**NON-DISCLOSURE AGREEMENT**

[ACRONYM – COPERA]

This Non-Disclosure Agreement (hereinafter “this Agreement”) is entered into by and between:

|  |  |  |
| --- | --- | --- |
| **Party 1: VITO** | | |
| Name of Contracting Party: | **VITO NV** | |
| Address: | a limited liability company incorporated under the laws of Belgium (Register of Legal Entities Turnhout 244.195.916), with its registered office situated at Boeretang 200, 2400 Mol, Belgium | |
| Authorized Representative: | Dirk Fransaer, Managing Director | |
| Contact Person: | Lisa Blyth | |
| Contact Phone: | xxxx | |
| Contact E-mail: | xxxxxxxxxxxxxx | |
| Subject Matter of the Confidential Information: | Click here to enter text. | |
|  | | *(Please complete what is applicable.)* |

and

|  |  |  |
| --- | --- | --- |
| **Party 2: CHMI** | | |
| Name of Contracting Party: | Czech Hydrometeorological Institute | |
| Address: | a semi-autonomous organisation incorporated under the laws of Czech Republic, with its registered office situated at Praha 4-Komořany, Na Šabatce 17, postcode 143 06, Czech Republic | |
| Authorized Representative: | Jan Macoun, Deputy Director for Air Quality | |
| Contact Person: | Ondřej Vlček | |
| Contact Phone: | xxxxxxxxxxxx | |
| Contact E-mail: | xxxxxxxxxxxxx | |
| Subject Matter of the Confidential Information: | Gridded raw data for air quality maps for the Czech Republic in the resolution 1x1 km. The following species and statistics for years 2014 and 2015: PM10 (annual average), PM2.5 (annual average), NO2 (annual average). For ozone (26th highest daily maxima of 8-h running mean) 3-year average for years 2013–2015. Data will be provided as ESRI shapefiles. | |
|  | | *(Please complete what is applicable.)* |

WHEREAS, the parties hereto have determined to establish terms governing the use and protection of certain information that a party (“Discloser”) may disclose to the other party (“Recipient”) for the Authorized Purpose (as defined hereafter);

NOW, THEREFORE, the parties hereto agree as follows:

***Specific terms and conditions***

*(please complete what is applicable)*

|  |  |  |
| --- | --- | --- |
| Authorized Purpose | Outline in detail the reason(s) for the exchange of information: | These data will be used xxxxxxxxxxxxxxxxxxxxxxxxAir quality maps or analysis plots based on this data can be published in project reports and articles based on the results of the LIFE-IP MALOPOLSKA project. |
| Effective Date | Insert start date of first discussion: | 26/05/2017 |
| Disclosure Period | Specify during which period information will be exchanged: | This Agreement applies to Confidential Information that is disclosed between the Parties until the 31/12/2018 as from the Effective Date (as defined above). |
| Confidentiality Period | Specify during which period confidentiality is to be preserved: | Recipient’s use and disclosure restrictions expire on the fifth (5th) anniversary of the ending date of the Disclosure Period. However, regarding the source code, algorithms disclosed under this Agreement, Recipient’s use and disclosure restrictions with respect to such items of Confidential Information shall remain in force until one of the exceptions provided in article 3 hereunder can be invoked by Recipient. |
| Governing law | | The laws of Belgium, without reference to its conflict of law principles. |
| Dispute Settlement | | Courts of Antwerp (Belgium). |

***General terms and conditions***

The parties agree to exchange the Confidential Information (as defined below) under the specific terms and conditions set forth above and the general terms and conditions detailed hereunder.

**Article 1 – Definition**

1.1. “Confidential Information” means any and all non-public information that Discloser desires to protect against unrestricted disclosure or competitive use and that Discloser may disclose or allow to be disclosed to Recipient. Confidential Information includes, but is not limited to (i) financial information (such as prices, discounts, customers and suppliers lists), (ii) technical information (such as information concerning research and development, inventions, algorithms, prototypes, materials, object and source code of software and know-how) and (iii) business information (such as operations, planning, marketing and product information). Confidential Information may be disclosed or made available in (a) tangible form (including, without limitation, fax, e-mail, text message (SMS)) or machine readable format, samples) or (b) intangible form (including, without limitation, oral or visual disclosures).

1.2. “Affiliates” means any legal entity which is:

1. directly or indirectly owning or controlling a Party, or
2. under the same direct or indirect ownership or control as a Party, or
3. directly or indirectly owned or controlled by a Party.

Ownership or control as referred to in sub items (i), (ii) and (iii) above shall exist through the:

1. direct or indirect ownership of more than 50 % of the nominal value of the issued equity share capital or of more than 50 % of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or
2. direct or indirect right by any other means to elect or appoint directors, or persons performing similar functions, who have a majority vote.

A party shall be deemed to be an Affiliate only as long as the above defined ownership or control lasts.

**Article 2 – Use and disclosure restrictions**

2.1. Recipient shall protect the Confidential Information against unauthorized use or disclosure by using the same degree of care, but no less than a reasonable degree of care, as Recipient uses to protect its own confidential information of a like nature. The Recipient shall be liable for damages resulting from unauthorized disclosure or use of Confidential Information of the Discloser only if such care is not used. The burden shall be upon the Recipient to show that such care was used.

2.2. Recipient will not use or disclose Discloser’s Confidential Information for any other purpose other than the Authorized Purpose.

2.3. Recipient shall endeavour to keep to a minimum the number of persons having access to the Confidential Information, these persons (i) having a need to know in connection with the Authorized Purpose, (ii) have been advised of the information’s confidential status, and (iii) are subject to legally binding obligations of confidentiality as to such information no less restrictive than those contained in this Agreement. Recipient shall at all times be fully responsible to Discloser for the compliance by such persons with this Agreement.

Furthermore the confidentiality and restricted use obligations imposed in this Agreement shall not preclude the disclosure of any Confidential Information to or by Affiliates engaged within the Authorized Purpose. Disclosure by or to an Affiliate of a party shall be deemed to be a disclosure under this Agreement, regardless to whom the Confidential Information belongs.

2.4. The Recipient agrees not to modify, analyse, reverse-engineer, decompile or disassemble the Confidential Information in any way in order to determine its composition or build-up without the express prior written permission from the Discloser.

2.5. Each party shall have the right to refuse to accept any Confidential Information if it believes that receiving such Confidential Information would limit or restrict in any way the use of its own technology or otherwise impair its business interests, while nothing herein shall oblige a party to disclose any particular information to the other party.

2.6. Recipient shall promptly notify in writing if Recipient has reason to believe that unauthorized use or disclosure of any Confidential Information has occurred, and Recipient shall use its reasonable efforts to cooperate with any appropriate action taken by Discloser to protect Discloser’s proprietary rights.

**Article 3 – Exceptions**

The use and disclosure restrictions set out in article 2 shall not apply to any portion of the Confidential Information that:

(a) was in Recipient’s possession prior to receipt from Discloser as proven by its written records;

(b) is or becomes in the public domain otherwise than by a breach of this Agreement by Recipient;

(c) is rightfully received by Recipient from a third party;

(d) is independently developed by or for Recipient without access to or use of Confidential Information received from Discloser;

(e) is required to be disclosed by law or governmental regulation or by any competent body or authority, provided that Recipient shall notify Discloser of the information to be disclosed (and of the circumstances in which disclosure is required) as early as reasonably possible before disclosure and shall take all reasonable actions to avoid or limit such disclosure; or

(f) is approved for release by written agreement of Discloser.

If only a portion of the Confidential Information falls under any of the above exceptions, then only that portion of the Confidential Information shall be excluded from the use and disclosure restrictions of this Agreement.

Confidential information shall not be deemed to be in the public domain merely because any part of said information is embodied in general disclosures or because individual features, components or combinations thereof are, or become, known to the public.

**Article 4 - Ownership**

The ownership of and/or intellectual property rights in the Confidential Information disclosed by Discloser to Recipient shall remain with Discloser’s. Nothing contained in this Agreement will be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed except the rights expressly stated in this Agreement.

The nature and scope of the Confidential Information disclosed by Discloser shall be entirely at the discretion of Discloser. Discloser may, at any time, cease giving Confidential Information to Recipient without any liability.

**Article 5 - Warranties**

Discloser shall provide all Confidential Information on an “AS IS” basis without any warranty whatsoever, expressed, implied or otherwise, including but not limited to any warranties regarding (i) the accuracy, completeness or usefulness of any information and (ii) non-infringement of the rights of third parties.

Recipient assumes all risk, known and unknown, incident to its use of the Confidential Information, and Discloser shall not be liable to Recipient for any damages whatsoever, including without limitation direct, indirect or consequential damages resulting from the use of or reliance upon the Confidential Information by Recipient.

Neither party shall rely on any information exchanged as a commitment or an inducement to act or not to act in any given manner. Correspondingly, neither party shall be liable to the other in any manner whatsoever for any decisions, obligations costs or expenses incurred, changes in business practices, plans, organization, products, services or otherwise, based on either party’s decision to use or rely on any information exchanged hereunder.

**Article 6 – Term of this Agreement**

This Agreement remains in force during the Disclosure Period and the Confidentiality Period. Upon termination of this Agreement, Recipient shall immediately discontinue the use of the Confidential Information of Discloser.

**Article 7 - Miscellaneous**

7.1. This Agreement contains the entire understanding of the parties with respect to the confidentiality of the Subject Matter and supersedes all prior agreements and writing between the parties and may not be modified, changed or altered without a written agreement signed by the parties.

7.2. Neither party shall have authority to make any statements, representations, or commitments of any kind, or take any action, which shall be binding on the other party, except as may be explicitly provided for herein or authorized in writing. None of the provisions of this Agreement can be interpreted as indicating the intent of the parties to form a partnership, association or joint venture.

7.3. This Agreement has been executed in English, which will be the binding and controlling language for all matters relating to the meaning, interpretation or execution of this Agreement.

7.4. The failure of either party to enforce at any time, or for any period of time, the provisions hereof shall not be construed to be a waiver of such provisions or of the right of such party to enforce each and every such provision.

7.5. All notices and demands of any kind which a party may require or desire to serve upon the other under the terms of this Agreement shall be in writing and shall be served by personal service or by mail at the address of the Recipient set forth above (or at such different address as may be designated by either party by written notice to the other party). All notices or demands by mail shall be by certified or registered mail, return receipt requested, and shall be deemed complete three days after mailing.

7.6. This Agreement shall be executed in two (2) counterparts, each of which shall constitute an original but all of which taken together shall constitute one and the same instrument. The parties may sign and deliver this Agreement by electronic or facsimile transmission. Each party agrees that the delivery of the Agreement by electronic or facsimile transmission shall have the same force and effect as delivery of original signatures and that each party may use such electronic or facsimile signatures as evidence of the execution and delivery of the Agreement by the parties to the same extent that an original signature could be used.

IN WITNESS WHEREOF, the parties have caused their duly authorized representative(s) to execute this Agreement and thereby make it effective as of the Effective Date.

For Czech Hydrometeorological Institute

Jan Macoun

Deputy Director for Air Quality

Date:

For VITO NV

Dirk Fransaer

Managing Director

Date: