

CONFIDENTIALITY AGREEMENT

This Agreement is made and entered into as of the 2nd day of June, 2009 by and between:

Delft University of Technology, a university duly organised and existing under the laws of The Netherlands, having its registered office at Mekelweg 2, hereinafter referred to as **TU DELFT**

ON THE ONE HAND,

AND

<full name company>, a company duly organised and existing under the laws of the Netherlands, having its registered office at <location>, The Netherlands, hereinafter referred to as <short name>.

ON THE OTHER HAND,

RECITALS

WHEREAS, TU DELFT
is a technical university, and

WHEREAS, <short name> is engaged in the field of <activities company>, and

WHEREAS, TU DELFT
wishes to enter into discussions with <short name> relating to <topic of collaboration/discussion> (the “Purpose”), and

WHEREAS, as a consequence of the discussions and exchanges between the parties and possible future relationship, TU DELFT
and <short name> may disclose to each other information which is confidential and proprietary to TU DELFT
or <short name>, as the case may be, and

WHEREAS, in order to protect the legitimate business interests of each of them, the parties hereto have decided to enter into this Confidentiality Agreement.

NOW, THEREFORE, the parties hereto, intending to be legally bound, hereby agree as follows:

1. As used in this Agreement, the term “ CONFIDENTIAL INFORMATION ” means any information that TU DELFT (and/or its partners in MicroNed) or <short name> regard as confidential and proprietary and/or as trade secrets and which pursuant to this Agreement either party (“ DISCLOSER ”) discloses to the other party (“ RECIPIENT ”) in writing, orally or in other intangible form.

CONFIDENTIAL INFORMATION shall include, without limitation, all data, samples, prototypes, drawings, plans, methods, projects, scientific records, specifications, know-how and technical knowledge disclosed by TU DELFT and/or its partners in MicroNed to <short name> or disclosed by <short name> to TU DELFT.

2. The RECIPIENT hereby undertakes:

- a) Not to disclose the CONFIDENTIAL INFORMATION, or any part of it, communicated by the DISCLOSER to any third party except for TU DELFT's partners in MicroNed and wholly owned subsidiaries of TU DELFT unless expressly authorised in writing by the DISCLOSER. A disclosure of CONFIDENTIAL INFORMATION to TU DELFT's partners in MicroNed or, in the case of <short name>, a wholly owned subsidiary of the <full name company>, is only allowed if such party is bound by confidentiality undertakings at least as protective as the undertakings under this agreement.
- b) To protect and keep the CONFIDENTIAL INFORMATION of the other party strictly confidential, using for it the same degree of care and safeguarding as he uses for its own proprietary and / or confidential information of the same importance, but no less than a reasonable degree of care;
- c) To disclose the CONFIDENTIAL INFORMATION furnished by the DISCLOSER only to its employees and representatives on a need-to-know basis and who are or shall be bound by the same rules of confidentiality as those contained in this Agreement;
- d) Not to use the CONFIDENTIAL INFORMATION of the DISCLOSER for any other purpose than the Purpose;
- e) Not to reproduce or copy totally or partially the CONFIDENTIAL INFORMATION of the DISCLOSER hereunder unless expressly permitted by the DISCLOSER in writing;
- f) Not to file any patent application containing any CONFIDENTIAL INFORMATION of the DISCLOSER.

3. In the event of supply of samples of products, the RECIPIENT thereof undertakes not to analyze, reverse-engineer or otherwise alter, modify or disassemble the samples supplied by or on behalf of the DISCLOSER without the express permission of the DISCLOSER.

4. The parties acknowledge and agree that:

- a) DISCLOSER's CONFIDENTIAL INFORMATION is proprietary business information of great economic value to the DISCLOSER;
- b) All right, title and interest in and to DISCLOSER's CONFIDENTIAL INFORMATION shall at all time remain in, and belong to, DISCLOSER;
- c) Immediately upon termination or expiration of this Agreement, or at any other time DISCLOSER's requests, the RECIPIENT will return to the DISCLOSER any and all tangible media containing CONFIDENTIAL INFORMATION, including samples, which were provided to RECIPIENT pursuant to the terms hereof and will destroy any notes, compilations, studies and all other materials prepared by the RECIPIENT, based in whole or in part on the CONFIDENTIAL INFORMATION provided by the DISCLOSER.

5. Nothing contained in this Agreement shall be construed as granting or conferring to the RECIPIENT, whether expressly or implicitly, any patent right or any other intellectual property right of DISCLOSER existing prior to or coming into existence after the entry into effect of this Agreement.
6. Each party hereby disclaims any warranties, express or implied, with respect to the accuracy or completeness of any Confidential Information supplied to the RECIPIENT.
7. Nothing contained herein shall be interpreted as lawfully compelling either party to disclose CONFIDENTIAL INFORMATION to the other party or to sign any subsequent contract with the other party.
8. However, the requirements of confidentiality and non-use contained in paragraphs 2 and 3 above shall not apply to information which the RECIPIENT can prove that such information is:
 - a) Already in the public domain or becomes publicly available through no breach of this Agreement by the RECIPIENT;
 - b) Lawfully received without any restriction on use or disclosure from a third party free to disclose such information to the RECIPIENT;
 - c) In the RECIPIENT's possession at the time of disclosure by the DISCLOSER as shown by written evidence;
 - d) Independently developed by the RECIPIENT or its employees without use of the CONFIDENTIAL INFORMATION.
9. Specific portions of CONFIDENTIAL INFORMATION shall not be deemed to be exempted from the confidentiality and non-use obligations because they are embraced by more general information which is subject to one of the above exemptions. CONFIDENTIAL INFORMATION consisting of separate items of information which are individually exempted from the obligations stated above shall only be exempted if the whole of this information comes under the above exemptions.
10. This Agreement shall be effective as of the day first mentioned above, and shall terminate two (2) years thereafter. However the obligations of confidentiality and non-use contained in paragraphs 2 and 3 above shall continue for a period of five (5) years from the date of termination of this Agreement.
11. Each Party agrees that this Agreement shall be subject to all applicable export and import laws and regulations with respect to the transfer of the proprietary technical information and the products containing such information, and that no Confidential Information shall be exported without complying with the requirements of such laws and regulations, including the obtaining the export license of its respective government if required.
12. Failure of either party to exercise or otherwise act with respect to any of its rights hereunder shall not be construed as a waiver nor prevent either of them from thereafter enforcing strict compliance with any and all the terms hereof.
13. If any part to this Agreement shall be adjudicated to be invalid or unenforceable, then such part shall be deemed deleted from the Agreement or amended, as the case may be, in order to render the remainder of this Agreement valid and enforceable.

- 14. It is agreed and understood that this Agreement contains the entire understanding relative to the protection of the CONFIDENTIAL INFORMATION covered by this Agreement and supersedes all prior and collateral communications, reports, and understandings, if any, between the parties regarding such CONFIDENTIAL INFORMATION.
- 15. This Agreement shall be governed in all respects by the laws of The Netherlands. The validity and interpretation of this Agreement and legal relations of the Parties to it shall be governed by the laws of the Netherlands, excluding any conflict of law provisions. Any dispute arising out of or in connection with this Agreement (whether based in contract, tort or otherwise) shall be submitted exclusively to the competent court in The Hague, the Netherlands.
- 16. No modifications to any provision of this Agreement shall be binding upon the parties hereto unless made in writing and signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement in duplicate effective as of the date first mentioned above.

Delft University of Technology
(also for its partners in MicroNed)

<full name company>
<location>

(Name)

(Name)

(Title)

(Title)

(Signature)

(Signature)