

# Deliverables

<b><i>Deliverable Number</i></b>	<b>D4.1</b>
<b><i>Deliverable Title</i></b>	<b>Common non-disclosure agreement and feasibility/access agreement templates</b>
<b><i>Lead Beneficiary</i></b>	<b>ESRF</b>
<b><i>Type</i></b>	<b>Report</b>
<b><i>Dissemination Level</i></b>	<b>Public</b>
<b><i>Due date of delivery</i></b>	<b>Month 6</b>

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## INTRODUCTION

The aim of task 4.3.1 of work package 4, “European Light Sources for Industrial Innovation plus (ELSIplus)”, is to support a common approach to industry to assist inter-light source service concepts by creating templates for a common non-disclosure agreement and for an agreement on feasibility studies or trans-national access for industry.

The present deliverable D4.1 “Common non-disclosure agreement and feasibility/access agreement templates” presents such templates for industrial users which the CALIPSOplus light sources may use the way it is or adapt in order to better fit their cultural or legal requirements, or specific needs of the particular industry user. Light sources with well-developed industrial programmes may also use their own industry access agreements and procedures if access is being provided in the framework of the TamaTA SME support programme. The medium term goal is to adopt a common approach if the TamaTA programme will prove to be successful, thereby providing a true common and streamlined approach.

This deliverable could also constitute the basis of a more general non-disclosure agreement (NDA) to be used as a starting point by any research infrastructure dealing with industry users. Further effort would be required for that, which is beyond the scale of the present project.

# Non-Disclosure Agreement

between

Name of the Facility, address

and

Name of the company, address

- hereinafter separately and jointly referred to as “Partner” and “Partners”,  
respectively –

Whereas the Partners desire to examine the possibility of concluding a research agreement within the project CALIPSOplus (EC grant agreement number 730872) in the field of ... . For this purpose, the Partners will disclose information.

## 1. Subject Matter

The subject matter of the present Agreement (purpose) shall be the exchange of information to initiate potential cooperation in the field indicated above.

## 2. Confidentiality, Publication

2.1 “INFORMATION” shall be any disclosed protected or unprotected technical and/or business information in writing or any other format, which is designated confidential. Oral or visual information shall be designated confidential, summarized in writing by the disclosing Partner, and sent to the receiving Partner within 21 days upon original communication.

2.2 The INFORMATION to be exchanged between the Partners under this Agreement shall not claim to be correct, complete or not to infringe upon rights of third parties. The receiving Partner shall acknowledge this fact and shall therefore use this information with the necessary care and according to the present Agreement.

2.3 Each Partner shall treat as confidential all INFORMATION received from the other Partners and designated confidential and shall not disclose it to third parties up to ... years upon termination of or withdrawal from this Agreement. Such confidential information shall be used for the implementation of the above purpose of the Agreement exclusively.

2.4 The INFORMATION received shall only be disclosed to those employees, who need it for evaluating the possibility of concluding a research agreement or of establishing business connections in the above area.

2.5 The obligation according to Article 2.3 shall not apply to INFORMATION or objects that can be proved

- to belong to the public domain as a result of publications or the like, or
- to fall into the public domain without any fault of the receiving partner, or
- to have been disclosed to a Partner by a third party, without the obligation of confidentiality, or
- to have already been known to the receiving Partner prior to disclosure by a Partner, or
- to be the result of work of employees of the receiving Partner, who had no access to the disclosed information, or
- to have to be disclosed due to a legal obligation or an order by court or an authority. In this last case the disclosure towards the respective authorities does not change the status of the information as confidential towards other third parties.

2.6 The Partners shall take the usual and reasonable measures to ensure confidentiality of the information and objects according to these provisions also relative to their staff members.

### **3. Return of Information**

3.1 The receiving Partner shall be obliged to immediately return or delete all INFORMATION received as well as potential copies made at the request of the disclosing Partner.

3.2 This obligation shall not apply to routinely produced back-up copies of electronic data communication as well as to secret information and copies thereof, which have to be stored by the other Partner according to the valid legislation.

3.3 If the INFORMATION contains personal data (in the sense of the Data Protection Act), the receiving Partner shall be obliged to treat this information in accordance with the valid legislation and to delete it. If necessary, this shall be confirmed in writing to the disclosing Partner.

### **4. Intellectual Property**

4.1 Each Partner shall remain the owner of his intellectual property (protected and unprotected). The disclosing Partner shall reserve all rights in the INFORMATION disclosed by him, in particular property, copyrights, and national and foreign property rights.

4.2 Each Partner shall acknowledge that any acts of use of the INFORMATION obtained from the other Partner shall not constitute any right of prior use pursuant the legal provisions.

### **5. Term, Termination**

5.1 This Agreement shall become effective after having been signed by both Partners as of ... and shall terminate on ..., unless previous notice has been given or it is terminated in some other way.

5.2 Each Partner shall only have the right to terminate this Agreement for an important reason. Termination shall be in writing to be effective.

## **6. Liability**

6.1 The Partners shall be liable only for property damage and financial loss caused by intent or gross negligence.

6.2 If essential contractual obligations are violated, the Partners shall be liable for intent and negligence. In case of slight negligence, liability shall be limited to direct damage foreseeable and typical of this type of agreement. Essential contractual obligations shall be obligations that protect the contracting Partners' essential contractual legal positions to be conferred on them in accordance with the content and purpose of this Agreement. Essential contractual obligations shall also be obligations, the fulfilment of which makes the proper execution of the Agreement possible and on the observation of which the contracting Partner should regularly be able to rely.

6.3 The Partners shall indemnify each other against third-party claims, unless liability is based on the respective Partner's intentional or grossly negligent actions. The liability/exclusion shall not apply to claims on fraudulent behaviour, liability for guaranteed characteristics, or injury to life, body or health.

## **7. Concluding Provisions**

7.1 Should any provision of this Agreement be or become ineffective, this shall affect neither the effectiveness of the remaining provisions nor the Agreement in its entirety. That provision shall retroactively be replaced by a provision which is legally permitted and the content of which is closest to that of the original provision.

7.2 Any amendments and modifications of this Agreement shall be in writing to be valid. This requirement shall be waived in writing only.

7.3 Specific cooperation in the research area mentioned in Article 1 shall be subject to a separate written agreement. Under this Agreement, no Partner shall acquire a claim to a cooperation agreement being concluded or to a business connection being established. Should the contracting Partners decide in favor of such

cooperation, the provisions of that Agreement on the specific cooperation shall take precedence over the provisions of this Agreement.

7.4 Rights and obligations arising from this Agreement may be transferred with the previous consent in writing of the other Partner only.

7.5 The Partners shall try to amicably settle any possibly arising disputes. As for the rest, The Agreement shall be governed by the laws of ... (country), and courts and tribunals of the city of ....

**Name of the Facility**

**Name of the company**

**Place**

**Place**

**Name of the person**

**Name of the person**

**Position**

**Position**

## Access Agreement

between

**Name of the Facility, address**

- hereinafter referred to as 'facility' –

and

**Name of the company, address**

- hereinafter referred to as 'industrial user' –

- hereinafter separately and jointly referred to as "Partner" and "Partners",  
respectively –

### Whereas

I. The CALIPSOplus project allows enterprises to carry out a full experiment or a set of experiments at unique research infrastructures facilities such as the light source facilities.

II. The facility is interested in promoting the access of industrial users in the framework of dedicated programs of CALIPSOplus.

III. The industrial user is interested in the results of the experiments to be carried out at the facility.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

## CLAUSES

### 1. - Purpose of the Agreement

1.1 The purpose of this Agreement is to establish the conditions that will govern the access of the industrial user to the facility beamlines in order to perform its experiments.

### 2. - Access conditions

2.1 The industrial users complying with the definition of “Small and Medium- sized Enterprises” (SME) according to EU recommendation 2003/361 and following the scheme under the work package entitled “Tailor-made for SMEs Trans-national Access (TamaTA)” shall submit a proposal in reply to dedicated calls published by CALIPSOplus (TamaTA WP).

2.2 The proposal shall contain a detailed description of the research project, the type of samples to be measured, the impact of the planned experiment and the innovation potential. If knowledge on the most suitable light source is available, the later shall be indicated. The proposal has to be submitted via [www.wayforlight.eu](http://www.wayforlight.eu). 2.3 The proposal is subject to a peer-review process. If accepted for implementation, the facility and the industrial user shall agree on the details of the experiment.

2.4 An access voucher will be issued by the facility, taking into account the estimated beamtime requirement to carry out the experiments and works.

2.5 The facility will act diligently to ensure the proper implementation of the project of the industrial user, providing access to the required beamlines and staff to carry out the experiments agreed upon.

### 3. – Experiment and Reporting

3.1 The experiment will be carried out as a mailing-in measurement without physical presence of the industrial user. The company will send the sample(s) in due time and in accordance with instructions provided by the facility.

3.2 The facility shall appoint the necessary personnel to carry out the experiment and to do the data analysis. 3.3 The experiments and works will be carried out following the rules of access to the facility. Refusal of the industrial user to follow those regulations may imply the termination of the service.

3.4 after termination of the experiment the facility shall issue a report containing the information agreed with the industrial user.

#### **4. – Financial obligations**

4.1 The experiments and works carried out in the framework of the TamaTA access program are free of charge for the industrial user. However, the CALIPSOplus access voucher will not cover any additional costs related to the works such as shipment of the samples to the facility that shall be beared by the industrial user.

#### **5. – Industrial Property**

5.1 Due to their character as industrial research, the experimental results obtained at the light source facilities in the framework of the TamaTA access scheme, shall be owned by the SME (industrial user). No publication of the results is required.

5.2 However, as the works having been performed has been supported by the CALIPSOplus project which is funded by the European Union, the companies shall grant the TamaTA light sources the right to disseminate their names, a short characterisation of the company and a brief cursory summary of the performed experiment, without disclosing any confidential information, for reporting purposes to the European Commission..

#### **6. – Confidentiality**

6.1 “INFORMATION” means any disclosed, protected or unprotected technical and/or business information in writing or any other format, which is designated confidential. Oral or visual information shall be designated as confidential in writing , to the receiving Partner by the disclosing Partner within 21 days of the original communication.

6.2 The INFORMATION to be exchanged between the Partners under this Agreement shall not claim to be correct, complete or not to infringe upon rights of third parties. The receiving Partner shall acknowledge this fact and shall therefore use this information with the necessary caution and in compliance with the present Agreement.

6.3 Each Partner shall treat as confidential all INFORMATION received from the other Partners and designated as confidential, and shall not disclose it to third parties within ... years after termination of or withdrawal from this Agreement. Such confidential information shall be used exclusively for the implementation of experiment which is the purpose of this Agreement.

6.4 The INFORMATION received shall only be disclosed to those employees, who need it for assessing the possibility to conclude a research agreement or to establish business connections with the industrial user.

6.5 The obligation according to Article 2.3 shall not apply to INFORMATION or objects that can be proved

- to belong to the public domain as a result of publications or the like, or
  - to fall into the public domain without any fault of the receiving partner, or
  - to have been disclosed to a Partner by a third party, without the obligation of confidentiality, or
  - to have already been known to the receiving Partner prior to disclosure by a Partner, or
  - to be the result of work of employees of the receiving Partner, who had no access to the disclosed information, or
  - to have to be disclosed due to a legal obligation or an order by court or an authority.
- In this latter case the disclosure to the respective authorities does not change the status of the information as confidential with respect to other third parties.

6.6 The Partners shall take usual and reasonable measures to ensure confidentiality of the information and objects according to these provisions also with respect to their staff members.

## **7. - Personal data protection**

7.1 The parties shall refrain from any kind of processing of personal information obtained as a result of this Agreement, except to the extent strictly necessary for the purposes thereof. In particular, they undertake not to cede these data or files containing them to third parties, and to maintain them strictly confidential.

## **8. Liability**

8.1 The Partners shall only be liable for property damage and financial loss caused by intent or gross negligence.

8.2 “Essential contractual obligations” means all obligations arising of this agreement and on which the contracting Partner shall be able to rely.

If essential contractual obligations are violated, the Partners shall be liable in case of intent and negligence. In case of slight negligence, liability shall be limited to direct damage foreseeable and typical for the type of experiments which are the subject of this agreement. 8.3 The Partners shall indemnify each other against third-party claims, unless liability is based on the respective Partner’s intentional or grossly negligent actions. The liability/exclusion shall not apply to claims on fraudulent behaviour, liability for guaranteed characteristics, or injury to life, body or health.

## **9. Term, termination**

9.1 This Agreement shall become effective upon signature by both Partners as of ... and shall terminate on ..., unless previous notice has been given or it is terminated in some other way.

9.2 Each Partner shall only have the right to terminate this Agreement for an important reason. Termination shall be in writing.

## 10. Concluding Provisions

10.1 Should any provision of this Agreement be or become ineffective, this shall affect neither the effectiveness of the remaining provisions nor the Agreement in its entirety. That provision shall retroactively be replaced by a provision which is legally permitted and the content of which is closest to that of the original provision.

10.2 Any amendments and modifications of this Agreement shall be done in writing

10.3 Rights and obligations arising from this Agreement may only be transferred after previous written approval of the other Partner.

10.4 The Partners shall try to amicably settle any possibly arising disputes. As for the rest, The Agreement shall be governed by the laws of ... (country), and courts and tribunals of the city of ....

**Name of the Facility**

**Name of the company**

**Place**

**Place**

**Name of the person** in charge  
of signing this agreement

**Name of the person** in charge  
of signing this agreement

**Position**

**Position**