

NON-DISCLOSURE AND RESTRICTED USE AGREEMENT

During your participation in this survey, Sivantos GmbH (“**Sivantos**”, a company organized under the laws of Germany and having its principal place of business at Henri-Dunant-Str. 100, 91058 Erlangen, Germany) may disclose certain Confidential Information (as defined below) to you for the purposes of obtaining your feedback (the “**Purpose**”).

By clicking ‘Accept’ below and by participating in this survey, you (“**User**” or “**You**”) agree with Sivantos as follows:

Article 1 - Definitions

“Confidential Information” shall mean any information and data, including, but not limited to, any kind of business, commercial or technical information and data disclosed by Sivantos to you in connection with the Purpose, irrespective of the medium in which such information or data is embedded. Confidential Information shall include any copies or abstracts made thereof as well as any apparatus, modules, samples, prototypes or parts thereof.

“Affiliate” shall mean a corporation, company or other entity, now or hereafter, directly or indirectly, owned or controlled by, or owning or controlling, or under common control with Sivantos, but such corporation, company or other entity shall be deemed to be an Affiliate only so long as such ownership or control exists. For purposes of this definition “**control**” of a corporation, company or other entity shall mean to have, directly or indirectly, the power to direct or cause the direction of the management and policies of a corporation, company or other entity, whether (i) through the ownership of voting securities entitling to the right to elect or appoint, directly or indirectly, the majority of the board of directors, or a similar managing authority, (ii) by contract or (iii) otherwise.

Article 2 - Confidentiality; Restricted Use

All Confidential Information

- (i) shall be used by you exclusively for the Purpose, unless otherwise expressly agreed to in writing by Sivantos;
- (ii) shall not be distributed or disclosed in any way or form by you to anyone;
- (iii) shall be kept confidential by you with the same degree of care as is used with respect to your own equally important confidential information to avoid disclosure to any third party, but at least with reasonable care; and
- (iv) shall remain the property of Sivantos.

Article 3 - Exceptions

The obligations under Article 2 shall not apply, however, to any information which you can show:

- (i) was in your possession without an obligation to confidentiality prior to receipt from Sivantos;
- (ii) is at the time of disclosure already in the public domain or subsequently becomes available to the public through no breach of this agreement by you;
- (iii) is lawfully obtained by you from a third party without an obligation to confidentiality, provided such third party is not, to your knowledge, in breach of any obligation to confidentiality relating to such information;
- (iv) is developed by you independently of any Confidential Information or under the exceptions as set out in Article 3 lit. i) - iii) or v); or
- (v) is approved for release by written agreement of Sivantos.

You may disclose Confidential Information if you are required to do so by any ruling of a governmental or regulatory authority or court or by mandatory law, provided that written notice of such ruling is given without undue delay to Sivantos so as to give Sivantos an opportunity to intervene and provided further that you use reasonable efforts to obtain assurance that the Confidential Information will be treated confidentially. Confidential Information which is disclosed in such way must be marked "Confidential".

Article 4 - No license

Licenses or any other rights such as, but not limited to, patents, utility models, trademarks or tradenames, are neither granted nor conveyed by this agreement, nor does this agreement constitute any obligation of Sivantos to grant or convey such rights to you. You shall not be entitled to file for patents or other statutory protection in any country based on or using any Confidential Information received hereunder, and any such patent or statutory protection must be transferred to Sivantos upon its request and without any charge. The disclosure of Confidential Information does not constitute any right of prior use for you.

Article 5 - No remuneration; warranty/liability

You shall not be obligated to pay any remuneration for disclosure of any information under this agreement and you agree that any information is made available "as is" and no warranties are given or liabilities of any kind are assumed with respect to the quality of such information, including, but not limited, to its fitness for the Purpose, non-infringement of third party rights, or its correctness.

Article 6 - Termination; other contracts

This agreement shall come into force upon your clicking of 'Accept' below and shall automatically terminate one (1) year later. It may be prematurely terminated with thirty (30) days' prior written notice. The rights and obligations of Sivantos which have accrued prior to termination shall, however, survive the termination of this agreement for a period of four (4) years. Sivantos shall be legally under no obligation to conclude any contract with regard to the Purpose.

Article 7 - Return

Within ninety (90) days after termination of this agreement Sivantos may request in writing from you that you, at your discretion, either returns or destroys all Confidential Information received from Sivantos and stored electronically and/or on record-bearing media as well as any copies thereof. You shall confirm in writing such destruction or return the Confidential Information as well as any copies thereof to Sivantos within fourteen (14) days after receipt of Sivantos's request.

The provisions of Article 7 para. 1 hereof shall not apply to copies of electronically exchanged Confidential Information made as a matter of routine information technology backup and to Confidential Information or copies thereof which must be stored by you according to provisions of mandatory law, provided that such Confidential Information or copies thereof shall be subject to an indefinite confidentiality obligation according to the terms and conditions set forth herein until returned and/or destroyed, as the case may be.

Article 8 - Liability for third parties

If you disclose or distribute Confidential Information to any third party, you shall be liable for acts or omissions of such third party resulting in further unauthorized distribution, use and/or disclosure of such Confidential Information as if such acts or omissions had been your own acts or omissions.

Article 9 - Dispute Resolution

All disputes arising out of or in connection with the present agreement, including any question regarding its existence, validity or termination, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The seat of arbitration shall be Munich, Germany. The procedural law of this seat applicable to international arbitration proceedings shall apply where the Rules are silent. The language to be used in the arbitration proceedings shall be English.

Any party to this contract shall have the right to have recourse to and shall be bound by the Pre-arbitral Referee Procedure of the International Chamber of Commerce in accordance with its respective rules.

Sivantos may seek provisional measures from any court of competent jurisdiction, including without limitation provisional injunctive relief, provided that the final resolution of the dispute is through the arbitral tribunal appointed in accordance with this Article 9.

Article 10 - Governing law

This agreement shall be subject to the substantive law in force in Germany without reference to any of its conflict of law rules.

Article 11 - Assignment

Neither this agreement nor any rights and obligations under this agreement may be assigned or delegated by either party without the prior written consent of the other party.

Article 12 - Written form

This agreement may not be modified or amended except by written amendments duly executed by the parties. This requirement of written form can only be waived in writing.

Article 13 - Export regulations

You shall abide by all applicable export license regulations.

Article 14 - Third parties

A person who is not a party to this agreement may not enforce any of its terms.

By clicking 'Accept' below, I acknowledge and agree to comply with the terms of the non-disclosure and restricted use agreement set out above.

[Accept button]