**MUTUAL CONFIDENTIALITY AND DISCLOSURE AGREEMENT**

This Mutual Confidentiality and Disclosure Agreement (“**Agreement**”) shall be effective from (DATE) (the “Effective Date”) between the following parties (each a “**Party**” and collectively, the “**Parties**”):

**Foundation for Innovative New Diagnostics (FIND)** (hereinafter “**FIND**”) a Swiss charitable Foundation having its principal place of business at Campus Biotech, 9 Chemin des Mines, 1202 Geneva, Switzerland; and

**(FULL NAME).,** (hereinafter “**NAME**”) a [insert description] e.g. institute, private company, public company, government body, not-for-profit…) with its address at (ADRESS)

**AGREEMENT**

1. **PURPOSE**. The purpose of this Agreement is to enable the Parties to exchange confidential or commercially sensitive information concerning the discussions and activities required as a basis for the selection, development and evaluation of technologies from FIND partners in accelerating tools to drive Tuberculosis detection. (the “**Purpose**”).
2. **DISCLOSURE PERIOD**. The term of disclosure under this Agreement shall be one (1) year from the Effective Date. The Parties may extend the Disclosure Period by written mutual agreement.
3. **CONFIDENTIAL INFORMATION DEFINITION AND USE**.

The term “**Disclosing Party**” shall mean a party disclosing its CONFIDENTIAL INFORMATION to the other party. The term “**Receiving Party**” shall mean a party to whom such a disclosure is made.

For the purpose of this Agreement the term “**CONFIDENTIAL INFORMATION**” shall mean all information disclosed in oral, electronic, written, graphic, photographic, recorded, or in any other manner by Disclosing Party to Receiving Party in the course of the Purpose, and is marked “CONFIDENTIAL”, to the extent that such information is not generally available and is generally treated by Disclosing Party as confidential or proprietary and which may include, without limitation:

1. Any and all technical and non-technical information and/or data transferred, exposed, disclosed or conveyed to the Receiving Party, including but not limited to information traditionally recognised as proprietary trade secrets, patents and unpublished patent applications, processes, formulas, designs, data, writings, know-how, improvements, technologies, product specifications, schematics, tooling, customer and supplier information, research results, drawings, financial information, pricing and marketing plans.
2. All copies of any of the foregoing or any analyses, studies or reports to the extent they contain or are based on, or reflect any of the foregoing, any agreements signed between the Disclosing Party and any third party.
3. Any Personally Identifiable Information (“PII”) as defined below.
4. Any of the above which has been heretofore or may hereafter be transmitted or otherwise disclosed to the Receiving Party by the Disclosing Party, and any other materials and information which relates to the business, technology, products, marketing or any other activity of the Disclosing Party.

The Receiving Party shall use the same degree of care with Disclosing Party’s CONFIDENTIAL INFORMATION as it uses to protect its own CONFIDENTIAL INFORMATION. The Receiving Party shall communicate CONFIDENTIAL INFORMATION only to its employees (or employees and representatives of companies controlling, controlled by or under common control by a third party), agents, independent contractors, institutional donors and other financial sponsors, legal, financial, scientific or technical advisors, potential project implementation partners or consultants (together “**Representatives**”) who: (a) need to know such CONFIDENTIAL INFORMATION under the Purpose, and (b) such Representative has previously agreed in writing, to be bound by terms and conditions substantially similar to those of this Agreement with respect to the Disclosing Party and its information, including but not limited to confidentiality and non-use restrictions. Each Party will be responsible for any breach of this Agreement by its Representatives.

The Receiving Party shall treat each item of CONFIDENTIAL INFORMATION as confidential during the Term of this Agreement and for a period of five (5) years from the date of the end of the Disclosure Period and shall not use such CONFIDENTIAL INFORMATION for any purpose other than that described above.

1. **PERSONALLY IDENTIFIABLE INFORMATION (“PII”)**.“PII” means any information that identifies, or is reasonably capable of being identified with, a particular individual, such as but not limited to, names, addresses, telephone numbers, electronic addresses, social security numbers, credit card numbers, medical records and demographic information. Each Recipient Party of PII under this Agreement will comply with all data and privacy and data protection laws, rules and regulations which are or may in the future be applicable to PII. As such, the Receiving Party acknowledges that its obligations under this Agreement with respect to PII will remain in effect for as long as such information remains PII under the applicable law.
2. **TERM**. This Agreement shall continue for one (1) year after the Effective Date unless terminated earlier (“**Term**”). Either Party may terminate the Agreement at any time giving ten (10) working days prior written notice, provided however, that Recipient’s obligations with respect to the Confidential Information hereunder will survive any termination or expiration of this Agreement for a period of five (5) years following the effective termination date and/or the end of the Disclosure Period, whichever is latest. In the case that the Parties succeed in the Purpose and execute a corresponding collaboration or equivalent agreement (“**CA**”) that supersedes this Agreement with respect to the activities contemplated under the Purpose, the non-disclosure provisions of such a CA shall supersede this Agreement and this Agreement shall terminate immediately upon such execution.
3. **EXCEPTIONS TO CONFIDENTIALITY**.

The restrictions on disclosure and use shall not apply:

1. To information which was generally available to the public at the time of disclosure, or information which becomes available to the public after disclosure by the Disclosing Party other than through fault of the Receiving Party.
2. To information which can be shown to have been already known to the Receiving Party prior to its receipt from the Disclosing Party.
3. To information which is obtained at any time lawfully from a third party under circumstances permitting its use or disclosure to others.
4. To information which is developed independently by the Receiving Party as evidenced by written records other than through knowledge of the CONFIDENTIAL INFORMATION.
5. To information required to be disclosed by the Receiving Party to comply with applicable laws or regulations, or with a court or administrative order, but only to the extent disclosure is required by such order and provided the Receiving Party furnishes prompt notice (in no event less than 5 days) to the Disclosing Party to enable it to oppose such disclosure.

The foregoing exceptions to CONFIDENTIAL INFORMATION shall not operate to exclude from CONFIDENTIAL INFORMATION which (i) is merely embraced by more general information available on a non-confidential basis, or (ii) consists of a combination of features, each of which may be publicly available, but wherein the combination itself and its principle of operation constitute CONFIDENTIAL INFORMATION because they are not embraced by corresponding information which is within one of the foregoing exceptions.

1. **PROPRIETARY RIGHTS**. Each Party will retain all right, title and interest in and to its CONFIDENTIAL INFORMATION, including all improvements, modifications, derivative works, copies or summaries thereof. Neither Party to this Agreement acquires any patent, copyright or other intellectual property rights or any other rights or licences under this Agreement, except as expressly provided in this Agreement. The Disclosing Party understands that the Receiving Party may currently or in the future be developing information internally, or receiving from third parties that may be similar to the Disclosing Party’s CONFIDENTIAL INFORMATION. Nothing in this Agreement will be construed to preclude either Party from any activity, including establishing collaborative activities, developing, using, marketing, licensing, and/or selling any product or service, that is not using the Disclosing Party’s CONFIDENTIAL INFORMATION.
2. **APPLICABLE LAW AND DISPUTE RESOLUTION**. This Agreement shall be governed by and construed in accordance with the laws of Switzerland. Any dispute, controversy or claim arising under, out of or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the World Intellectual Property Organisation (“[**WIPO**”) Mediation Rules](http://www.wipo.int/amc/en/mediation/rules/), in effect at such date, or such equivalent rules as mutually agreed between the Parties. The place of mediation shall be Geneva, Switzerland. The language to be used in the mediation shall be English. If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within sixty (60) days of the appointment of the mediator, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the [WIPO Expedited Arbitration Rules](http://www.wipo.int/amc/en/arbitration/expedited-rules/) in effect at that date. Alternatively, if, before the expiration of the said period of sixty (60) days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The arbitral tribunal shall consist of a sole arbitrator. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English. The dispute, controversy or claim referred to arbitration shall be decided in accordance with Swiss law.
3. **RIGHT TO INJUNCTION**. The Parties agree that any breach of confidentiality could result in immediate and irreparable harm to the non-breaching party or Parties who shall be entitled to seek an injunction, without prejudice to other remedies available at law.
4. **NO FURTHER OBLIGATIONS**.The Parties do not intend that any agency or partnership relationship be created by this Agreement, or any other relationship except that of independent contracting Parties. Nothing in this Agreement obligates a Party to enter into any further agreement or arrangements, or to furnish any CONFIDENTIAL INFORMATION or any other information or materials.
5. **NO COMMITMENT**. The Parties agree that unless and until a definitive agreement with respect to the Purpose has been executed and delivered, neither Party will be under any legal obligation of any kind with respect to a possible business relationship, except for the matters specifically agreed to in this Agreement. All obligations, expenses, costs, liabilities or losses incurred by a Party pursuant to this Agreement, and the discussions and related effort regarding the Purpose will be borne by the Party incurring such charges.
6. **LIMITED WARRANTY**. The Disclosing Party warrants it has the right to make the disclosures it makes under this Agreement. Except for the foregoing, the Disclosing Party makes no other representations or warranties with respect to the information disclosed hereunder. ALL INFORMATION (CONFIDENTIAL OR OTHERWISE) IS PROVIDED BY THE DISCLOSING PARTY “AS IS” AND DISCLOSING PARTY MAKES NO WARRANTIES EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE INFORMATION, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTIBILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR ACCURACY. ANY RELIANCE ON THE DISCLOSING PARTY’S INFORMATION WILL BE EXCLUSIVELY AT THE RECEIVING PART’S OWN RISK.
7. **ASSIGNABILITY**. No party may assign this Agreement (whether by operation of law, sale of securities or assets, merger or otherwise) or any rights or obligations hereunder without the prior written consent of the other Party; provided however, that the Parties may assign this Agreement to any person or entity acquiring all or substantially all of a Party’s business or assets to which the CONFIDENTIAL INFORMATION primarily relates. Notwithstanding the foregoing, this Agreement will be binding upon and inure to the benefit of, and be enforceable by, each Party and its permitted successors and assigns.
8. **GENERAL**.

**a) No Waiver**. No express or implied waiver by any party of any provision of this Agreement or of any breach or default of the other party shall constitute a continuing waiver, and no waiver by any party shall prevent such party from enforcing any and all other provisions of this Agreement or from acting upon such other provisions or upon any other or subsequent breach or default by the other party.

**b) Notice**. Any notice or communication by either party to the other shall be in writing, in the English language, and shall be deemed to have been duly given if delivered personally, or sent by facsimile transmission, overnight mail, or prepaid registered mail, addressed to the other party as it appears below or at such other address as such party may hereafter specify.

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| **To NAME:** | **Full NAME.** |
|  | Attention:  Address  Address |
|  | Tel:  Mail: |
|  |  |
| **To FIND:** | **Foundation for Innovative New Diagnostics (FIND)** |
|  | Attention: Senior Director Programme Operations  Campus Biotech  9 Chemin des Mines  1202 Geneva  Switzerland |
|  | Tel: +41 (22) 710 0590  Mail: sharon.saacks@finddx.org |

**c) Modifications**. This Agreement may not be amended or modified except in a writing signed by both Parties.

**d) Heading and Captions**. Heading and captions in this Agreement are for convenience only, do not form a part of this Agreement, and shall in no way affect its interpretation.

**e) Survivability**. The Parties agree that the following provisions shall survive the termination or expiration of this Agreement: Sections 2 - 14.

**f) Severability**. The provisions of this Agreement are severable. If any one or more of such provisions are judicially determined to be illegal or otherwise unenforceable, either in whole or in part, the remaining provisions or portions of this Agreement shall continue to be binding and enforceable.

**g) Entire Agreement**. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understanding, whether oral or written, between the Parties relating to the subject matter hereof.

1. **SIGNATURES**. Facsimile and/or scanned (portable document format) PDF signatures and/or electronic signatures are deemed equivalent to original signatures for purposes of this Agreement.

*Signature page follows*

*The rest of this page has been expressly left blank*

***IN WITNESS WHEREOF***, the Parties have agreed to and accepted the foregoing terms and conditions and have executed this Agreement in the English language, by and through their duly authorised representatives. This Agreement may be executed in two or more counterparts, all of which taken together shall constitute one and the same instrument, and any Party hereto may execute this Agreement by signing any such counterpart. Each Party consents to be bound by the facsimile signature of an authorised agent of a Party to this Agreement.

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| --- | --- | --- |
| **FOR FOUNDATION FOR INNOVATIVE NEW DIAGNOSTICS** |  | **FOR NAME** |
| **Name:**  **Title:**  **Date:**  **Geneva, Switzerland** |  | **Name**  **Title**  **Date:**  **Place:** |