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**CONFIDENTIALITY AGREEMENT**

between

- 1. \_\_\_\_\_,
- 2. \_\_\_\_\_,

hereinafter referred to as the **Adamed**,

and

- 1. \_\_\_\_\_,
- 2. \_\_\_\_\_,

hereinafter referred to as the **Contractor**,

The Adamed and the Contractor are referred to herein collectively as the **Parties** and each individually as a **Party**.

**Whereas:**

- 1) the Parties intend to enter into negotiations, in which the Adamed or the Contractor (each a **Disclosing Party**) may disclose to the other party (each a **Receiving Party**) certain Confidential Information (as defined hereunder); the purpose of such disclosure is evaluation and initiation of possible future collaboration between the Parties in the scope of \_\_\_\_\_ (Purpose);
- 2) the Receiving Party is entitled to use the Confidential Information only for the Purpose and subject to the terms and conditions agreed herein,

**NOW THEREFORE in consideration of the premises and mutual obligations hereinafter described, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:**

**1. CONFIDENTIAL INFORMATION**

- 1.1 The Receiving Party acknowledges the confidential and proprietary nature of the Confidential Information, as defined herein and agrees to hold and keep secret and confidential as provided in this Agreement, and agrees to each and every restriction and obligation set out in this Agreement.
- 1.2 **Confidential Information** shall mean and include any and all technical, scientific, technology, marketing, business and other information regarding Disclosing Party or any of its Affiliate’s obtained by the Receiving

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Party, regardless of form of this information or form of its disclosure to the Receiving Party, marked or not as “confidential”, including but not limited to: development strategies, business plans, sales and marketing strategies and results, financial information, information regarding products and planned or proposed products, product dossier, trade secrets, patents and other intellectual property, know-how, current and planned research and development, formulae, components, compositions, specifications, manufacturing technology, clients, suppliers and other business partners, manufacturing or distribution methods, all of which the Disclosing Party considers to be proprietary information. The fact that conversations between the Parties related to the Purpose are occurring, the content and terms of any offer or proposal and the terms of this Agreement shall be treated as Confidential Information. Confidential Information shall also include all discoveries, experimental results, formulations, reports, papers, notebook entries, descriptions, excerpts, samples, memoranda and the like, comprising or incorporating, in whole or in part, Confidential Information, or derived from or based on Confidential Information.

## **2. UNDERTAKING OF THE RECEIVING PARTY**

- 2.1 The Receiving Party hereby undertakes to use Confidential Information, only in the necessary extent, solely and exclusively for the Purpose. In particular the Receiving Party undertakes not to use Confidential Information for any other purpose whatsoever, including but not limited to the development, manufacture, marketing, sale or licensing of any process or product or any other commercial purpose anywhere in the world.
- 2.2 The Disclosing Party may terminate the Receiving Party’s right to use the Confidential Information by written notice to the Receiving Party at any time. Such notice shall have immediate effect.
- 2.3 The Receiving Party hereby undertakes to maintain the confidentiality of Confidential Information and not to disclose it directly or indirectly to any third party, organization, individual or otherwise, without the prior written consent of the Disclosing Party.
- 2.4 The Receiving Party hereby undertakes to keep the Confidential Information safe in a secure place and properly protected against theft, damage, loss and negligent disclosure or unauthorized access (including, but not limited to, access by electronic means) and, without prejudice to the foregoing, to take all reasonable due precautions and steps and to exercise reasonable skill and due degree of care to protect its confidentiality. In each case such precautions, skills and degree of care shall be no less than the precautions, skills and degree of care the Receiving Party applies to its own Confidential Information.
- 2.5 The Receiving Party may reproduce the Confidential Information of the Disclosing Party only to the extent necessary for the Purpose, with all such reproductions being considered Confidential Information of the Disclosing Party.
- 2.6 The Receiving Party is obliged to notify Disclosing Party promptly of any misuse, misappropriation or unauthorized disclosure of Confidential Information, or any threat thereof, which may come to the Receiving Party’s attention.

## **3. EXCLUDED INFORMATION**

- 3.1 The obligation to maintain the confidentiality of Confidential Information does not apply to Confidential Information which the Receiving Party may duly demonstrate:
  - 3.1.1 was already in the public domain prior to its disclosure by the Disclosing Party hereunder; or
  - 3.1.2 comes into the public domain through no fault of the Receiving Party, in particular through no breach of this Agreement by the Receiving Party; or
  - 3.1.3 is fully independently generated by the Receiving Party or its Affiliate or its or its Affiliate’s employees with no direct or indirect access to or knowledge of the Confidential Information and without any recourse or reference to the Confidential Information (what can be substantiated by the reasonable evidence created at the time of generation of such independent information); or
  - 3.1.4 are required to be disclosed by applicable and binding law or by the binding request, order or ruling of an authorized court or public authority.
- 3.2 If disclosure of Confidential Information is required for the purpose set out in paragraph 3.1.4, prior to such disclosure Receiving Party will give– if permitted by the applicable law – the Disclosing Party prompt written notice of the information to be disclosed (being the minimum amount of information consistent with

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satisfying obligations) and will take into account any reasonable comments of the Disclosing Party it may have in relation to the content, timing and manner of dispatch of the disclosure and take such steps which are reasonably required to enable Disclosing Party to mitigate the extent of or avoid the requirement of any such disclosure.

#### **4. PERMITTED DISCLOSURE**

The Receiving Party shall only disclose Confidential Information, in the necessary extent, to its or to its Affiliate's employees who need to know the Confidential Information in connection with the Purpose, provided that the Receiving Party shall procure that prior to such disclosure each of those employees to whom Confidential Information is to be disclosed is made aware of the confidentiality, non-use and other obligations contained herein and any breach of the obligations contained in this Agreement by such employees shall be treated as a breach of such obligations by the Receiving Party. The Receiving Party is liable for any acts or omissions of such employees as for its own acts or omissions.

#### **5. RETURN OF CONFIDENTIAL INFORMATION**

Within thirty (30) days after the written request of Disclosing Party, the Receiving Party is obliged to:

- 5.1 return to Disclosing Party, with all the necessary precautions, all Confidential Information and all copies, reproductions or extracts thereof or any part thereof, except for Confidential Information destroyed in accordance with paragraph 5.3 below; and
- 5.2 delete permanently all Confidential Information from any computer, data carrier, hard disc, word processor or other similar device except for regular copies on back-up servers (which shall be not restored by the Receiving Party); and
- 5.3 destroy all documentation, notes, analyses, compilations, studies, descriptions, excerpts, memoranda and other documents prepared by the Receiving Party or employees mentioned in Section 4 and containing or reflecting or base on any Confidential Information.

At the written request of Disclosing Party the Receiving Party, within thirty (30) days after receipt of such request, shall certify in writing to the Disclosing Party that the above mentioned undertaking has been complied with.

#### **6. INJUNCTIVE RELIEF**

- 6.1 Because the Disclosing Party can not be adequately compensated by money damages in the event of the breach of any of the provisions of this Agreement, Disclosing Party or its respective Affiliate shall be entitled, in addition to any other right or available remedy, to an injunction restraining such breach or any threatened breach and to specific performance of any provision hereof and, in either case, no bond or other security shall be required in connection with such injunction.
- 6.2 In the event of any breach of any provisions of this Agreement the Party in breach is obliged to pay to the injured Party full compensation under the applicable law.

#### **7. NO GRANT OF RIGHTS**

- 7.1 No rights or obligations in Confidential Information are granted other than as expressly provided under this Agreement.
- 7.2 No license or warranty is granted, conveyed or implied with respect to the Confidential Information. Nothing in this Agreement shall be construed to create, constitute, give effect to or otherwise imply a venture, partnership, agency or employment relationship of any kind between the Parties.
- 7.3 Any Confidential Information and any development materially based thereon are and shall remain the sole property of the Disclosing Party or its respective Affiliate, and the Receiving Party shall assert no patent, copyright or other claim on such Confidential Information or developments. Nothing herein shall be deemed to constitute by implication or otherwise the grant to the Receiving Party of any license or intellectual property right to or interest in Confidential Information, and/or any information, technology and/or products(s) materially derived or developed there from.

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- 7.4 The Receiving Party shall not reverse engineer, chemically analyze, disassemble, modify, decompile or create derivative works based on any Confidential Information of the Disclosing Party provided under this Agreement.
- 7.5 The Contractor acknowledges that the Adamed and/or any of its Affiliate's own and control certain rights, title and/or interest in intellectual property (including without limitation know-how, patents and patent applications) both existent on the Effective Date as well as coming into existence during the term of this Agreement (**Adamed IP**). Nothing contained herein shall be construed to grant the Contractor any immunity, intellectual property right or license under the Adamed IP. Any intellectual property invented, conceived, discovered, developed or otherwise made or generated by the Contractor on basis of the Adamed IP and/or Confidential Information shall be owned solely by the Adamed or its Affiliate's respectively.

## 8. ANNOUNCEMENTS

The Receiving Party shall not originate any publicity, press releases or other public announcement relating to this Agreement or performance hereunder, without the other Disclosing Party's prior written consent.

## 9. DURATION

This Agreement shall expire ten (10) years after the Effective Date. Notwithstanding the foregoing, the Receiving Party's obligations set herein concerning Confidential Information constituting a trade secret of the Disclosing Party (and marked by the Disclosing Party as trade secret) shall remain in effect for so long as trade secret protection applies (but in no event less than ten (10) years after the Effective Date). The provisions of this paragraph shall survive expiration or termination of any agreement between the Parties.

## 10. LAW AND JURISDICTION

This Agreement shall be governed by and construed in accordance with the substantial laws of Germany excluding the conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG). Any disputes or controversy arising out of or in connection to this Agreement (including but not limited to any question regarding its existence, validity, performance or termination) which cannot be settled amicably by and between the Parties shall be finally settled by arbitration in accordance with the Arbitration Rules of The German Arbitration Institute (DIS) in force on the date when the notice of arbitration is submitted in accordance with these rules. The seat of arbitration shall be Berlin. Language of arbitration shall be English. Number of arbitrators shall be one. The arbitration award shall be final and binding upon the Parties.

## 11. GENERAL PROVISIONS

- 11.1 This Agreement constitutes the entire understanding of the Parties with respect to the matters contained here in; superseding all prior oral or written understandings or communications between the Parties.
- 11.2 For the purpose of this Agreement, an "**Affiliate**" means, in relation to any Party to this Agreement, any person, whether individual or entity, directly or indirectly controlling, controlled by, or under common control with, such Party; provided that, for the purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any person or Party, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Party or person, whether through the ownership of equity interests or shares or voting rights, by contract or otherwise. The term Affiliate in relation to Adamed.
- 11.3 Non-Solicitation. Contractor agrees that for a period of five (5) years after the Effective Date will not and will procure that its Affiliate will not: (i) directly or indirectly solicit for employment in any capacity any person who is at the date of this Agreement a director, officer, employee or consultant of the Adamed Pharma S.A. or its Affiliates, (ii) encourage or seek to encourage such person to leave his current employment or to breach the terms of such employment or consultancy.

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- 11.4 Nothing in this Agreement shall be construed to obligate either Party to negotiate or enter into any business arrangement with the other Party or to obligate the Disclosing Party to disclose or otherwise make available any information to the Receiving Party. Confidential Information is provided by the Disclosing Party “as is”. Disclosing Party makes no representation or warranty, express, implied or otherwise, regarding the accuracy, completeness or result of any use of the information or non-infringement of third party’s rights, including – but not limited to – intellectual property rights.
- 11.5 Any amendments to the Agreement shall be made in such form, in which the Agreement was concluded, or in the written form (signatures of representatives of both Parties in handwriting) – otherwise being null and void.
- 11.6 No failure or delay by the Disclosing Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.
- 11.7 The rights and obligations of the Receiving Party resulting from this Agreement can not be assigned or transferred to any third party without prior written and express consent of the Disclosing Party.
- 11.8 If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, that provision shall be stricken and the remainder of this Agreement shall continue in full force and effect; provided, however, that the Parties shall renegotiate an acceptable replacement provision so as to accomplish, as nearly as possible, the original intent of the Parties.
- 11.9 This Agreement is effective on the date of the signature of a latter Party (**Effective Date**).
- 11.10 This Agreement has been prepared in two conforming copies, one copy for each Party.

**12. OBLIGATION TO PROVIDE INFORMATION**

- 12.1 Pursuant to Article 13 of the General Data Protection Regulation of 27 April 2016 (**GDPR**), the Adamed is the data controller of the Contractor’s personal data. Data protection officer contact details: iod@adamed.com.
- 12.2 The Contractor’s personal data will be processed for the purpose of executing the Contract under Article 6 par. 1 letter b) GDPR.
- 12.3 The recipients of the Contractor’s personal data include suppliers of IT systems, law offices and advisory companies with whom the Controller cooperates. Personal data will be processed for the period of 6 years from the date of termination of the contract due to legal requirements imposed on the administrator in the area of accounting.
- 12.4 The Contractor has the right to access their data, the right to rectification, erasure, restriction of processing, the right to data portability, the right to object, the right to withdraw your consent at any time, without affecting the lawfulness of processing based on consent before its withdrawal.
- 12.5 The Contractor has the right to lodge a complaint with a relevant supervisory authority with respect to personal data protection, if they consider that the processing of their personal data infringes the provisions of the General Data Protection Regulation of 27 April 2016.
- 12.6 The provision of the Contractor’s personal data necessary to enter into the Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date set forth below.

**By: the Adamed**

**By: the Contractor**

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Date: \_\_\_\_\_

Date: \_\_\_\_\_