# NON-DISCLOSURE AGREEMENT (NDA) FOR THE PREPARATION OF

# CELTIC-NEXT-PROPOSAL

# < Acronym >

By and between the partners, which are listed in Annex A of this AGREEMENT

- Hereinafter referred to as “PARTY” or “PARTIES” respectively –

Whereas, the PARTIES intend to engage in discussions concerning the preparation of project proposal < Title > for the CELTIC-NEXT Call <number of call> ("PURPOSE");

Whereas, in the course of such activities it is anticipated that the PARTIES may wish to disclose to each other proprietary information for the PURPOSE, which information the PARTIES regard as confidential;

Now therefore, the PARTIES enter into the following agreement (“AGREEMENT”):

1. **Definitions.** “CONFIDENTIAL INFORMATION” shall mean any information and data, including, but not limited to, any kind of business, commercial or technical information and data disclosed by any one of the PARTIES herein the “disclosing PARTY” to any other of the PARTIES, herein the “receiving PARTY” in connection with the PURPOSE, irrespective of the medium in which such information or data is embedded, which is - when disclosed in tangible form - marked “Confidential” by the disclosing PARTY or which is - when disclosed orally or visually - identified as such prior to disclosure. In case of disagreement, the receiving PARTY must present its objection in writing within thirty (30) days of receipt. All information disclosed is deemed to be CONFIDENTIAL INFORMATION unless the disclosing PARTY explicitly declares otherwise. INFORMATION includes any copies or abstracts made thereof as well as any apparatus, modules, samples, prototypes or parts thereof.

“RELATED COMPANY” shall mean any corporation, company or other entity, which controls, or is controlled by one PARTY or by other RELATED COMPANY/IES of such PARTY, where control means ownership or control, direct or indirect, of fifty (50) percent or more of such corporations, company’s or other entity’s voting capital. However, any such corporation, company or other entity shall be deemed to be a RELATED COMPANY of one PARTY only so long as such ownership or control exists.

1. **Extent of Disclosure** The extent of disclosure hereunder by the disclosing PARTY to the receiving PARTY of CONFIDENTIAL INFORMATION shall be entirely at the disclosing PARTY’S discretion consistent with the PURPOSES hereunder.
2. **Confidentiality.** All CONFIDENTIAL INFORMATION
3. shall be used by the receiving PARTY exclusively for the PURPOSE, unless otherwise expressly agreed to in writing by the disclosing PARTY;
4. shall not be distributed or disclosed in any way or form by the receiving PARTY to anyone except its own, its RELATED COMPANIES’ or its consulting firms’ employees, who reasonably need to know such CONFIDENTIAL INFORMATION for the PURPOSE and who are bound to protect the confidentiality of CONFIDENTIAL INFORMATION in the possession of the receiving PARTY either by their employment agreement or otherwise to an extent not less stringent than the obligations under this AGREEMENT. Prior to any disclosure to its RELATED COMPANIES or to its consulting firms, the receiving PARTY must have an appropriate agreement with any such RELATED COMPANY or any such consulting firm sufficient to require the RELATED COMPANY or the consulting firm to treat CONFIDENTIAL INFORMATION in accordance with this AGREEMENT. Any unauthorized disclosure or use of CONFIDENTIAL INFORMATION by RELATED COMPANIES or by RELATED COMPANIES’ employees or by any PARTY’s consultants shall constitute a breach of this AGREEMENT;
5. shall be kept confidential by the receiving PARTY with the same degree of care as is used with respect to the receiving PARTY's own equally important confidential information to avoid disclosure to any third party, but at least with reasonable care; and
6. where appropriate shall not be reverse engineered, de-compiled or disassembled by the receiving PARTY; and
7. shall remain the property of the disclosing PARTY.
8. **Exceptions.** The confidentiality obligations shall not apply, however, to any information which:
9. was in the receiving PARTY's possession without confidentiality obligation prior to receipt from the disclosing PARTY;
10. is at the time of disclosure alreadypublicly available or subsequently becomes available to the public through no breach by the receiving PARTY of this AGREEMENT;
11. is lawfully obtained by the receiving PARTY from a third party without an obligation of confidentiality, provided such third party is not, to the receiving PARTY’s knowledge, in breach of any confidentiality obligation relating to such information;
12. is developed by the receiving PARTY or its RELATED COMPANIES independently from the other PARTIES’ CONFIDENTIAL INFORMATION;
13. is required to be disclosed by law or the rules of any governmental organization, provided that written notice of such judicial action was given to the disclosing PARTY and that the receiving PARTY fully cooperates with the disclosing PARTY in seeking confidential treatment for any such disclosure; or
14. is approved for public release by written agreement of the disclosing PARTY.

The PARTY seeking the benefit of such exception shall bear the burden of proving its existence.

1. **Refusal.** Each PARTY shall have the right to refuse to accept any information under this AGREEMENT prior to any disclosure; information disclosed despite such a refusal is not covered by the confidentiality obligation under this AGREEMENT. Nothing herein shall obligate either PARTY to disclose any particular information.

The receiving PARTY or its RELATED COMPANIES may use, subject to valid patents and copyrights, any underlying ideas, concepts and know-how contained in the Discloser’s Information and retained in the unaided memories of receiving PARTY’s employees who have had access to CONFIDENTIAL INFORMATION under this Agreement, provided that the confidentiality of theCONFIDENTIAL INFORMATION shall be maintained as stated herein. Memory is considered unaided if the CONFIDENTIAL INFORMATION has not been intentionally memorized for the purpose of retaining and subsequently using it otherwise than for the PURPOSE.

1. **No license.** Licenses or any other rights such as, but not limited to, patents, utility models, trademarks or tradenames, are neither granted nor conveyed by this AGREEMENT, nor does this AGREEMENT constitute any obligation of the disclosing PARTY to grant or convey such rights to the receiving PARTY.
2. **No remuneration; warranty/liability.** The PARTIES shall not be obligated to pay any remuneration for disclosure of any information under this AGREEMENT and agree that any information is made available “as is” and no warranties are given or liabilities of any kind are assumed with respect to such information, including, but not limited, to its fitness for any PURPOSE, non-infringement of third party rights, or its correctness. **Termination; other contracts.** This AGREEMENT shall come into force upon execution by all PARTIES and shall automatically terminate two (2) years later. A PARTY's participation in the PURPOSE of this AGREEMENT may withdraw from the AGREEMENT thirty (30) days’ prior written notice. In these cases the AGREEMENT remains in force between the PARTIES, who do not wish to withdraw. The rights and obligations of all PARTIES, including that of those PARTIES, who have withdrawn from this AGREEMENT, which have accrued prior to withdrawal and/or automatic termination shall, however, in any case survive the automatic termination of this AGREEMENT for a period of four (4) years. The PARTIES shall not be legally obligated to conclude any other contract with regard to the PURPOSE.
3. **Return.** All CONFIDENTIAL INFORMATION exchanged between the PARTIES electronically and/or on record-bearing media, as well as any copies thereof, shall, upon respective request of the disclosing PARTY, either be returned to the disclosing PARTY or at the disclosing PARTY’S option, be destroyed by the receiving PARTY after termination of this AGREEMENT. Such request shall be made in writing by the disclosing PARTY to the receiving PARTY within ninety (90) days after termination of this AGREEMENT. The receiving PARTY shall confirm in writing such destruction or return to the disclosing PARTY within fourteen (14) days after receipt of the respective request.

This clause shall not apply to routinely made back-up copies of electronically-exchanged CONFIDENTIAL INFORMATION as well as to each PARTY’s consulting firms who are bound to keep a copy under the applicable law, provided that any such copy shall be subject to an indefinite confidentiality obligation to the terms and conditions set out herein.

1. **Arbitration.** All disputes arising out of or in connection with this AGREEMENT, including any question regarding its existence, validity or termination, shall, unless amicably settled between the PARTIES, be finally settled by arbitration according to the Rules of Arbitration of the International Chamber of Commerce, Paris (“RULES“) by three arbitrators in accordance with said RULES. The seat of arbitration shall be Paris, France. The procedural law of this place shall apply where the RULES are silent. The arbitration proceedings shall be conducted in English.

 Each PARTY shall be entitled to seek necessary and appropriate injunctive relief to maintain the status quo depending on the outcome of the arbitration or any other temporary measures from the courts of competent jurisdiction to enjoin the other PARTY from taking certain actions which allegedly infringe the rights of the PARTY bringing such claim, provided that any proceedings and decisions as to the merits of the dispute, including permanent injunctions, are exclusively governed and resolved by arbitration in accordance with the first paragraph of this Article 9.

1. **Governing law.** This AGREEMENT shall be subject to the substantive law in force in Belgium without reference to any other substantive law.
2. **No assignment**. This AGREEMENT may not be assigned by any PARTY without the prior written consent of the other PARTIES.
3. **Written form.** This AGREEMENT may not be modified or amended except by written amendments duly executed by the PARTIES. This requirement of written form can only be waived in writing.
4. **Entire Agreement.** This Agreement is the entire agreement between the PARTIES with respect to the subject matter contained herein and supersedes all prior or contemporaneous oral or written agreements concerning this subject matter. This Agreement may only be modified in writing by the PARTIES. Any understanding between the parties beyond the Purpose of this Agreement shall be set forth in a separate written agreement containing appropriate terms and conditions.
5. **Export Regulations.** The PARTIES shall abide by the applicable export license regulations of the respective country (ies) and the disclosing PARTY shall be required to apply for an export license grant prior to any transmission of CONFIDENTIAL INFORMATION and to inform the receiving PARTY sufficiently of any existing limitation.
6. **Third parties.** A person who is not a party to this AGREEMENT may not enforce any of its terms.

# ANNEX A: List of Parties, who signed this AGREEMENT

< List of Parties, for example: MASTER GmbH, Germany >

**< Party, Location >**

Place, date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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