- 4.5. The obligations specified in clauses 4.3. and 4.4 above shall not apply in the following cases:
 - i. the Confidential Information was known to the Recipient prior to the time of its receipt pursuant to this agreement otherwise than as a result of the Recipient's breach of any legal obligation; or
 - ii. the Confidential Information is in the public domain at the time of disclosure by the Party to the Recipient or thereafter enters the public domain without any breach of the terms of this agreement; or
 - iii. the Confidential Information becomes known to the Recipient through disclosure by sources, other than the Party disclosing it, having the legal right to disclose such Confidential Information; or
 - iv. the Recipient proves the Confidential Information has been developed independently by its employees, who had no access to any of the Confidential Information disclosed by the Party disclosing it to the Recipient.
- 4.6. The Recipient shall limit and control any copies and reproductions of the Confidential Information. The Recipient shall return all records or copies of the Confidential Information at the request of the other Party and at the latest on termination of this agreement. This shall not apply to Confidential Information or copies thereof which must be stored by the Recipient according to mandatory law, provided that such Confidentiality Information or copies thereof shall be subject to an indefinite confidentiality obligation.
- 4.7. The Recipient undertakes to disclose the Confidential Information only to its employees who:
 - i. reasonably need to receive the Confidential Information for the Purpose of the present agreement; and
 - ii. have been informed by the Recipient of the confidential nature of the Confidential Information and of the terms of the present agreement; and
 - iii. have been advised of and agree to be bound by equivalent obligations to those in the present agreement.
- 4.8. All Confidential Information shall remain the exclusive property of each Party as well as all patent, copyright, trade secret, trade mark and other intellectual property rights therein. The Parties agree that this agreement and the disclo-

sure of the Confidential Information do not grant or imply any license, interest or right to the Recipient in respect to any intellectual property right of the other Party.

5. **Intellectual Property Rights**

The Parties acknowledge that nothing in this MoU and NDA shall affect ownership of any intellectual property rights.

6. **Miscellaneous**

- 6.1. This Agreement shall be effective from the date of signature of the last Party to sign and shall remain in force for twelve months or until the date of the entry into force of the Grant Agreement signed with the European Commission, whichever comes first. Notwithstanding the aforementioned, the obligations under clause 4 of this MoU and NDA shall remain in force for period of five (5) years after the date of expiry or termination.
- 6.2. All the clauses of this Agreement are intended to be legally binding, with the exceptions of clauses 1, 2 and 3.
- 6.3. A Party may at any time withdraw from the Project and terminate its involvement in the activities set out in this MoU. Such termination shall be done in writing to all other Parties. For the avoidance of doubt, the binding clauses of this MoU and NDA in accordance with clause 6.2 shall continue to apply to all Parties during the term established in clause 6.1. notwithstanding any withdraw and termination.
- 6.4. Any dispute that might arise concerning clauses 1, 2 and 3 shall be settled amicably. If this is not possible, the Parties hereby submit any dispute relating to the exclusive jurisdiction of the [*insert the court*]. Any dispute that might arise concerning clauses 4, 5 and 6 shall be submitted to the court of [*insert the court*].
- 6.5. This MoU and NDA shall be governed by and construed in accordance with the laws of [*insert the country*].
- 6.6. Each Party shall cover its own costs related to the preparation and submission of the Proposal, as well as the negotiation and conclusion of a Grant Agreement and Consortium Agreement.



IN WITNESS WHEREOF, the Parties hereto have caused this Memorandum of Understanding to be executed as of the date stated above.

FOR *[insert name of potential participant]*

[insert name of representative]

[insert title]

Done at *[place]* on *[date]*

[Add the identification of all the potential participants]

For comments, suggestions or further information, please contact

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