CONFIDENTIALITY AGREEMENT

between

**Please insert name of the Carl Zeiss company involved**

insert address of Carl Zeiss company

insert address of Carl Zeiss company

insert address of Carl Zeiss company

-hereinafter referred to as “**Zeiss**”-

and

**Please insert name of the other party involved**

insert address of the other party

insert address of the other party

insert address of the other party

-hereinafter referred to as “**Partner**”-

-Zeiss and Partner are hereinafter individually and alternatively referred to as "**Receiving Party**" and "**Disclosing Party**" or "**Party**", or together "**Parties**"-

**Preamble**

WHEREAS Zeiss is engaged in the development, manufacture and sale of ……………………….…..;

WHEREAS Partner is engaged in ……………………………..;

WHEREAS the Parties intend to discuss or to undertake the following activities: [please describe precisely the goal of the discussions / activities in a narrow sense] (hereinafter referred to as the “**Purpose**“);

WHEREAS during the course of these discussions and activities it may become desirable or necessary for the Parties to disclose to each other certain information of a proprietary or confidential nature; and

WHEREAS the Parties wish to set forth the terms and conditions governing the disclosure, use and protection of such information;

NOW, THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, the Parties hereto agree as follows:

* 1. The term **„Affiliate**“ as used in this confidentiality agreement (hereinafter referred to as “**Agreement**”) shall mean any legal entity that directly or indirectly controls a Party (hereinafter referred to as “**Parent Company**”), or is controlled by a Party or its Parent Company. “**Control**” as used in this Agreement means direct or indirect ownership of more than fifty per cent (50%) of the stock of such entity, or more than a fifty per cent (50%) interest, direct or indirect, in the decision-making authority of such entity.
	2. The term "**Confidential Information**” as used in this Agreement shall mean any trade secrets or confidential or proprietary information disclosed by the Disclosing Party or an Affiliate of the Disclosing Party to the Receiving Party or which becomes known to the Receiving Party while performing the activities described in the Preamble above, whether in writing, orally, stored on data carriers, in the form of samples, models or otherwise. Orally disclosed information will be considered as Confidential Information if the Disclosing Party at the time of disclosure describes such information as confidential and summarizes the information in a written document marked as confidential. Such written summary shall be delivered to the Receiving Party within thirty (30) calendar days from the date of oral disclosure. Confidential Information disclosed in writing shall be noted as such, whether by letter or by the use of an appropriate stamp or legend. The fact that the Parties are in discussions and exchange information shall also be Confidential Information.
	3. However, information disclosed by the Disclosing Party hereunder shall not be considered as Confidential Information if the Receiving Party demonstrates that such information was
1. known to the Receiving Party prior to the time of disclosure;
2. in the public domain at the time of disclosure or thereafter becomes publicly known through no breach of this Agreement by the Receiving Party;
3. obtained by the Receiving Party from a third party who has the right to disclose such information to the Receiving Party; or
4. independently developed by the Receiving Party by employees which had no access to and which did not use Confidential Information of the Disclosing Party.

In the event that the Confidential Information is required to be disclosed by law, or a judicial or governmental order, the Receiving Party may disclose such Confidential Information to the extent so required; provided that the Receiving Party notifies the Disclosing Party in writing prior to such disclosure so that the Disclosing Party may contest the disclosure or seek a protective order.

The Receiving Party shall

1. hold in strict confidence and shall not disclose to the public domain or to any third party Confidential Information, whether or not bound by a non-disclosure agreement, except where expressly authorized in writing by the Disclosing Party. Confidential Information may be disclosed without such authorization only to Affiliates of the Receiving Party where (i) such disclosure is necessary or suitable to achieve the Purpose and (ii) the Affiliate is bound by a written confidentiality agreement of at least equal scope to this Agreement and which extends to the Confidential Information;
2. use the Confidential Information only for the Purpose;
3. not reverse engineer, disassemble, or de-compile any prototypes, objects, or software disclosed as Confidential Information;
4. at all times take all necessary and reasonable precautions to prevent access to the Confidential Information through unauthorized persons such precautions shall in no event be less than those the Receiving Party utilizes to protect its own proprietary information and trade secrets;
5. restrict access to the Confidential Information to those employees, representatives and consultants who need the Confidential Information in order to achieve the Purpose and who are bound, whether as a condition of an employment contract or otherwise, by a written confidentiality agreement of at least equal scope to this Agreement and which extends to the Confidential Information and to disclose the Confidential Information only to the extent that is necessary for such employees, contractors or consultants to achieve the Purpose of the Agreement. Notwithstanding the foregoing, the Receiving Party will be responsible for any unauthorized use, reproduction or disclosure of Confidential Information by its employees, representatives, consultants and Affiliates.
	1. All documents, drawings, data carriers, samples and other materials which contain or embody Confidential Information shall remain the sole and exclusive property of the Disclosing Party and shall, as well as any copies thereof, be returned upon written request without undue delay to the Disclosing Party or destroyed at the Disclosing Party’s sole option. If the Disclosing Party elects destruction, the Receiving Party shall confirm such destruction promptly upon request. The obligations under this Article 3.1 shall not apply for archival electronic backup copies created by the Receiving Party on a regular basis in the ordinary course of business with the sole purpose of data protection and for archival copies retained by the Receiving Party to comply with applicable laws. Such copies shall not be used for any other purposes than archival purposes and preservation of evidence.
	2. All intellectual property rights related to the Confidential Information, including but not limited to patents and copyrights, shall remain with the Disclosing Party. The Receiving Party shall not at any time infringe such right, title or interest of the Disclosing Party concerning the Confidential Information nor aid others in doing so, directly or indirectly. Nothing contained in this Agreement shall be construed as granting a license under any patent, copyright or other intellectual property right of the Disclosing Party with respect to the Confidential Information except the right to use the Confidential Information in accordance with the terms and conditions of this Agreement.
	3. No Party makes any representations, either expressed nor implied, as to the adequacy, usability, sufficiency, freedom from defect of any kind, or non-infringement of any patent, copyright, trade secret or other proprietary rights that may result from the use of the Confidential Information, nor shall the Parties incur any responsibilities or obligations whatsoever by reason of the furnishing or receiving of such Confidential Information, except as provided in this Agreement.
	4. Nothing contained in this Agreement shall be construed as an obligation to disclose any Confidential Information to the other Party, or to enter into any other agreement or relationship with the other Party.

The Receiving Party acknowledges that the Confidential Information is the valuable proprietary information and/or confidential trade secret of the Disclosing Party and that the Disclosing Party will sustain irreparable financial and business loss by any breach of the terms and conditions of this Agreement and money damages may not afford the Disclosing Party an adequate remedy. Therefore, in the event of a breach of this Agreement by the Receiving Party, the Disclosing Party may seek all remedies granted under law or equity, including without limitation injunctive or other court-ordered relief that may be available against a threatened or continuing breach.

* 1. This Agreement comes into effect on the date last signed by both Parties and remains effective for a period of 2 (two) years thereafter. It may be terminated in writing any time prior to the end of this term by either Party; termination will become effective thirty (30) days from date of receipt of the termination notice.
	2. The obligations to protect Confidential Information shall survive the term of this Agreement for a period of five (5) years from the expiration or earlier termination of this Agreement.
	3. This Agreement contains and constitutes the entire understanding and agreement between the Parties with regard to the exchange and protection of the Confidential Information.
	4. This Agreement may not be amended or modified except by a subsequent agreement in writing by duly authorized officers or representatives of the Parties. This written form requirement cannot be waived except by a written instrument signed by both Parties. Scanned copies of signed original documents such as pdf- copies shall be deemed as signed original copies.
	5. This Agreement may neither in whole nor in part be transferred or assigned by one Party to a third party without the prior written consent of the other Party.
	6. Should a provision of this Agreement be or become invalid or void, the validity of the remainder of this Agreement is not affected. The Parties shall replace the invalid or void provision and amend this Agreement with a provision that comes as close as possible to the invalid provision in a way that is permitted by law.
	7. A waiver of any term or condition in one instance shall not be deemed to be a waiver of such term or condition in any other instance. No waiver of any right, remedy, power or privilege by any Party under this Agreement shall be effective unless made in writing.
	8. This Agreement shall be subject to and interpreted in accordance with the laws of Germany without regard to the conflict of laws provisions thereof.
	9. All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The place of arbitration shall be in the city where Zeiss has its principal place of business. The procedural laws of the place of arbitration shall apply where the Rules are silent. Arbitration language shall be English. The costs of the arbitration procedures and the reasonable attorney costs of the prevailing Party shall be borne by the defeated Party.

**For Zeiss**: **For Partner**:

………………………………………………………. ……………………………………………………….. (Date) (Date)

……………………………………………………….. ……………………………………………………….. (Signature) (Signature)

……………………………………………………….. ……………………………………………………….. (Signatory’s name in capital letters) (Signatory’s name in capital letters)

……………………………………………………….. ……………………………………………………….. (Title) (Title)

………………………………………………………..

(Signature)

………………………………………………………..

(Signatory’s name in capital letters)

………………………………………………………..

(Title)