**CONFIDENTIALITY AGREEMENT**

**(NON DISCLOSURE AGREEMENT – NDA)**

This Agreement (hereinafter, the "**Agreement**") is executed on \_\_\_\_\_

**BETWEEN**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with registered office in \_\_\_\_\_\_\_\_, address \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ no. \_\_\_\_, Fiscale Code/VAT number \_\_\_\_\_\_\_\_ and registration number at the companies’ register of \_\_\_ no. \_\_\_\_\_, in the person of\_\_\_\_ (hereinafter “Advisor”, “Recipient” or "Receiving Party")

and

Dr. \_\_\_\_\_\_\_\_\_\_\_, of Stazione Zoologica Anton Dohrn, with registered office in Naples, Villa Comunale, 80121, Italy – Fiscal Code/VAT IT 04894530635 and registration number at the companies’ register of Naples No. NA – 926218 from 11/03/2015, (hereinafter, “Disclosing Party”)

(hereinafter, the Advisor and the Disclosing Party defined together as the **“Parties”**)

**WHEREAS:**

* 1. the Parties shall exchange confidential information for the purpose of \_\_\_\_ or the Disclosing Party has conducted and developed a study related to \_\_\_\_ and the Receiving Party has an interest in evaluating the details of said study in order to establish with the Receiving Party a contract of \_\_\_ (hereinafter, the “Purpose”);
  2. the Parties intend to explore the possibility of cooperation in the above field;
  3. given the highly confidential and reserved nature of any piece of information that is going to be shared for the purpose of the purpose, the Parties intend to sign the following Agreement in order to define, protect and regulate the use of the related information. The Parties shall establish the conditions of confidentiality under which the Parties will exchange information in discussions related to \_\_\_\_\_\_ and/or the Technology during the period stipulated in Article 5 or in that context it is in the Parties' interest to exchange confidential and secret information, some of which is susceptible to patent protection.
  4. The provisions of this Agreement shall apply whether or not the Technology is subsequently developed and/or industrialized and/or supplied. It is understood that whether or not the exchange of information leads to the development of Technology that is subsequently developed and/or industrialized and/or supplied, the information exchanged will still remain protected by the confidentiality conditions of this Agreement.

All that being stated, the Parties hereby acknowledge and agree as follows:

1. **Definitions and Interpretation of the Agreement**

In this Agreement the following words and phrases shall have the meanings set forth below:

* "**Control**", "**Parent Company**", "**Subsidiary**": have the meaning set out in Article 2359 of the Italian Civil Code;
* "**Disclosing Party**" means the Party disclosing the Confidential Information;
* **"Advisor",** "**Receiving Party**" or **"Recipient"**: means the Party that receives or otherwise becomes aware of Confidential Information;
* "**Related Persons**" means, in relation to each Party, the shareholders, directors of that Party, officers, employees, consultants, agents, consultants and self-employed persons, or any other person employed or hired by that Party or any of its Subsidiaries or Parents;
* "**Purpose**": means the object referred to in Premise A).
* "**Confidential Information**" means information of any nature that is obtained by the Receiving Party or Related Parties, concerning the scope of the agreement, the Disclosing Party, and/or Related Parties, either prior to or after the date of this Agreement, in written form or by electronic mail, transmitted by the Disclosing Party or any of the Related Parties. To name but a few, the following shall be considered as Confidential Information:
  1. all copies of any analysis, compilation, study, note, memorandum, communication, report, or any other document prepared by either of the Parties or any of the Related Parties for its exclusive use, which contains, reflects or derives, in whole or in part, from the Confidential Information in any way connected with the Transaction; and
  2. the terms and conditions of this Agreement and the interests of the Parties, concerning the purpose and/or any other negotiations relating thereto;
  3. information regarding patents and patent applications, trade and copyright secrets, reports, proprietary information - such as ideas, activities, techniques, discoveries, research results, processes, models, inventions, know-how, algorithms, software, documents - and all information that the Disclosing Party may disclose to the Recipient under this agreement, in any form.
* **"Exceptions":** The term "confidential" may not be associated with information, data and knowledge:

1. in the public domain or has become public domain by an act or conduct not prohibited by the Parties;
2. the disclosure of which is required by compliance with legal or regulatory provisions, or by the implementation of a provision of public authority, provided that the Parties have consulted each other beforehand on the manner and content of such disclosure, unless law, regulation or public authority provides otherwise.
3. **Handling of Confidential Information**

2.1 Following the communication by the Disclosing Party of Confidential Information, the Receiving Party undertakes to treat such Confidential Information in a strictly confidential manner and, as an example but not limited to, undertakes to:

1. observe, in protecting Confidential Information, the same diligence used to protect its own information of equal sensitivity and importance;
2. not to sell, publish, and disclose the Confidential Information by any means, without the prior written consent of the Disclosing Party;
3. take all reasonable precautions in handling and handling such Confidential Information in order to prevent third parties from accessing it;
4. indemnify the Disclosing Party against any direct damage or loss of profit that may arise or that the Disclosing Party may otherwise suffer as a result of the Receiving Party's breach of the duty of confidentiality;
5. use such Confidential Information only and exclusively to achieve the purpose set out in this agreement and/or to make any assessment in this regard, it being absolutely forbidden to use the Confidential Information to achieve other purposes such as, by way of example but not limited to, to carry out activities that may be considered, directly or indirectly, in competition with the activity (or part thereof) carried out by the Disclosing Party;
6. keep secret and confidential the existence of any negotiation concerning the purpose of this Agreement or not to make any disclosure, whether oral or written, in any way connected with and relating to the purpose of this Agreement;
7. reproduce only such copies of Confidential Information as are strictly necessary pursuant to Section 2.1(e), and for the sole purpose of providing it to persons authorized to use Confidential Information under this Agreement; and
8. immediately notify the other Party if it becomes aware that the Confidential Information has been disclosed to an unauthorized third party, and take all necessary steps to stop and remedy such violation, and to keep the Disclosing Party informed of such activities.

2.2 The Receiving Party agrees to ensure that each person to whom Confidential Information is disclosed in accordance with this Agreement is aware and complies with the restrictions regarding the use of such Confidential Information, and in particular:

1. maintains absolute confidentiality; and
2. does not reveal or disclose such Confidential Information to anyone who is not authorized under this Agreement.

2.3 Confidentiality obligations do not apply to Confidential Information to the extent that the Receiving Party demonstrates that:

1. to be in lawful possession of the Confidential Information before transferring information from Disclosing Party; or
2. the Confidential Information has been collected entirely autonomously by an officer, agent, employee, or other person on behalf of the Receiving Party, without any support from the Disclosing Party; or
3. the Confidential Information is or has become public knowledge for any reason other than a breach of confidentiality obligations by the Receiving Party, or any Related Person; or
4. the Confidential Information is transmitted to the Receiving Party, without any restriction on its disclosure or use, by a Related Person entitled to make its disclosure;
5. the Confidential Information must be disclosed by the Receiving Party by law and/or by order of the competent judicial authority or for any investigation carried out by any competent authority entitled to request the disclosure of such Confidential Information. It remains expressly understood that in such case the Receiving Party shall promptly notify the Disclosing Party of such request so that the latter:
6. provides, prior to any disclosure and, in any case, within the shortest time, to the Disclosing Party all the details of the request for disclosure; and
7. provides and discloses only that Confidential Information that is strictly necessary in order to comply with the requesting authority's inquiries.

2.4 Taking into consideration that the intellectual property of the Confidential Information will remain with the Disclosing Party, the Disclosing Party acknowledges that the Receiving Party and its affiliates may in the future develop internal information or receive information from various other parties that may be similar to the Confidential Information transmitted by the Disclosing Party.

2.5 The Parties undertake to take all necessary precautions and security measures to protect secret information, data and knowledge and to ensure that their confidentiality and secrecy are not compromised in any way. The Parties undertake to comply with the data protection regulations in force in relation to the processing of personal data covered by this Agreement in compliance with current legislation on the subject, in particular Legislative Decree No. 196 on 30th June 2003 and its subsequent amendments.

1. **Ownership and Waiver**

3.1 Each Party warrants that it has the full right to disclose Confidential Information to the other Party and to authorise the other Party to use such Information for the assessment of the conditions and for the achievement of the purpose of this Agreement.

3.2 All intellectual property rights and other proprietary rights and to the Confidential Information are and shall remain the full and exclusive property of the Disclosing Party and/or the Related Party thereof, without any provision of this Agreement constituting, or is intended to constitute, title or other undertaking to secure ownership.

3.3 All intellectual property rights and other proprietary rights in and to the Confidential Information shall be deemed to be confidential and no further rights to use the Confidential Information other than those expressly provided in this Agreement shall be deemed to be granted by implication or shall be deemed to exist by virtue of this Agreement. In particular, under this Agreement, no license rights are granted, directly or indirectly, to the Receiving Party, or a Related Person, in any invention, discovery, patent, copyright or other intellectual property or proprietary right now or hereafter owned, established or licensed by the Disclosing Party.

3.4 Neither the Disclosing Party nor the Related Parties makes, under this Agreement, any representation or warranty - express or implied - as to the accuracy or completeness of the Confidential Information, and neither the Disclosing Party nor any Related Persons shall have any liability under this Agreement to the Receiving Party or any third party arising out of the use of, or reliance on the Confidential Information by the Receiving Party or its Related Persons.

1. **Restitution and Destruction of Confidential Information**

4.1 At any time, following a specific written request by the Disclosing Party, with respect to Confidential Information transmitted in writing, the Receiving Party shall, and will ensure that its Related Parties will:

1. return to the Disclosing Party the Confidential Information received (including all copies thereof held by the Receiving Party or its Affiliates or Related Parties);
2. destroy all copies and e-mail of any document containing, reflecting or deriving, in whole or in part, the Confidential Information.
3. **Term, renewal, validity**

5.1 This Agreement shall be effective from the date of execution and shall continue to be binding between the Parties for the purposes of the Purpose for as long as the Receiving Party is aware of and in possession of Confidential Information received or otherwise derived from the Disclosing Party for a period of 5 (five) years from the date of execution of this Agreement.

5.2 In the case of patentable results and the commencement of patenting proceedings, the obligations of secrecy and confidentiality shall survive as long as they become public knowledge, not for breach of this agreement.

5.3 The validity of this Agreement shall not cease even if the Parties do not continue to negotiate. The provisions of Section 7.13 *(Jurisdiction and Applicable Law)* and Section 7.7 *(Representations)* shall continue in effect until the termination of the effects of this Agreement.

1. **Communications**

6.1 All notices and communications between the Parties, which arise from the application of this Agreement, shall be made, according to specific uses and needs, in writing and/or communicated by e-mail and certified e-mail, to the following addresses:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Via \_\_\_\_\_\_\_\_\_\_, n. \_\_\_\_\_\_\_

Cap. \_\_\_\_\_, \_\_\_\_ (\_\_\_\_)

Email:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PEC: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Stazione Zoologica Anton Dohrn**

Villa Comunale, 80121 Napoli (NA) - Italy

E-mail:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

PEC: ufficio.protocollo@cert.szn.it (to the attention of Dr. \_\_\_\_\_\_ and the contact person for Technology Transfer Office indicated for this purpose)

and will be duly notified on the date of confirmation of receipt certified e-mail or email.

1. **General Provisions**

**7.1 Waiver**

Any failure by either Party to exercise any of the rights, faculties or privileges set forth in this Agreement shall not be deemed to be a waiver by such Party of such right, faculty or privilege. The partial exercise of any of these rights, faculties or privileges shall not affect the further exercise of the same.

**7.2 Partial invalidity**

In the event that any of the provisions of this Agreement is found by a court or competent public authority to be invalid and/or unenforceable, the invalidity and/or ineffectiveness of such provision shall not affect the validity and effectiveness of the remaining provisions of the Agreement. Therefore, all provisions not deemed invalid and/or ineffective will continue to apply in full. In this regard, in the event that any of the provisions of the Agreement is declared invalid and/or ineffective, both Parties undertake to replace such provision by a different provision that is valid and effective.

**7.3 Exhaustiveness of the Agreement**

This Agreement constitutes the entire agreement between the Parties regarding the use and handling of Confidential Information, and supersedes and replaces any prior understandings, agreements or representations, whether written or oral.

No modification to this Agreement shall be effective unless made in writing and signed by or on behalf of each of the Parties.

**7.4 Autonomy**

Each of the Parties expressly confirms that it is acting independently and in its own name, and not as an agent or intermediary for any other person.

Each Party shall be responsible for any charges incurred that may arise in connection with the purpose of this Agreement and/or in connection with the handling of Confidential Information.

**7.5 Remedies and penalties**

Each Party acknowledges that any breach of the provisions of this Agreement may cause irreparable harm to the other, and shall be entitled to damages, without prejudice to any other remedies provided by applicable law.

The Parties agree that in the event of a breach of the confidentiality obligations assumed under this Agreement, the defaulting Party shall be required to pay the other Party a pecuniary sum of € 100,000.00 as a penalty for each breach ascertained, pursuant to and for the purposes of Article 1382 of the Italian Civil Code, subject to compensation for greater damages*, or* In the event of a breach of the confidentiality obligations assumed under this agreement attributable to it, the Recipient shall be required to pay the other Party a pecuniary sum of € 100,000.00 as a penalty for each violation ascertained, pursuant to and for the purposes of Article 1382 of the Italian Civil Code, without prejudice to compensation for greater damages.

**7.6 Assignment of the Agreement**

This Agreement may not be assigned without the prior written consent of the other Party.

**7.7 Declarations**

The Parties agree to keep the nature and subject matter of this Agreement confidential. The same confidentiality shall also be guaranteed in relation to negotiations and communications between the Parties in relation to the purpose of this Agreement, and the same shall hereby be undertaken not to disclose, either by public statements, or by advertising or other forms of communication, any information relating to this Agreement without the prior written consent of the other Party.

**7.8 No License**

The rights in the Confidential Information are vested solely with the Disclosing Party, and no rights or obligations other than those expressly provided in this Agreement shall be deemed to be granted, either expressly or impliedly. In particular, no license shall be deemed to be granted to the Receiving Party - directly or indirectly - by this Agreement in respect of any invention, discovery, patent, *copyright* or other industrial or intellectual property currently owned, made or obtained by the Disclosing Party.

**7.9 No Obligation**

The terms and conditions of this Agreement shall in no event be construed or construed as meaning that the Disclosing Party is bound to transmit both confidential and non-confidential information.

**7.10 Further Agreements**

The purpose of this Agreement is to ensure the protection of the confidentiality and secrecy of Confidential Information. This Agreement shall not constitute any obligation on either Party to enter into any future agreement.

In addition, this Agreement does not imply any assumption of any exclusivity obligations or undertakings or obligations or undertakings other than those expressly set out, nor does it create any agency, joint venture or partnership relationship between the Parties.

**7.11 Intellectual and industrial property**

According to what is provided for by Articles 3 section 3, 7.8 and 7.10 this agreement does not constitute any form of grant or transfer of any right or grant of license or other right to use patents, trademarks, modelsarticolo 3 or other industrial or intellectual property rights.

However, in the event that, in the context of the execution of this Agreement, the activity leads to innovative and patentable results, the ownership of such results may be managed by a subsequent specific agreement.

**7.12 Protection of personal data**

The Parties undertake to comply with all applicable data protection provisions, EU Regulation 2016/679 on data protection and any other applicable legislation in relation to the data of the other Party, as well as any third parties that may come into their possession during the execution of this Agreement. To this end, the rules applicable under the law to which this Agreement is subject and those applicable to each of the Parties according to its nationality shall apply.

The signatories and persons named as authorised representative under this Agreement understand that their personal data will be processed for the purposes of implementing and executing this Agreement, as well as for the management and archiving of related documentation.

In accordance with the data protection regulations in force from time to time, data subjects have the right to exercise their rights of access, rectification, deletion, opposition, the right to request the restriction of the processing of their personal data, portability and the right to lodge a complaint with a supervisory authority.

Details of the Parties as data controllers:

Company name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tax code and VAT number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_ n. \_\_\_\_, \_\_\_\_\_

Telephone:\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Data Protection Department - Data Protection Officer (DPO): \_\_\_\_\_\_\_\_\_\_.

Supervisory Authority: Italian Data Protection Authority - www.garanteprivacy.it

Corporate name: Stazione Zologica Anton Dohrn

Tax code and VAT number: IT 04894530635

Address: Villa Comunale - 80121, Naples, Italy

Data Protection Department: Data Protection Officer (DPO) - rpd.privacy@szn.it

Supervisory Authority: Italian Data Protection Authority - www.garanteprivacy.it

**7.13 Jurisdiction and applicable law**

This Agreement shall be governed by and construed in accordance with the laws of Italy.

In the event of a dispute between the Parties arising out of or otherwise related to this Agreement, either Party may notify the other in writing of the contents of the claim and the Parties will use their best efforts to resolve such dispute amicably through discussion.

If the dispute is not resolved within thirty (30) days of notification by one Party to the other and, unless agreed in writing by the Parties, either Party may refer the dispute to the competent court in Rome, Italy, to which the Parties confer exclusive jurisdiction.

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| **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | **Stazione Zoologica Anton Dohrn** |
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