

Appendix No. 6 to Request for Bids No. 01/WPD101/2020

NON-DISCLOSURE UNDERTAKING

This Non-Disclosure Undertaking (“**Undertaking**”) is made on [●] 2020 (“**Effective Date**”) by:

WPD Pharmaceutical sp z o.o., with its registered office ul. Żwirki Wigury 101, 02-089 Warszawa, Registered Number (KRS): 0000693186, Poland Tax Identification Number (NIP): 5252721500, represented by: Mariusz Olejniczak - the Member of the Management Board (hereinafter referred to as “**Disclosing Party**”).

and made towards:

..... with its registered office, Tax Identification Number (NIP):, represented by: - (hereinafter referred to as “**Receiving Party**”).

Disclosing Party and the Receiving Party are referred to herein collectively as the “Parties” and each individually as a “Party”.

Whereas:

The Parties intend to enter into negotiations in order to evaluate a possibility of a future cooperation between Parties;

In order to discuss the possibility of the cooperation, and in case of establishment of such cooperation, also in order to enable such cooperation, Disclosing Party may disclose to the Receiving Party certain Confidential Information as defined hereunder;

The Receiving Party is entitled to use the Confidential Information only for the Purpose and subject to the terms and conditions agreed herein.

1. Definitions

- (a) “**Party**” means jointly the Receiving Party and the Disclosing Party.
- (b) “**Purpose**”, in connection with interest in provision of services for Disclosing Party in the scope of new product research, development and clinical research (hereinafter the “**Collaboration**”),

the Receiving Party undertakes to keep Confidential Information confidential, on the terms agreed in the Undertaking.

- (c) **“Authorised Recipients”** means in the case of each Receiving Party’s directors, officers and employees and those of any corporation directly or indirectly controlling, controlled by, or under common control with Receiving Party (control being the ownership of fifty percent (50%) or more of the outstanding voting stock of a corporation), and/or any individual or organization retained by them to assist in the evaluation of the Collaboration, and/or any individual or company cooperating with Party in the scope of Collaboration, providing that each such company, individual or organization is legally bound to keep confidential any of the Confidential Information disclosed by the Disclosing Party on terms no less onerous than those set out herein.
- (d) **“Affiliate”** means any person, whether individual or entity, directly or indirectly controlling, controlled by, or under common control with the Disclosing Party, provided that, for the purposes of this definition “control” shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies.
- (e) **“Confidential Information”** means any information (including, but not limited to, marketing, promotional, commercial activity and financial), technical data, trade secrets or know-how of Disclosing Party (whether disclosed before or after the date of this Undertaking), including, but not limited to, information relating to business, products or service plans, financial projections, patents, patent applications, computer object or source code, research, inventions, processes, designs, drawings, engineering, marketing or finance, which information is designated to be confidential or to constitute a property of the Disclosing Party, or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary, regardless of form of this information or form of its disclosure to the Receiving Party, and regardless whether they are marked or not as “confidential”. Confidential Information shall also include the fact of the discussions and correspondence between the Parties. Confidential Information does not include information which:
- (i) is in the possession of the Receiving Party at the time of disclosure and is not subject to confidentiality; or
 - (ii) becomes part of the public knowledge or literature, not as a result of any improper inaction or action of the Receiving Party; or
 - (iii) is approved by respective Disclosing Parties, in writing, for release; or
 - (iv) are required to be disclose by applicable and binding law or by the binding request, order or ruling of an authorized court or public authority.

2. Undertaking

- 2.1. In consideration of the disclosure to Receiving Party by the Disclosing Party Receiving Party undertakes to treat as strictly confidential and not to disclose to any third party any of the Confidential Information disclosed by the Disclosing Party and not to make use of any such Confidential Information for any purpose other than Collaboration.
- 2.2. Receiving Party shall not disclose to any third party the fact that it is in evaluating the Collaboration or Collaborating with the other Disclosing party, or the nature of the Collaboration.

- 2.3. The receiving party hereby undertakes to keep the Confidential Information safe in a secure place and property protected against theft, damage, loss and negligent disclosure or unauthorized access (including but not limited to, access by electronic means) and, without prejudice to the foregoing, to take all reasonable due precautions and steps and to exercise reasonable skill and due degree of care to protect its confidentiality. In each case such precautions, skills and degree of care shall be no less than the precautions, skills and degree of care the Receiving Party applies to its own Confidential Information.
- 2.4. The receiving Party shall only disclose Confidential Information, in the necessary extent, to its employees who need to know the Confidential Information, provided that Receiving Party shall procure that prior to such disclosure each of those employees to whom Confidential Information is to be disclosed is made aware of the confidentiality, non-use and other obligations contained herein. Any breach of the obligations contained in this Agreement by such employees shall be treated as a breach of such obligations. The Receiving is liable for any acts or omissions of such employees as for its own acts or omissions.
- 2.5. Receiving Party agrees to notify the Disclosing Party promptly of any breach by any of the Authorised Recipients of the obligations of confidentiality to which the Authorised Recipient is subject and agrees at its own expense to take such action as the Disclosing Party may reasonably request to prevent further breaches or to restrain unauthorised use of the Confidential Information.
- 2.6. If disclosure of Confidential Information is required for the purpose set out in Clause 1 d) (iv), prior to such disclosure the Receiving party will give – if permitted by applicable law – other Receiving Party a prompt written notice of the information to be disclosed and will take into account any reasonable comments of receiving Party it may have in relation to the content, timing and manner of dispatch of the disclosure and take such steps which are reasonably required to enable Receiving Party to mitigate the extent of avoid the requirement of any such disclosure. The Receiving Party may disclose only the minimum amount of Information consistent with satisfying obligations and shall use reasonable efforts to protect the Confidential Information in connection with such disclosure.
- 2.7. In the case of non-performance or an improper performance of the obligations stated in this Undertaking, the Disclosing Party may demand from the Receiving Party a contractual penalty of PLN 50,000 (fifty thousand) for each breach.
- 2.8. A claim for damages that exceed the amount of the reserved contractual penalty is permissible.

3. Duration

- 3.1. This Undertaking shall continue in force from the Effective Date until ten (10) years from the date of the last disclosure of Confidential Information by one party to another.
- 3.2. Either Party may at any time give written notice to the other that it wishes to cease the supply and receipt of Confidential Information under this Undertaking and at the request of the Disclosing Party, Receiving Party shall promptly deliver to the Disclosing Party all documents and materials containing Confidential Information previously supplied (and all copies thereof and extracts therefrom), save that Receiving Party may retain in the office of its legal adviser one copy so as to establish its continuing obligations. The return of this material shall not, however, affect the Parties obligations hereunder.
- 3.3. No rights or obligations in Confidential Information are granted other than as expressly provided under this Agreement. Nothing in this Agreement shall be constructed as (i) giving the receiving Party any rights, title or interest in or to the Confidential Information; (ii) granting the receiving Party any rights by way of assignment, license or otherwise under any

intellectual property rights owned or controlled by Disclosing Party or its Affiliates; or (iii) representing any commitment by either Party to enter into any additional agreement, by implication or otherwise.

- 3.4. Any Confidential Information and any development materially based thereon are and shall remain the sole property of the Disclosing Party or its respective affiliate.

4. Return of confidential information

Within 30 days from the receipt of the written request of Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party any documents on data carriers or other tangible materials containing or representing Confidential Information received from the Receiving Party and all copies thereof, and shall destroy permanently any documents, notes, memoranda or other materials created by the Receiving Party or its employees which contain the Confidential Information, and shall delete any Confidential Information contained in any electronic or other data carriers or media. Such obligation does not include the copy of this Agreement. At the request of the Disclosing Party, the receiving Party shall, within 30 days from receipt of such request, confirm to the Disclosing Party such destruction and deletion in writing. The provisions of this Section do not exclude nor limit the obligation of the Receiving Party to observe obligations set forth in this Agreement.

5. No grants of right

- 5.1. No rights or obligations in Confidential information are granted other than as expressly provided under this Agreement.
- 5.2. Nothing in this Agreement shall be construed as (i) giving the receiving Party any right, title or interest in or to the Confidential Information; (ii) granting the Receiving Party any rights by way of assignment, license or otherwise under any intellectual property rights owned or controlled by the Disclosing Party or its Affiliates; or (iii) representing any commitment by either Party to enter into any additional agreement, by implication otherwise.
- 5.3. Any Confidential Information and any development materially based thereon are and shall remain the sole property of the Disclosing Party or its respective Affiliate, and the Receiving Party shall assert no patent, copyrights or other claim on such Confidential Information or developments. Nothing herein shall be deemed to constitute by implication or otherwise the grant to the Receiving Party any license or intellectual property right to or interest in Confidential Information, and/or any information, technology and/or products materially derived or developed there from.
- 5.4. The Receiving Party acknowledged that the Disclosing Party and/or any of its Affiliates own and control certain rights, title and/or interest in intellectual property (including without limitation know-how, patents and patent applications) both existent on the Effective date as well as coming into existence during the term of this Agreement. Nothing contained herein shall be construed to grant the Receiving Party any immunity, intellectual property right or license.

6. Governing law

- 6.1. This Undertaking shall be governed by the laws of Poland. Place of jurisdiction will be Warsaw, Poland.
- 6.2. This Undertaking has been drawn up in two counterparts, one copy for each Party.

- 6.3. Each person signing this Agreement declares, under pain of personal responsibility, that is entitled to represent the Party on whose behalf is acting.

7. General Provisions

- 7.1. This Agreement constitutes the entire understanding of the Parties with respect to the matters contained herein superseding all prior oral or written understandings or communications between Parties.
- 7.2. Nothing in this Agreement shall be construed to obligate either Party to negotiate or enter into any business agreement with the other Party or to obligate the Disclosing Party to disclose or otherwise make available any information to the Receiving Party. The Disclosing Party and its Affiliates makes no representation or any use of the information or non-infringement of third party's rights, including – but not limited to – intellectual property rights.
- 7.3. Any modification, amendment, or waiver accomplished to the terms of this Agreement must be made in written form otherwise being null and void.
- 7.4. The rights and obligations of the Receiving Party resulting from this Agreement can not be assigned or transferred to any third party without prior written and express consent of the Disclosing Party.
- 7.5. If any provision of this Agreement, several provisions hereof or a part of these provisions is or becomes ineffective, this shall not invalidate the remaining provisions.
- 7.6. This Agreement has been prepared in two conforming copies, one copy for each Party.

Signed by:

For the Receiving Party

For the Disclosing Party: