

Effective Date : Month Day, Year
Disclosure Period : X months (Month Day, Year to Month Day, Year)
End of confidentiality obligations : four (4) years after the end of the FED4SAE Project

RECIPROCAL NON DISCLOSURE AGREEMENT
In the field of FED4SAE Application Experiment n°**XXX**

This reciprocal non-disclosure agreement (hereinafter referred to as the "Agreement") is made by and between:

Competence Partner

XXXX, incorporated under the laws of , with its head office located at , represented by M , [function], hereinafter referred to as "**XXXX**";

Commenté [BC21]: To be filled in

And

Platform Partner

YYYY, incorporated under the laws of , with its head office located at , represented by M , [function], hereinafter referred to as "**YYYY**";

Commenté [BC22]: To be filled in

And

Innovation Management Partner

ZZZZ, incorporated under the laws of , with its head office located at , represented by M , [function], hereinafter referred to as "**ZZZZ**";

Commenté [BC23]: To be filled in

And

Selected Third Party

SSSS, incorporated under the laws of , with its head office located at , represented by M , [function], hereinafter referred to as "**SSSS**";

Commenté [BC24]: To be filled in

hereinafter called individually a "Party" and together the "Parties".

Whereas CEA, Intel Research and Development Ireland Limited, ST-I, ST-F, THALES, AVL LIST GMB, DIGITAL Catapult, FRAUNHOFER, FORTISS GMBH, CSEM, KTH, BME, UNICAN, BLUMORPHO (hereinafter sometimes collectively referred as the “**FED4SAE Beneficiaries**”) participate to the H2020 project entitled “Federated CPS Digital Innovation Hubs for the Smart Anything Everywhere Initiative” (hereinafter the “**FED4SAE Project**”).

Whereas the FED4SAE Beneficiaries entered into a Grant Agreement N°761708 with the European Commission (the “**Grant Agreement**” or “**GA**”) and signed together in 2017 a Consortium Agreement with respect to the FED4SAE Project (the “**Consortium Agreement**” or “**CA**”).

Whereas the FED4SAE Project involves financial support to selected third parties through a cascade funding scheme (hereinafter “**Cascade Funding**”).

Whereas further to an open call for a specific Application Experiment, **SSSS** has been selected by the Internal Evaluation Committee of the FED4SAE Project to implement such Application Experiment. The aim of such Application Experiment is to

Commenté [BC25]: To be filled in

Whereas, as Selected Third Party, **SSSS** will be in charge of the implementation of such Application Experiment with also the participation of the FED4SAE Beneficiaries: the other Parties to the present NDA and the Cascade Funding Partner

Commenté [BC26]: To be filled in

Whereas **SSSS** and the Cascade Funding Partner [will discuss the possibility of signing] [have signed] a Standard Application Experiment Contract for the implementation of the Application Experiment.

Whereas it is necessary for the Parties to disclose to each other certain of their proprietary information for the implementation of the Application Experiment (hereinafter “**Purpose**”).

Whereas in accordance with the Consortium Agreement, the Parties shall sign a non-disclosure agreement compliant with the GA and CA.

NOW THEREFORE, the Parties hereto agree as follows:

- 1 - All information of whatever nature and in whatever form or mode of communication, which is disclosed by a Party (the “Disclosing Party”) to any other Party (the “Recipient”) in connection with the Purpose during the implementation of the Application Experiment and which has been explicitly marked as “confidential” at the time of disclosure, or when disclosed orally has been identified as confidential at the time of disclosure and has been confirmed and designated in writing within fifteen (15) calendar days from oral disclosure at the latest as confidential information by the Disclosing Party, is “Confidential Information”. For the avoidance of doubt, “Feedback” (as that term is defined under the Standard Application Experiment Contract for the implementation of the Application Experiment) shall be deemed not to be Confidential Information even if marked such.
- 2 - The Recipients hereby undertake, for a period of four (4) years after the end of the FED4SAE Project:
 - not to use Confidential Information otherwise than for the Purpose;
 - not to disclose Confidential Information to any third party other than its subcontractors or Affiliates without the prior written consent by the Disclosing Party;
 - to ensure that internal distribution of Confidential Information by a Recipient to its employees or its authorized third parties (subcontractors or Affiliates involved in the Application Experiment) shall take place on a strict need-to-know basis; and
 - to return to the Disclosing Party on demand all Confidential Information which has been supplied to or acquired by the Recipients including all copies thereof and to

delete all information stored in a machine readable form. The Recipients may keep a copy to the extent it is required to keep, archive or store such Confidential Information because of compliance with applicable mandatory laws and regulations (i.e. public policy legislation).

For the purpose of this Agreement, "Affiliates" for FED4SAE Beneficiaries or "Affiliates" for the Selected Third Party means:

- (a) any legal entity directly or indirectly Controlling, Controlled by, or under common Control with that Party, for so long as such Control lasts ; and
- (b) any other legal entity that is listed on an exhaustive basis in Attachment 1 to this Agreement as being an Affiliate of that Party, where such legal entity is one in which that Party (or a legal entity qualifying as an Affiliate of that Party under (a) directly above) has a 50% equity share or is the single largest equity shareholder.

For the above purposes, "Control" of any legal entity shall exist through the direct or indirect:

- ownership of more than 50% of the nominal value of the issued share capital of the legal entity or of more than 50% of the issued share capital entitling the holders to vote for the election of directors or persons performing similar functions, or
- right by any other means to elect or appoint directors of the legal entity (or persons performing similar functions) who have a majority vote.

Common Control through government does not, in itself, create Affiliate status.

- 3 - The Recipients shall be responsible for the fulfilment of the above obligations on the part of their employees or its authorized third parties (subcontractors or Affiliates involved in the Application Experiment) involved in the FED4SAE Project and shall ensure that they remain so obliged, as far as legally possible, during and after the end of the Application Experiment and/or after the termination of the contractual relationship with the employee or subcontractor or authorized third party.
- 4 - The above shall not apply for disclosure or use of Confidential Information, if and in so far as the Recipient can show that:
 - the Confidential Information becomes publicly available by means other than a breach of the Recipient's confidentiality obligations; or
 - the Disclosing Party subsequently informs the Recipient that the Confidential Information is no longer confidential; or
 - the Confidential Information is 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;
 - the disclosure or communication of the Confidential Information is foreseen by provisions of the Grant Agreement; or
 - the Confidential Information, at any time, was developed by the Recipient completely independently of any such disclosure by the Disclosing Party; or
 - the Confidential Information was already known to the Recipient prior to disclosure without any obligation of confidentiality to the Disclosing Party; or
 - 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 article 7 hereunder.
- 5 - The Recipient shall apply the same degree of care with regard to the Confidential Information disclosed within the scope of the Application Experiment as with its own confidential and/or proprietary information, but in no case less than reasonable care.

- 6 - Each Party shall promptly advise the other Party in writing of any unauthorised disclosure, misappropriation or misuse of Confidential Information after it becomes aware of such unauthorised disclosure, misappropriation or misuse.
- 7 - If any Party becomes aware that it will be required to disclose Confidential Information in order to comply with applicable laws or regulations or with a court or administrative order, it shall, to the extent it is lawfully able to do so, prior to any such disclosure:
- notify the Disclosing Party in writing of said request (including notice as to the extent and type of information to be disclosed) in order to allow the Disclosing Party to seek a protective order or to utilize other available procedures to protect such Confidential Information, and
 - comply to the extent possible with the Disclosing Party's reasonable instructions to protect the confidentiality of the information at the Disclosing Party's expense, and
 - make such disclosure only to the extent it is compelled.
- 8 - Nothing in this Agreement shall be construed as compelling a Party to disclose any Confidential Information to the others, or to enter into any further contractual relationship with the other Parties.
- 9 - Nothing contained in this Agreement shall be construed as granting or conferring upon the Receiving Party, whether expressly or impliedly, any right by license or otherwise under any proprietary or statutory right of the Disclosing Party existing prior to or coming into existence after the Effective Date of the Agreement.
- 10 - Disclosure period: this Agreement governs communication of Confidential Information from (the "Effective Date") for a X (x) month duration and shall then terminate. The Receiving Party's duty to protect Confidential Information as foreseen in article 2 above shall continue for a period of four (4) years after the end of the FED4SAE Project.
- 11 - This Agreement does not limit any Party's right as existing as of the date of its signature. It does not create any additional right or obligation which is not expressly included herein and in particular it shall not be deemed to create any obligation for any Party to enter into any further contractual arrangements of any kind.
- 12 - The Confidential Information is disclosed "as is". The Disclosing Party makes no representations or warranties, whether express or implied, with respect to Confidential Information, and notably their fitness for a commercial technical purpose. The use of Confidential Information is made at the sole risk of the Receiving Party.
- 13 - The Agreement is personal to the Parties (« *intuitu personae* ») and each of them undertakes not to assign nor transfer its rights or obligations under the Agreement to any third party, including an Affiliate, without the other Parties' prior written approval.
- 14 - Settlement of disputes
- 14.1 The Parties shall use reasonable endeavours to settle their disputes amicably. If, however, no settlement of any dispute under this Agreement has been possible to achieve within 30 (thirty) calendar days of its occurrence, the dispute shall be submitted to proceedings under the ICC Mediation Rules. If the dispute has not been settled pursuant to the said Rules within two (2) months following the filing of a request for mediation or within such other period as the Parties to the dispute may agree in writing, the provisions of Section 14.2 of this Agreement shall be applicable to any such dispute's settlement.
- 14.2 Subject to the Section 14.3, all disputes directly arising under this Agreement (other than disputes relating to the infringement and/or validity of IPR which shall be the exclusive jurisdiction of the competent court), which cannot be settled amicably, shall be subject to the jurisdiction of the competent court in Brussels.

Commenté [BC27]: Please complete the date of beginning of the Application Experiment.

Commenté [BC28]: Please complete the duration of the Application Experiment

14.3 The foregoing shall be without prejudice to the right of any Party to seek injunctive relief or other equitable compensation before any court in any place notably if any unauthorized use of Confidential Information occurs or threatens to occur.

15 - Applicable law

The applicable law shall be Belgian Law, under which the dispute, controversy or claim referred to arbitration shall be decided without regard to its conflict of laws principles.

16 - Any notices for technical correspondence in connection with the Agreement shall be sent to:

- M, if to XXXX ([tel] [email])
[address]

- M, if to YYYY ([tel] [email])
[address]

- M, if to ZZZZ ([tel] [email])
[address]

- M, if to SSSS ([tel] [email])
[address]

17 - The Parties acknowledge that the FED4SAE Beneficiaries have entered into a Consortium Agreement and some of the Parties have or will enter into a Standard Application Experiment Contract. Said Consortium Agreement and Standard Application Experiment Contract both include confidentiality obligations. For the avoidance of doubt, this Agreement only applies for Confidential Information exchanged between the Parties hereto for the Purpose, as far as not agreed otherwise between the concerned FED4SAE Beneficiaries in the Consortium Agreement or in the Standard Application Experiment Contract. Save to the extent stated otherwise in this Agreement, this Agreement constitutes the Parties' entire agreement as to the Purpose. No addition or modification of the terms of the Agreement shall be valid between the Parties unless made in writing and signed by their duly authorised representatives.

18 - Each Party shall comply with all applicable export laws, regulations and rules and, in particular, will not export or re-export Confidential Information without obtaining all required government licenses, approvals or waivers.

19 - If any provision of this Agreement, or the application of such provision, is invalid or unenforceable under any applicable statute or rule of law, the remaining provisions of this Agreement shall remain in full force and effect. The failure by a Party to enforce any provision of this Agreement or to exercise any right in respect thereto shall not be construed as constituting a waiver of its right hereunder.

Executed in four (4) original counterparts, one (1) for each Party:

For XXXX :
Date :

Name
Title

For YYYY :
Date :

Name
Title

For ZZZZ :
Date :

Name
Title

For SSSS :
Date :

Name
Title

Annex 1: Affiliates