Confidential Information and Intellectual Property Agreement (**“IP Agreement”**)

Between

**XXXX** (“XXX” or the **“Company”**), a limited liability company duly constituted, formed and registered under the Laws of Malta with Company Registration Number XXX, and having its registered address at XXXX, represented herein by XXXX, duly authorised for this purpose;

and

the **University of Malta** (**“UM”**) of Msida, MSD 2080, Malta, represented herein by the Rector, Professor Alfred J. Vella, duly authorised for this purpose.

Hereinafter for the purposes of this IP Agreement individually referred to as a **“Party”** and all of them together and jointly, as **“Parties”**.

**PREAMBLE**

1. WHEREAS the Parties have jointly submitted an application for a grant to carry out a project with the name “[PROJECT NAME]” (the **“Project”**) to be financed by the Malta Council of Science and Technology, should the application be successful;
2. WHEREAS the Parties are aware and acknowledge that should the grant be awarded, during the course of the Project and thereafter they will be exposed to each other’s know-how, trade names, trademarks, trade secrets, trade technology and other proprietary information;
3. WHEREAS should the grant be awarded, the Parties will enter into a grant agreement with MCST (hereinafter the **“Original Agreement”**); and
4. WHEREAS, as a result of the above, the Parties are desirous to enter into this IP Agreement as a document to be considered, for their purposes, as ancillary and complementary to the Original Agreement, binding only between the Parties, with respect to the protection of Intellectual Property Rights and disclosure of certain proprietary, secret or confidential information to regulate the rights of the Parties in this respect and to prevent the unauthorized disclosure of secret or confidential information and wish to define their rights and obligations with respect to such intellectual property and secret or confidential information.

**THE PARTIES THEREFORE HEREBY AGREE AS FOLLOWS:**

1. Definitions
	1. Defined Terms

Unless the context otherwise required, the following terms shall have the meaning attributed to them below:

1. **Access Rights** means rights to use Results or Background under the terms and conditions laid down in the Original Agreement and as more particularly specified under this IP Agreement;
2. **API** means application programming interface used in respect of a specific Software;
3. **Background** means any and all, data, information or know-how (tangible or intangible) whatever its form or nature, including any Intellectual Property and IPRs that is/are:

(i) owned by a Party or that a Party has a right to license, prior to the Start Date of the Project; or

(ii) developed or acquired by a Party independently from the work in the Project even if in parallel with the performance of the Project,

but solely to the extent that such data, information, know-how and/or IPRs are used in or introduced into the Project by the Party who owns or has the right to license it;

1. **Confidential Information** means all information (including any copies thereof) recorded, preserved or disclosed in whatever manner and via any media (in tangible or intangible form), by a Party or its employees, agents, officers, representatives or advisers (the **“Disclosing Party”**) to the other Party and that Party's employees, officers, representatives or advisers (the **“Receiving Party”**) including but not limited to:
2. the terms of this IP Agreement;
3. any information that would be regarded as confidential by a reasonable business person relating to:
* the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the disclosing party; and
* the operations, processes, product or service information, know-how, designs, trade secrets or software of the disclosing party;
1. any information of whatsoever nature duly marked by the Disclosing Party as “confidential” upon disclosure; and
2. any analysis derived from the above information.
3. **Defaulting Party** shall mean a Beneficiary that is responsible for an Event of Default in terms of Article 4.1 of the Original Agreement;
4. **Exploitation** or **Exploit** means the direct or indirect use of Results (i) in developing, creating or marketing a product, or process, or (ii) in creating and providing a service;
5. **Fair and Reasonable Compensation** means the appropriate conditions including possible financial terms taking into account the specific circumstances of the request for Access Rights, for example the actual or potential value of the Results or Background to which Access Rights are requested and/or the scope, duration and characteristics of the Exploitation envisaged and shall include the following understanding: to fall within Fair and Reasonable conditions, the conditions must also be non-discriminatory;
6. **Intellectual Property Rights** or **IPR(s)** means patents, patent applications and other statutory rights in inventions; copyright and related rights (including without limitation copyrights in Software); trade-marks, tradenames and domain names, registered design rights, applications for registered design rights, unregistered design right s and other statutory rights in designs; rights in get-up, goodwill and the right to sue for passing off or unfair competition; rights in computer software; database rights; rights to preserve the confidentiality of information (including know-how and trade secrets); and other similar or equivalent forms of statutory protection, and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world, but excluding rights in Confidential Information and/or trade secrets;
7. **MCST** means the Malta Council for Science and Technology;
8. **Needed** means in respect of executing or carrying out the Project, and/or in respect of “Exploitation of Results”, technically essential and:
9. where IPRs are concerned, that those IPRs would be infringed without Access Rights being granted under the Original Agreement and this IP Agreement;
10. where Confidential Information is concerned, only Confidential Information which has been disclosed during the Project may be considered as technically essential, except as otherwise agreed between the Parties;
11. **Object Code** means Software in machine-readable compiled and/or executable form including, but not limited to, byte code form and in form of machine-readable libraries used for linking procedures and functions to other Software;
12. **Result(s)** means any tangible or intangible output of the Project, such asdata, knowledge and information whatever their form or nature, whether or not they can be protected, which are generated in the Project as well as any rights attached to them, including Intellectual Property Rights;
13. **Software** means a software program being sequences of instructions to carry out a process in, or convertible into, a form executable by a computer, and fixed in any tangible medium of expression;
14. **Source Code** means Software in human-readable form normally used to make modifications to it, including but not limited to comments and procedural code such as job control language and scripts to control compilation and installation;
15. **Subcontractor** means a third party which has entered into an agreement on business conditions with one or more of the Parties, in order to carry out part of the work of the Project without the direct supervision of the beneficiary and without a relationship of subordination; and
16. **Termination** means termination of this IP Agreement for whatsoever reason.

Provided that any other capitalised terms used in this IP Agreement that are not defined in this Section 1.1 shall have the meaning attributed to them in the Original Agreement (including, for the avoidance of doubt, any of its annexes).

* 1. Interpretation

In this IP Agreement, the following rules of interpretation shall apply:

1. The headings in this IP Agreement are inserted for convenience only and shall not affect its construction.
2. A reference to a particular law or regulation is a reference to it as it is in force at the time of its application, therefore taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
3. Unless the context otherwise requires, words in the singular include the plural and in the plural include the singular.
4. Any phrase containing the term "include", "including", "in particular" or any similar expression will be construed as illustrative and will not limit the meaning or sense of the words preceding that term.
5. Any reference to a “Section” shall mean a reference to a provision in this IP Agreement.
6. Duration and Termination
7. Term and Termination
8. This IP Agreement shall come into force on the latest date of signature of the Parties hereto and shall continue in full force and effect until the complete fulfilment of all obligations undertaken by the Parties under the Original Agreement and under this IP Agreement.
9. Notwithstanding paragraph (a) of this Section 2.1, this IP Agreement or the participation of a Party to it may be terminated prior to the expiry of the Term as follows:

(i) forthwith by the non-Defaulting Party providing notice to a Defaulting Party;

(ii) forthwith by the Party not suffering the Force Majeure in the event of a Party suffering Force Majeure, in the manner provided in Section 3.6; and

by the mutual written consent of all of the Parties, on such terms as may be agreed between them.

provided that paragraphs (i) and (ii) above shall be without prejudice to Sections 2.2 and 6.6(b) of this IP Agreement.

1. In the event that the Project is not financed by MCST, or the Original Agreement is Terminated, or if a Party's participation in the Original Agreement is terminated, then this IP Agreement shall automatically terminate in respect of the affected Party/ies, subject to the provisions surviving the expiration or Termination under Section 2.2 of this IP Agreement.
2. Survival of rights and obligations

All provisions of this IP Agreement which by their nature should survive the Termination (whether terminated with respect to any or all Parties as provided under Section 2.1) shall survive Termination. This shall include the provisions relating to Definitions (Section 1), Background and Results (Section 4), Access Rights (Section 6) and Confidential Information (Section 7), for the time period mentioned therein, as well Liability (Section 3), General Provisions (Section 8) and Applicable law and Dispute Resolution (Section 9).

1. Liability
2. No warranties
3. In respect of any information or materials (including Results and Background) supplied by one Party to another under the Project, no warranty or representation of any kind is made, given or implied as to the sufficiency or fitness for purpose nor as to the absence of any infringement of any proprietary rights of third parties.
4. In pursuance of paragraph (a) of this Section 3.1, the following shall apply:

the recipient Party shall in all cases be entirely and solely liable for the use to which it puts such information and materials; and

no Party granting Access Rights shall be liable vis-à-vis any the other Party in the event of infringement of proprietary rights of a third party resulting from any other Party exercising its Access Rights.

1. Liability: General

Subject to the following provisions of this Section 3, the general provisions of Maltese law governing liability (including both contractual and non-contractual liability) shall apply to any claim between the Parties for loss or damage caused by a Party, its employees, agents and Subcontractors and arising in connection with the Project (including this IP Agreement or the Original Agreement).

1. Excluded liabilities

Notwithstanding Section 3.2, and without prejudice to the remaining provisions of this Section 3, in no event shall any Party be liable to another Party for loss or damage caused by a Party, its employees, agents and Subcontractors in connection with the Project (including this IP Agreement or the Original Agreement) for any of the following (howsoever caused or arising) and even if such Party was informed or aware of the possibility thereof:

1. loss of profits, revenue, income, interest, savings, shelf-space, production and business opportunities;
2. lost contracts, goodwill, and anticipated savings;
3. loss of or damage to reputation or to data;
4. costs of recall of products; or
5. any type of indirect, incidental, punitive, special or consequential loss or damage.
6. Exceptions to Section 3.3

The exclusions and limitations stated in Section 3.3 shall expressly not apply in respect of the following:

1. any infringement of the IPRs of any other Party, which is the result of any activity or use of such IPRs that exceeds the scope of the Access Rights granted or pursuant to the Original Agreement or this IP Agreement, or that is not in compliance with the associated terms and conditions upon which the Access Rights have been granted;
2. any breach by a Party of its obligations under Section 7;
3. fraud;
4. death, injury to natural persons or damage to real or immovable property caused by the negligence or wilful act of a Party, its directors, employees, agents and Subcontractors; wilful misconduct, gross negligence, wilful breach by a Party of any obligation accepted under the Original Agreement and this IP Agreement; or
5. otherwise in so far as mandatory applicable law overrides such exclusions and limitations.
6. Damage caused to third parties

Each Party shall be solely liable for any loss, damage or injury to third parties resulting from the performance of the said Party’s obligations by it or on its behalf under this IP Agreement or from its use of Results or Background.

1. Force Majeure

No Party shall be considered to be in breach of this IP Agreement if it is prevented from fulfilling its obligations under the Agreement by Force Majeure. The Party suffering the Force Majeure will notify the other Party/ies and MCST in writing of any Force Majeure without undue delay, describing the Force Majeure event, its anticipated duration and use reasonable efforts to resume performance as soon as possible. A twelve (12)-week grace period (to be reckoned from the date of the aforesaid notification) shall be given for overcoming the consequences of Force Majeure, following which the Party not suffering the Force Majeure shall have the option of deciding such steps which may be necessary in order to fulfil the obligations of the Party suffering the Force Majeure under the Original Agreement, which may also include a termination this IP Agreement in respect of the Party suffering the Force Majeure.

1. Background and Results
2. Background

The Parties hereby acknowledge that any Background of a Party shall remain the exclusive property of that Party.

1. Ownership of Results

Results shall be owned by the Party who discovered, generated or developed such Results during the course of the Project, provided that Section 4.3 shall apply in the event that the Parties generate the Results jointly.

1. Joint ownership
2. The Parties shall own Results jointly only in the event that:
3. they have jointly discovered, generated or developed them; and
4. it is not possible to separate them for the purpose of applying for, obtaining or maintaining their protection.
5. Following generation of a joint Result, the joint owners shall enter into good faith discussions in order to conclude a “Joint Ownership Agreement” that covers in particular the following:
6. The division of ownership to the joint Results based on the respective contribution of each Party. In case it is not possible to establish the respective contribution of each Party, each joint owner shall have an equal, undivided interest in and to a joint Result as well as in and to resulting Intellectual Property Rights in all countries;
7. An appropriate course of action for filing application(s) for Intellectual Property Rights in such joint Result, including the decision as to which Party is to be entrusted with the preparation, filing and prosecution of such application(s) and in which countries of the world such application(s) for Intellectual Property Rights are to be filed. Save as otherwise explicitly provided herein, all costs related to application(s) for Intellectual Property Rights in joint Results and Intellectual Property Rights resulting from such application(s) shall be shared in the same proportion as the division of ownership; and
8. Criteria or principles for ‘fair and reasonable compensation’ to be provided to the other joint owners, if a license to a Party’s share of joint Result is granted.
9. In the event that the Parties do not conclude a Joint Ownership Agreement within 6 months from Termination, each joint owner may grant non-exclusive licences to third parties to exploit jointly-owned Results (without any right to sub-license), on the condition that the other joint owners are given:
10. At least 45 days’ advance notice; and
11. Fair and Reasonable Compensation.
12. In the event that one of the joint owners of an Intellectual Property Right or an application for an Intellectual Property Right on a joint Result wishes to discontinue the payment of its share of the maintenance fees or other costs in any particular country or territory (the **“Relinquishing Owner”),** the Relinquishing Owner shall promptly notify the other joint owner(s) of its decision, and the other owner(s) may take over the payment of such share. The Relinquishing Owner shall forthwith relinquish to the other owner(s) who continues such payments, its right, title to and interest in such jointly owned Intellectual Property Right for the countries or territories concerned, subject, however, to the retention of a non-transferable, non-exclusive, royalty-free and fully paid-up license, without the right to grant sub-licences, for implementation of the Project.
13. Dissemination
14. Dissemination of Results

During the Project and for the period of time as stated in Section 7.1(a), the Dissemination of Results by any of the Parties including but not restricted to publications of whatever form (excluding patent applications(s) and other registrations of IPRs), shall subject to the following:

* + - * 1. Prior written notice of the final version of any planned publication shall be given by the Party requiring the publication (hereinafter the **“Requesting Party”**) to the other Party at least forty-five (45) days before the planned publication submission date. Any objection to the planned publication shall be made in writing by the objecting Party to the Requesting Party within thirty (30) days from receipt of the said written notice. If no objection is made within the time limit stated above, the publication is permitted.
				2. An objection to a planned publication by a Party is justified if any of the following applies:
1. the protection of the objecting Party's Results or Background is adversely affected;
2. the proposed publication includes Confidential Information of the objecting Party; and
3. the objecting Party's legitimate academic or commercial interests would be significantly harmed.
	* + - 1. Any and all objection(s) shall include, to the extent possible, a precise request for necessary modifications.
				2. If an objection has been raised on one or more of the grounds mentioned in paragraph (b) of this Section 5.1, the objecting Party and the Requesting Party shall discuss how to overcome the justified grounds for the objection on a timely basis (for example by amendment to the planned publication and/or by protecting Confidential Information before publication) and the objecting Party shall not unreasonably continue the opposition if appropriate measures are taken following the discussion.
4. Dissemination of another Party’s unpublished Results or Background

In the event that a Party wishes to include in a dissemination activity another Party's Results (which are not publicly available), Background and/or Confidential Information, it needs to first obtain that Party's prior written approval. In such case, the procedure provided in Section 5.1 is to be followed by that Party, provided that the mere absence of an objection according to Section 5.1 of this IP Agreement shall not in any instance be considered as an approval.

1. Co-operation obligations
2. The Parties undertake to co-operate to allow the timely submission, examination, publication and defence of any dissertation or thesis for a degree which includes their Results, Background and/or Confidential Information, subject to the confidentiality and Dissemination provisions agreed in this IP Agreement.
3. In accordance with Section 5.1 of this IP Agreement, prior to notifying any planned publication and/or any planned Dissemination of Results activity, Parties shall undertake reasonable efforts to refrain from including in such planned publication and/or such planned Dissemination activity of any other Party’s Results, Background or Confidential Information.
4. Use of names, logos or trademarks

Nothing in this IP Agreement shall be construed as conferring rights to use in advertising, publicity or otherwise the name of the Parties or any of their logos or trademarks without their prior written approval.

1. Access Rights
2. Background included
	* + - 1. Each Party hereby grants the other Party a non-exclusive, royalty-free licence to the relevant part or parts of its Background, and to its Confidential Information, for the sole purpose of carrying out their duties for the successful completion of the Project in terms of the Original Agreement.
				2. For the avoidance of doubt, any Access Rights granted under this IP Agreement expressly exclude any rights to grant sub-licences, unless expressly stated otherwise in this IP Agreement or agreed in writing between the Parties concerned.
				3. Save in exceptional circumstances, the granting of Access Rights shall be free of any administrative transfer costs. Any and all Access Rights granted under this IP Agreement shall be granted on a non-exclusive, non-transferable and worldwide basis, if not otherwise agreed in writing by the Parties concerned.
3. Access Rights for implementation of the Project

Access Rights to Results and Background Neededby a Party for the implementation of its own tasks underthe Project are hereby requested (in accordance with the requirements of the Original Agreement), and shall be deemed granted, as of the date of the Original Agreement entering into force, on a royalty-free basis to and by all Parties, and shall either terminate automatically upon completion of the Project or upon Termination, as applicable, subject to the provisions of Section 6.6.

1. Access Rights for non-commercial internal use

Access Rights to Results for internal use by a Party for non-commercial purposes limited to research, further development and teaching are hereby requested and shall be deemed granted, as of the date of the Result arising, on a royalty-free basis to and by all Parties.

1. Access Rights for Exploitation
2. Access Rights to Results for Exploitation (including as Needed for Exploitation of own Results) shall be granted on Fair and Reasonable Conditions, subject to the following:

The Party requiring the grant of such Access Rights (the **“Requesting Party”**) shall make a written request to the Party (the **“Granting Party”**) from whom it requires the Access Rights;

The written request shall identify the Results concerned; and

Any such Access Rights shall only be granted upon the signature of a written agreement between the Granting Party and the Requesting Party and shall not be otherwise deemed granted.

1. Access Rights to Background, if Needed for Exploitation of Results, as demonstrated to the satisfaction of the Party owning or controlling such Background shall be granted on Fair and Reasonable Conditions to be negotiated in good faith between the concerned Parties.
2. Access Rights to third parties

Subject to obligations in relation to Confidential Information but notwithstanding anything else in this IP Agreement, each Party may enter into a technical co-operation or licensing arrangement with a third party in respect of its own Results.

1. Access Rights for Parties leaving the Project
2. Access Rights granted to a leaving non-Defaulting Party
3. A withdrawing Party shall continue to grant Access Rights pursuant to the Original Agreement and this IP Agreement in respect of its Background and Results existing at the time of such termination; and
4. Notwithstanding anything to the contrary in this IP Agreement, a leaving Party is entitled to request Access Rights for Exploitation of its Results under the terms set forth in this IP Agreement up to one (1) year following termination of such leaving Party’s participation in the Project.
5. Access Rights granted to a leaving Defaulting Party
6. Any and all Access Rights granted to a Defaulting Party and such Party's right to request Access Rights shall cease immediately upon receipt by the Defaulting Party of the formal notice of the decision of MCST to terminate its participation in the Project.
7. A Defaulting Party shall continue to grant Access Rights pursuant to the Original Agreement and this IP Agreement in respect of its Background, and Results existing at the time of such termination as prescribed in this IP Agreement.
8. A Defaulting Party shall immediately return at its own cost any and all other Party’s materials, equipment, and any other element being in its possession, if and where requested by a Party (including without limitation Confidential Information capable of being returned).

[START - OPTIONAL for projects with software component]

1. Specific provisions on Access Rights to Software
	1. For the avoidance of doubt, the general provisions for Access Rights provided for in this Section 6 are also applicable to Software. In the event of a contradiction between the terms of Sections 6.1 - 6.6 inclusive, and this Section 6.7, the provisions of the Sections 6.1 - 6.6 inclusive shall prevail.
	2. Parties’ Access Rights to Software generally do not include any right to receive the following:
2. Source Code; or
3. Object Code ported to a certain hardware platform; or
4. any right to receive Source Code, Object Code or respective Software Documentation in any particular form or detail, but only as available from the Party granting the Access Rights.
	1. Access Rights to Software which is a Result shall comprise:
5. access to the Object Code; and
6. where normal use of such an Object Code requires an API, Access to the Object Code and such API; and
7. if (ii) is not available, notwithstanding paragraph (b) of this Section 6.7, and if a Party can show that the execution of its tasks under the Project or the Exploitation of its own Results is technically impossible without Access to the Source Code, Access to the Source Code to the extent Needed.
	1. Access Rights to Software which is Background shall only be provided to the Object Code of such Software, unless otherwise agreed between the Parties concerned.

[END - OPTIONAL for projects with software component]

1. Confidential Information
2. Obligations of the Parties
3. A Party being the recipient of Confidential Information under this IP Agreement (the **“Recipient”**) hereby undertakes for the duration of this IP Agreement and for a period of five (5) years after the end of the Project:
4. not to use Confidential Information otherwise than for the purpose for which it was disclosed;
5. not to disclose Confidential Information to any third party other than Subcontractors without the prior written consent by the Party disclosing the Confidential Information (the **“Disclosing Party”**), wherein the Recipient must ensure that an arrangement is in place prior to such disclosure that subjects the Subcontractors to provisions at least as strict as provided in this Section 7;
6. to apply for the security of Confidential Information at least the same degree of care as it applies for the security of its own Confidential Information (but in any case, shall apply not less than reasonable care); and
7. to ensure that internal distribution of Confidential Information by it and by any Subcontractors shall take place strictly on a need-to-know basis;
8. to return to the Disclosing Party, or destroy, on request all Confidential Information that has been disclosed to the Recipient including all copies thereof, and to delete all such Confidential Information stored in a machine-readable form to the extent practically possible; provided that the Recipient may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable laws and regulations, for the proof of on-going obligations or to the extent the Confidential Information is archived (such as by Recipient’s automated back-up archiving practices), provided that the Recipient complies with the confidentiality obligations herein contained with respect to such copy for as long as the copy is retained.
9. Further to provisions of paragraph (a) of this Section 7.1, the Recipient undertakes to disclose the Confidential Information only to its employees, subcontractors or such persons otherwise engaged by it specifically to assist the Recipient in undertaking its obligations with respect to the Project who:
10. Reasonably need to receive the Confidential Information for the purposes of the implementation of the Project;
11. Have been informed by the Recipient of the confidential nature of the Confidential Information and of the terms of the present Agreement; and
12. Have been advised of, and agree to be bound, by equivalent obligations to those in the present IP Agreement.
13. The provisions of paragraph (a) of this Section 7.1 shall not apply to disclosure or use of Confidential Information, if and in so far as the Recipient can show that:
14. the Confidential Information has become publicly available by means other than a breach of the Recipient’s confidentiality obligations;
15. the Disclosing Party has informed the Recipient that the Confidential Information is no longer confidential;
16. the Confidential Information has been communicated to the Recipient without any obligation of confidence by a third party who is to the best knowledge of the Recipient in lawful possession thereof and under no obligation of confidence to the Disclosing Party, as the Recipient can evidence by written records;
17. the Confidential Information was developed by the Recipient completely independently of any such disclosure by the Disclosing Party, as the Recipient can evidence by written records;
18. the Confidential Information was already known to the Recipient prior to disclosure without any obligation of confidence to the Disclosing Party, as the Recipient can evidence by written records; or
19. the Recipient is required to disclose the Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, subject to the provisions of Section 7.2.
20. The Recipient shall further limit and control any copies and reproductions of the Confidential Information. The Recipient shall return (or destroy, as applicable) all records or copies of the Confidential Information at the request of the Disclosing Party and at the latest on termination of this IP Agreement. This shall not apply to Confidential Information or copies thereof which must be retained by the Recipient according to mandatory law, provided that such Confidential Information or copies thereof shall be subject to the confidentiality terms of this IP Agreement for the duration of Term (as defined in Section 2.1(a)) and for an additional period of five (5) years thereafter.
21. All Confidential Information disclosed under this IP Agreement shall remain the exclusive property of the Disclosing Party, as well as all patent, copyright, trade secret, trade mark and other Intellectual Property Rights therein. Furthermore, the Parties agree that this Agreement and the disclosure of Confidential Information hereunder do not grant or imply any license, interest or right to the Recipient in respect to any Intellectual Property Right of the other Party.
22. Notification obligations

(a) The Recipient shall promptly notify the Disclosing Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information as soon as practicable after it becomes aware thereof.

(b) If the Recipient becomes aware that it will be required, or is likely to be required, to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order in terms of Section 7.1 (b)(vi), it shall, to the extent it is lawfully able to do so, prior to any such disclosure:

1. notify the Disclosing Party; and
2. comply with the Disclosing Party’s reasonable instructions to protect the confidentiality of the Confidential Information and to mitigate any damage which the said disclosure may cause.
3. General Provisions
4. Notices
	1. A notice required to be given under this IP agreement or information or other documentation required to be sent under this IP agreement shall be validly given if sent by e-mail to the following email addresses:
5. For the UM: to the email address of the Project Coordinator, with a copy to knowledgetransfer@um.edu.mt; and
6. For the Company: to the email address of a duly-authorised legal representative of the Company with a copy to [insert email address, if applicable],
7. or to any such any other email address as duly notified by one Party to the other from time to time;
8. provided that any notice requires to be given by any Party to MCST shall be duly given to MCST in the manner provided in Article 6.3 of the Original Agreement.
	1. For the purposes of this IP Agreement, any notice duly sent by email shall be deemed to be delivered and received upon transmission, provided that notices sent after 17:00HRS CET on a working day, and notices sent on a Saturday, Sunday or on a public or national holiday in Malta, shall be deemed to be received at 09:00HRS CET of the immediately-following working day.
	2. This Section 8.1 does not apply to the service of any proceedings or other documents in any legal action.
9. Entire Agreement

In addition to the Original Agreement, this IP Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof.

1. Modifications and Amendments

No modification, amendment or waiver of this IP Agreement or provision hereof shall be binding upon any Party unless made in writing or confirmed in writing by their duly authorised representatives.

1. Inconsistencies

In the event that the terms of this IP Agreement are in conflict with the mandatory terms of the Original Agreement, the terms of the latter shall prevail.

1. Severability

Should any part, term or provision of this IP Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby. In such event, any such part, term or provision, shall to that extent, be severed from the remaining provisions which shall continue to be valid to the fullest extent permitted by law.

1. No representation, partnership or agency

Each Party is an independent contractor under this IP Agreement. The Parties agree that this IP agreement does not create any partnership, agency or any other relationship under which either Party may be deemed responsible for the acts or omissions of the other Party and this IP Agreement should not be construed so as to render the parties liable as partners or as creating a partnership or agency or any other similar relationship. The Parties are furthermore expressly not entitled to act or to make legally binding declarations on behalf of any other Party.

1. Prohibition of Assignment

No rights or obligations of the Parties arising from this IP Agreement may be assigned or transferred, in whole or in part, to any third party, without the other Party’s prior formal (written) approval.

1. Miscellaneous
	1. No failure or delay on the part of either Party hereto to exercise any right or remedy under this IP Agreement shall be construed or operated as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in this IP Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
	2. In the event of a breach or threatened breach or intended breach of this IP Agreement by either Party, in addition to any other rights and remedies available to it/them at law, shall be entitled to file precautionary warrants or applications, enjoining and restraining such breach or threatened breach or intended breach.
	3. No person other than a Party to this IP Agreement may enforce any of its terms.
2. Applicable law and dispute resolution
3. Applicable Law

This IP Agreement and any dispute or claim arising out of or in connection with it or its subject-matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Malta.

1. Dispute Resolution
	* + - 1. The Parties shall reasonably endeavour to settle their disputes amicably. If, however, no settlement of any dispute under this IP Agreement has been possible to achieve, after the Parties’ reasonable endeavours to settle such dispute(s) amicably, the provisions of paragraph (b) of this Section 9 shall apply, provided that the Parties concerned may instead elect unanimously to seek to resolve by mediation any dispute under this IP Agreement.
				2. All disputes directly arising under this IP Agreement, which cannot be settled amicably, shall be referred to final and binding arbitration in terms of Part IV of the Arbitration Act (Chapter 387, Laws of Malta) under the applicable Arbitration Rules of the Malta Arbitration Centre by one arbitrator appointed by agreement between the Parties.
				3. Should no agreement be reached on who shall be appointed arbitrator within a period of fifteen (15) days from the date on which the dispute, controversy or claim arises, the arbitrator shall be appointed by the Malta Arbitration Centre.

**--- END ---**

**SIGNED -**

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For and on behalf of the **University of Malta** For and on behalf of [COMPANY]

By Prof. Alfred J. Vella, Rector By [NAME, POSITION]

Date: [DD/MM/YYYY] Date: [DD/MM/YYYY]