

NON-DISCLOSURE AGREEMENT

This non-disclosure agreement (**NDA**) is made by and between:

- Médecins sans Frontières [Full name] (**MSF**), an organization, governed by the laws of [Country of registration] with registered offices in [postal code] [City] [Address], and
 - [Redacted] (**Partner**), a company governed by the laws of [Country of registration] with registered offices in [postal code] [City] [Address]
- MSF and Partner are collectively referred to as the "**Parties**" and individually a "**Party**".

RECITALS

- A.** MSF and the Partner are conducting exploratory discussions to evaluate a potential cooperation for the provision by the Partner of the Services/Products/Expertise as further described in Annex 1 (the "**Project**").
- B.** In the framework of their discussions, the Parties will have access to or be provided with information related to the other Party that is of private or confidential nature.

NOW THEREFORE, the Parties acknowledge and agree as follows.

1. DEFINITION OF CONFIDENTIAL INFORMATION

- 1.1. For purposes of this NDA, "**Confidential Information**" means any information, including all proprietary information, know-how, trade secrets, any information that may directly or indirectly identify an individual ("**Personal Data**"), regardless of the manner in which it is disclosed, delivered, furnished, learned or observed, provided that such information (i) is marked "Confidential," (ii) if oral, is declared to be confidential when disclosed and confirmed in writing within 30 days of disclosure, or (iii) should have been known by a reasonable person with expertise on the subject matter, based on the nature of the information and the circumstances of its disclosure, to be confidential, with the burden on the Disclosing Party to prove so, and provided that the Disclosing Party has otherwise made good faith efforts to clearly so mark or identify Confidential Information as such, including:
 - a. Information of whatever nature relating to MSF and/or its Affiliates (as defined under clause 1.2.a), or their operations, processes, finances, supplies, communication activities, relationships with and names of partners, suppliers, staff and donors.
 - b. Information of whatever nature related to the Partner and/or its Affiliates (as defined under clause 1.2.b), related to their activities or the Services/Products/Expertise (as defined in Annex 1).

The existence and content of the Project itself and any prior or current discussion that relates to the Project are considered as Confidential Information.

- 1.2. For the purposes of this NDA, "**Affiliate(s)**" means:

- a. As regards MSF, any independent MSF entity registered under the name of "Médecins Sans Frontières" or any translation of the name, within the frame of a trademark license granted by MSF International (individually referred to as an "**MSF Entity**"), and any other entities that benefit from significant MSF funding and which governing bodies are controlled by an MSF Entity that can determine the outcome of decisions about the entity's financial and operating policies
- b. As regards the Partner, any entity controlling, controlled by or under common control with the Partner, where "**control**" is defined as (i) the ownership of at least 50% of the equity or beneficial interests of such entity; or (ii) the right to vote for or appoint a majority of the board of directors or other governing body of such entity; or (iii) the power to exercise a controlling influence over the management or policies of the entity.

- 1.3. For the purposes of this NDA, "**Disclosing Party**" refers to the Party that shares, reveals, or provides access to its Confidential Information to the other party, known as the "**Receiving Party**".

2. DISCLOSURE, USE AND RETURN OF CONFIDENTIAL INFORMATION

- 2.1. When receiving Confidential Information from the Disclosing Party, the Receiving party shall:
 - a. Maintain such Confidential Information as secret by using the same degree of care it uses in safeguarding its own confidential information, but in no event less than a reasonable degree of care, maintaining appropriate physical, technical, and organizational measures to protect all Confidential Information against accidental disclosure or unauthorized access; and
 - b. Use such Confidential Information only for purposes listed or in connection with the Project, except with the prior written consent of the Disclosing Party;
 - c. Disclose such Confidential Information only to its officers, employees, staff, advisors, and/or Affiliates who have an actual need to know such Confidential Information in connection with the Project and then only after each person has been warned of the obligations contained in this NDA and that such person is bound by a non-disclosure agreement at least as restrictive as this NDA;
 - d. Promptly upon the request of the Disclosing Party, and in any case at the time of expiration of the Project, return or destroy, at the Disclosing Party's option, all Confidential Information to the Disclosing Party. Notwithstanding the foregoing and subject to the terms of this NDA, a Receiving Party shall have right to retain one copy of Confidential Information received from the Disclosing Party in a secure location for so long as necessary under applicable law or to ensure compliance with the terms of this NDA. Notwithstanding anything to the contrary in this Agreement, the Receiving Party shall not be required to destroy any computer files stored securely by the Receiving Party that are created during automatic system back-up.

3. TERM & EFFECTIVE DATE

- 3.1. This NDA shall enter into force and be fully applicable as from the below date, or, when no date is indicated below, upon signature by both Parties (**Effective Date**).
Date: [Redacted]
- 3.2. This NDA shall remain in effect until (i) replaced by a following agreement between the Parties ruling the execution of the Project also embedding confidentiality obligations, or (ii) for a period of 10 years after the expiration of this NDA, whichever is the sooner.

4. EXCEPTION TO CONFIDENTIALITY

- 4.1. The obligations of confidentiality set forth herein shall not apply to information that:
 - a. Was already in the public domain at the time of disclosure, or hereafter enters the public domain through no action of the Receiving Party.
 - b. Was obtained from a third party entitled to possession of such Confidential Information and under no obligation of confidentiality towards the Disclosing Party or its Affiliates.
- 4.2. The obligation of non-disclosure will not apply in the event that the Receiving Party is required to disclose Confidential Information in connection with a legal or administrative proceeding or otherwise to comply with a requirement under applicable law. In this event the Receiving Party will promptly notify the Disclosing Party of such request so that the Disclosing Party may seek an appropriate protective order or other remedy.

5. OWNERSHIP OF CONFIDENTIAL INFORMATION

- 5.1. All Confidential Information shall remain the property of the Disclosing Party.

5.2. The disclosure of Confidential Information hereunder shall not be construed to grant to the Receiving Party any license, permission of use or other right under any trademark, design, copyright, or other intellectual property right held by the Disclosing Party and/or its Affiliates.

6. NO COMMITMENT

6.1. This NDA shall NOT be construed to obligate any Party to enter into any arrangement with the other Party regarding the Project.

7. BREACH & REMEDIES

7.1. Each Party undertakes to notify, as soon as possible, the other Party in case of breach or suspected breach of the other Party's Confidential Information along with all relevant and useful information on the incident.

7.2. Receiving Party acknowledges that disclosure of Confidential Information contrary to the terms of this Agreement may cause irreparable harm and significant injury to Disclosing Party for which damages at law may not be an adequate remedy and agrees that Disclosing Party shall have, in addition to any other rights or remedies available to it at law or in equity, the right to seek (a) injunctive relief to enjoin any breach or violation or (b) specific performance of the provisions of this Agreement prohibiting disclosure and use of the Confidential Information.

7.2. The Partner acknowledges that the Confidential Information related to MSF and MSF Affiliates is of a unique character, and that the unauthorized dissemination of the Confidential Information might tarnish and hinder the reputation and the activities of MSF and its Affiliates.

8. RELATIONSHIP BETWEEN THE PARTIES

8.1. This NDA only relates to the confidentiality attached to exchanges of information between the Parties. It shall not be deemed or interpreted to constitute either Party a partner, joint venture, or employee of the other Party.

8.2. Each Party agrees that the respect of confidentiality in accordance with this NDA is a decisive matter without which they would not have entered discussions relating to the Project and/or its further implementation.

9. DATA PROTECTION

9.1 Each Party shall process Personal Data concerning the other Party's staff involved in the Project discussions for the sole purposes of this NDA. Each Party acts as an independent data controller for the processing of such Personal Data. Each Party undertakes to put in place appropriate technical and organizational measures to preserve the confidentiality and security of such Personal Data and to prevent it from being processed other than in accordance with this NDA and applicable laws.

9.2 If either Party determines that the fulfilment of the obligations under this NDA requires the disclosure or access to any Personal Data

other than as described in 9.1, the Parties agree to enter into a written data sharing agreement setting out the conditions necessary for such sharing under applicable laws.

10. MISCELLANEOUS

10.1. This NDA may not be amended or modified, except by a written and duly executed amendment by authorized representatives of the Parties. This NDA is made and shall be construed in accordance with the laws of [insert the country where the MSF association is based], without giving effect to the conflict of laws principles thereof. Place of exclusive jurisdiction shall be the Courts in [insert the name of the main city closer to the legal seat, where there is a Court].

10.2. Any failure by one Party to enforce the other Party's strict performance of any provision of this NDA will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this NDA.

10.3. This NDA is personal in nature, and neither Party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other Party, which consent will not be unreasonably withheld.

10.4. The Parties agree that that execution of this NDA by industry standard electronic signature software shall have the same legal force and effect as the exchange of original signatures.

MSF
Legal Representative #1:
Title
Signature:
Date:
Legal Representative #2:
Title
Signature:
Date
THE PARTNER
Legal Representative #1:
Title
Signature:
Date:
Legal Representative #2:
Title
Signature:
Date

[briefly insert the description of the Project,
including the Services/Products/Expertise
to be provided by the Partner]

CONFIDENTIAL