

CONFIDENTIALITY & NON-DISCLOSURE MASTER AGREEMENT - “OBSERVER” STATUS

BETWEEN:

- **CRESYM**, an international non-profit association (AISBL), incorporated under the laws of Belgium under number 0790 603 745, with its registered office at Multiburo, Square de Meeûs 38-40 1000 Brussels (Belgium), and represented by Sébastien LEPY, as General Manager.

Hereinafter "**CRESYM**" or “the **Association**”;

and

- **XXX**, [legal organisation class], incorporated under the laws of [country] under number [registration nr], with its registered office at [address (country)], and represented by [first & LAST name], in his capacity as [capacity/title].

Hereinafter "**XXX**";

Each referred to as a **Party** or collectively as a **Parties**.

WHEREAS

- A. CRESYM is an association of research centres and industries aiming at fostering R&D with respect to energy system simulation, delivering and maintaining opensource assets, available to researchers and business.
- B. **XXX is...**
- C. **XXX**, CRESYM and CRESYM Members need to share Information altogether, as if **XXX** were a Member of CRESYM.
- D. In order to enable such sharing and use of Information and preserve confidentiality whenever needed, CRESYM Internal Rules require **XXX** to enter the present NDA, making **XXX** an **Observer** vis-a-vis CRESYM and its Members in application of Article 5.5 of CRESYM’s Internal Rules.
- E. The said Internal Rules make CRESYM’s Members compelled to comply with the same terms regarding the confidentiality, share and use of the Information vis-a-vis any Observer as any Observer will vis-a-vis them because of such NDA, in a symmetric and equal manner.
- F. In this framework, the considered Information is either “Confidential” (shared only to a limited circle) or “Private” (accessible to all Members, Observers and CRESYM’s Representatives) if not public.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

.../...

1. Definitions

- 1.1. **Agreement** (or **NDA**) means the present Confidentiality and Non-Disclosure Agreement.
- 1.2. **Article** means a clause of the present NDA, as referred to by an accompanying index.
- 1.3. **Confidential Information** means every piece of Information provided by an Issuing Person to another Person, pursuant to this Agreement, with an explicit request to consider it “confidential”, be it in writing or orally (and confirmed in writing within 30 days during which the Information will be considered as confidential), but excludes Information which:
 - is in the public domain or is available through other sources without breach of this confidentiality undertaking; or
 - the Issuing Person has confirmed in writing such Information is not required to be treated as confidential (in which case, the Information shall be considered as Private Information); or
 - the Receiving Person can show, the Information was in their possession or known to them (by being in their use or being recorded in their files or computers or other recording media) prior to receipt from the Issuing Person and was not previously acquired by the Receiving Person from the Issuing Person under an obligation of confidentiality; or
 - was developed by the Receiving Person independently from the application of this Agreement.
- 1.4. **Defined terms or expressions** means all terms and expressions starting with a capital letter in this Agreement (but the Appendix, see infra), that are listed, and with the meaning given to them, in the present Section, unless the context necessarily requires otherwise.

In the Appendix to this NDA highlighting an excerpt of the Internal Rules, all terms in expression starting with a capital letter are defined in the definitions section of the said Internal Rules.
- 1.5. **GDPR** means the European General Data Protection Regulation (EU Reg. 2016/679).
- 1.6. **Information** means notably all data, knowledge, know-how, software, document, statements whether initially disclosed by a third party or not, and whether in written, verbal, graphic, electronic or any other form whatsoever, whether or not protected or protectable by Intellectual Property Rights, that the Persons may communicate to one another or any of their Representatives, gain access to, or otherwise disclose on or after the date hereof within the context of this Agreement.
- 1.7. **Internal Rules** (or also **CRESYM’s Internal Rules**) means the latest approved version of the Association’s Internal rules (in the French language known as “règlement intérieur”).

See <https://cresym.eu/wp-content/uploads/2024/04/240409-CRESYM-Internal-Rules-version-2.2.pdf>.
- 1.8. **Issuing Person** means the Person, which discloses Information.
- 1.9. **Member** means a member of CRESYM, as per the Association’s by laws.
- 1.10. **Observer** means the signatory of the present NDA or a signatory of a similar NDA with CRESYM.
- 1.11. **Organisation** shall be broadly interpreted to include, without limitation, any corporation, limited liability company, partnership, organisation or other entity or individual.
- 1.12. **Person** means CRESYM, one of its Members or Observers.
- 1.13. **Private Information** means every piece of Information provided by an Issuing Person, regardless of whether it is specifically identified as "confidential" or "proprietary", that the Persons may communicate to one another or any of their Representatives, gain access to, or otherwise disclose on or after the date hereof within the context of this Agreement, but excludes Information which:
 - is in the public domain or is available through other sources without breach of this confidentiality undertaking; or
 - has been made available publicly in writing by a Person, which did not gain access to it within the context of this Agreement; or

- the Issuing Person has confirmed in writing such Information can be used freely, outside CRESYM's framework and with any third parties; or
 - the Receiving Person can show, the Information was in their possession or known to them (by being in their use or being recorded in their files or computers or other recording media) prior to receipt from the Issuing Person and was not previously acquired by the Receiving Person from the Issuing Person under an obligation of confidentiality; or
 - was developed by the Receiving Person independently from the application of this Agreement.
- 1.14. **Project** means an undertaking gathering one or more organisation(s), and at least one Member, in order to achieve one or more explicit goal(s) matching the overall objectives and strategy of CRESYM and governed by a project agreement matching CRESYM's Internal Rules' related standards.
- 1.15. **Project Private Workspace** means a subset of CRESYM's, or any associated Person's, IT facilities and/or premises and/or furniture and/or events (esp. meetings, email exchanges), (i) dedicated to the implementation of a Project; (ii) where all Information related to the Project is shared and/or stored; (iii) and available solely to the Persons' Representatives listed in the related project agreement for that purpose.
- 1.16. **Receiving Person** means the Person, which receives Information from the Issuing Person.
- 1.17. **Representative** means, as to any Organisation, such Organisation's shareholders, members, partners, affiliates and their directors, managers, officers, members, employees, agents, advisors (including, without limitation, financial advisors, counsel and accountants), contracted operators and controlling persons as well as current or prospective banks or other lenders or financing sources, provided they comply with confidentiality obligations vis-a-vis the Organisation matching the present NDA requirements.

2. Interpretation

- 2.1. **Comprehensiveness.** This Agreement supersedes all prior agreements between the Parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter.
- 2.2. **Equivalence.** The present Agreement's provisions mirror and complete CRESYM Internal Rules in order to enable the exchange and treatment of Information between CRESYM Members and Observers in a fair and symmetric manner for every Person.

In case of textual differences between the present Agreement and CRESYM Internal Rules, and/or differences or divergences in the interpretation of the said documents, the provisions stated in CRESYM's Internal Rules shall prevail.

- 2.3. **Phrases.** The expressions "including" (or any other derived term or expression such as "to include"), "i.e.", "such as", and the like, must not be construed restrictively but as "including but without limitation" or "without prejudice to the generality (of the foregoing)".
- 2.4. **Severability.** Should any one or more of the provisions contained in this Agreement for any reason be held by a court or arbitrator of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and such invalid, illegal or unenforceable provision (or provisions) shall be reformed and construed so that it (or they) will be valid, legal and enforceable to the maximum extent permitted by law.
- 2.5. **No Partnership.** This Agreement does not create any partnership, joint venture, or agency of any kind between the Parties and none of the terms or provisions of this Agreement shall be interpreted as creating any such partnership, joint venture or agency, it being understood that the Parties nevertheless herein agree to develop together the Project pursuant to the terms of this Agreement.

Each Party is liable for its own commitments only. The Parties do not assume joint and several liability.

- 2.6. **No Employment.** This Agreement does not create an employment relationship between a Party and/or any individual involved by its implementation.

Nothing in this Agreement shall be construed or have the effect of giving rise to a relationship of employer and employee between any Party.

3. Objectives

- 3.1. **Goal.** The present Agreement defines the terms and conditions under which the Parties may come to share Information, and especially Confidential Information, in the context of, and/or aiming at, exploring research action opportunities or organisation, and possibly anticipating future cooperation, as exposed in the preamble (“Whereas”) with CRESYM and/or its Members and other Observers.

4. Duration, Amendment and Termination

- 4.1. **Beginning date.** This Agreement enters into force on the date of its signature by the Parties.
- 4.2. **End date.** This Agreement ends at the earliest of the following dates, either:
- (i) as the case may be, by the signature by both Parties of another superseding agreement; or
 - (ii) one (1) month after the notification of either Party to end the Agreement; or
 - (iii) thirty-six (36) months after the Beginning Date.
- 4.3. **Breach.** Both Parties are entitled to end the Agreement if the other Party or another Person caused a confidentiality breach.
- 4.4. **Ex Post obligations.** The obligation to preserve the confidentiality of Confidential Information shall remain in force for a period of three (3) years following termination of this Agreement for any reason, unless the Issuing Person informs in writing that the related confidentiality obligation is cancelled or ii/ the Information comes lawfully to the public domain.
- 4.5. **IR update.** In case CRESYM’s Internal Rules are updated with respect to information sharing between Persons, CRESYM shall notify every Observer of the changes and the entailed amendments to the Agreement, at least one (1) month before their enforcement.

Each Observer may oppose the said updates and amendments by notifying it to CRESYM, therefore ending the present Agreement.

If an Observer has not opposed the said updates and amendments one (1) month after CRESYM’s notification, the related NDA still applies mutatis mutandis (see [Article 2.2](#)).

5. Information sharing & confidentiality

- 5.1. **Agreement existence.** The existence of this agreement is not Confidential Information.

Cooperation principles

- 5.2. **Representatives.** Every Party agrees that their Representatives involved or implied by the implementation of this Agreement,
- will comply with the terms and conditions of the present Agreement;
 - have each undertaken in writing an obligation of confidentiality (or are obliged by law) with respect to any Private, respectively Confidential, Information they may receive in relation to this Agreement and shall treat Private, respectively Confidential, Information in accordance with this Agreement’s provisions; and
 - are aware of CRESYM’s Code of Conduct (<https://cresym.eu/wp-content/uploads/2024/08/C5-CRESYM-Code-of-Conduct.pdf>); and especially of every Person’s obligations regarding competition law, e.g. as stressed out in CRESYM’s Antitrust Guidelines” (<https://cresym.eu/wp-content/uploads/2023/09/C0-CRESYM-Antitrust-Guidelines.pdf>).

- 5.3. **Limited use.** Each Person is entitled to use any Information free of charge on a non-exclusive, non-transferable and non-sublicensable basis provided that such use is limited to the Information and for the sole purposes set out in [Article 3.1](#) and for the duration of the Agreement.

Private Information

- 5.4. **Private Information.** Each Receiving Person shall treat as Private Information every piece of Information provided by any Issuing Person's Representative in the framework of CRESYM's activities, related meetings, files and data repositories.
- 5.5. **Transparency inside.** Unless it is a Confidential Information, every piece of Private Information may be freely shared with other Persons' representative in the framework of CRESYM's activities, related meetings, files and data repositories.
- 5.6. **Confidentiality outside.** Private Information shall not be disclosed to any third party, i.e. an organisation that is not a Person, without the prior consent of the Issuing Person.

Confidential Information

- 5.7. **Confidential Information.** Each Receiving Person shall treat as Confidential Information every piece of Information provided by any Issuing Person, including Issuing Person's Representative, if either
- explicitly declared, indicated or marked "confidential", by such Issuing Person, including Issuing Person's Representative, to be confidential; and/or
 - shared in a Project's Private Workspace.
- 5.8. **Projects.** For the sake of clarity:
- the present Agreement does not grant access to any Project Private Workspace. Only the related Project Agreement may grant a Person such right.
 - The present Agreement's provisions however apply in every Project Private Workspace.
 - Every piece of Information in a Project Private Workspace can be accessed by every Person which the related project agreement granted access to, i.e. every such Person is a Receiving Person of the Information
- 5.9. **Restriction.** Confidential Information shall not be disclosed to another Person than the Receiving Persons, nor to any third party, without the prior consent of the Issuing Person.

Confidentiality implementation

- 5.10. **Effort.** Except as required by applicable law or regulation or by legal process, or unless otherwise agreed to in writing by the Issuing Person, the Receiving Person agrees:
- to restrict access to any Issuing Person's Private Information's as set out by [Articles 5.5 and 5.6](#);
 - to restrict access to any Issuing Person's Confidential Information's as set out by [Articles 5.8 and 5.9](#);
 - not to disclose, reveal, convey or transfer any of Issuing Person's Confidential Information to any Representative other than the Receiving Persons' Representatives who are required to have knowledge thereof; and
 - not to use or disclose any of the Issuing Person's Confidential Information for any purpose whatsoever other than as permitted pursuant to the terms of this Agreement.

A Receiving Person shall take all necessary measures to enforce such commitment and such measures shall not be inferior to those taken by it for the protection of its own confidential information.

- 5.11. **Purpose.** A Receiving Person undertakes to communicate such Information only to its Representatives who are required to read and use it in order to undertake and achieve the purpose of this Agreement.

In addition, a Receiving Person may disclose the Information to its directors, shareholders, employees or professional advisers, provided that it is necessary for the performance by such Person of its legal obligations and undertakings or for the exercise of its rights in relation to this Agreement.

- 5.12. **Disclosure.** A Receiving Person shall immediately notify the concerned Issuing Person in writing of any unauthorised disclosure of Private, respectively Confidential, Information, be it due to negligence or required by applicable law or regulation or by legal process.

If a Receiving Person is required by any applicable legislation in force during the term of this Agreement (including but not limited to legislation, enactments, act of a competent public authority based on the legislation, regulations, regulatory policies, regulatory permits and licences) or by an order of a judicial, regulatory or other competent public authority to disclose Private, respectively Confidential, Information, the Receiving Person must, prior to any such disclosure and to the extent reasonably possible whilst complying with the applicable legislation or order, notifies the Issuing Person of such requirements and provides the notified Issuing Person with a reasonable opportunity to contest the requirement to disclose the information or to limit the extent of the disclosure.

The Receiving Person shall take all reasonable measures to limit the harmful consequences of a disclosure.

- 5.13. **Waiver.** If and once a Private, respectively Confidential, Information has been made lawfully publicly available in writing by a Person which did not gain access to it within the context of this Agreement, the said Information is deemed public and all confidentiality obligations about it in application of this Agreement are lifted for all Parties.

From then on, another Person may further disseminate the said Information, with no entailed liability.

The said Information shall however be further disseminated in the public domain with caution.

- 5.14. **Cure.** Within thirty (30) days of the Issuing Person's written request, every Receiving Person, shall, to the extent applicable with national law, destroy or return to the Issuing Person any Private, respectively Confidential, Information and any object embodying it, including any copy, extract or summary thereof.

Every Receiving Person shall stop using such Information immediately if requested in writing by the Issuing Person.

The erasure of electronic files containing or constituting the Information meets this requirement, insofar as the destroyed files can only be recovered by the implementation of extraordinary recovery methods.

The obligation to return or destroy shall not apply to automatic back-up copies for archiving purposes of Private, respectively Confidential, Information exchanged electronically, insofar as the destroyed files can only be recovered by the implementation of extraordinary recovery methods.

Confidentiality obligations shall apply to the Confidential Information or copies of it that are not destroyed or returned for as long as they are retained by the Receiving Person.

- 5.15. **Archiving.** Upon termination of this Agreement, every Party shall apply [Article 5.14](#) to all received Private, respectively Confidential, Information.

Caveats

- 5.16. **No Representation or Warranty.** The disclosure of Private, respectively Confidential, Information by the Issuing Person does not constitute a warranty with respect to such Information, including that such Information does not infringe the rights of any third party.

The Issuing Person makes no representation or warranty, including as to the accuracy or completeness of the Confidential Information supplied and shall have no duty to update such Information nor have any liability whatsoever with respect to the use by Receiving Person of such information under this Agreement.

- 5.17. **Injunctive Relief.** Every Party, as a Receiving Person, acknowledges and agrees that an Issuing Person may not have an adequate remedy at law in the event of a breach of this Agreement by the Receiving Person, that the Issuing Person may suffer irreparable damage and injury as a result of a breach of this Agreement, and that if the Receiving Person violates the provisions of this Agreement, the Issuing Person, in addition to any other rights and remedies available under this Agreement or otherwise, shall be entitled to seek an

injunction to be issued by a tribunal of competent jurisdiction restricting the Receiving Person from committing or continuing any violation of the terms of this Agreement.

No proof of special damages shall be necessary for the enforcement of the present Article.

Each Party is responsible for any breach of this Agreement by its Representatives or by any Person to whom it has disclosed the Private or Confidential Information.

Personal data protection

5.18. **Principle.** To the extent that any of the Confidential Information is personal data as defined in the European General Data Protection Regulation (GDPR) and/or any hereto applicable data protection laws, the Party, as Receiving Person, hereby undertakes to:

- only process (as defined in the GDPR and/or any hereto applicable data protection laws) such personal data to the extent strictly necessary for the Agreement and not for any other purpose without the prior written consent of the Issuing Person;
- take such technical, organisational and security measures as required to enable it to process such personal data in compliance with the GDPR and/or any hereto applicable data protection laws and this Agreement and to allow the Issuing Person to inspect all such measures upon reasonable prior written notice to the Receiving Person;
- not transfer or process (as defined in the GDPR and/or any hereto applicable data protection laws) such personal data outside of the European Economic Area without the prior written consent of the Issuing Person;
- upon request from the Issuing Person, immediately cease processing (as defined in the GDPR and/or any hereto applicable data protection laws) such personal data and/or take any other steps reasonably specified in relation to such personal data including destroying, blocking or amending such personal data; and
- provide the Issuing Person with all reasonable assistance and co-operation necessary to allow the Issuing Person to comply with its obligations under the GDPR and/or any hereto applicable data protection laws including complying with subject information about processing of its data by the Receiving Person, access requests and requests made by the competent information authority, if any, in respect of such personal data.

5.19. **Ex-post storage.** The Personal Data relating to any Person Representative shall be stored for no longer than five (5) years after the termination of the Agreement.

6. Intellectual Property

6.1. **No License.** No license or right, express or implied, under any patent, invention, trade secret, trademark, copyright or other proprietary right or license is granted or conferred to either Person by this Agreement or by any disclosure hereunder and nothing in this Agreement shall be construed as granting or conferring such license or right, except for the limited right to use the Issuing Person's Confidential Information as set forth in [Article 5](#) above.

Such foregoing rights and licenses shall remain the sole property of their respective owner.

A Receiving Persons undertakes not to register or claim any intellectual property right on all or part of the Issuing Person's Private or Confidential Information

6.2. **Context of use.** If the Agreement ends, the Receiving Person loses all right to use the disclosed Confidential Information.

7. Force Majeure, Governing Law, Dispute

7.1. **Force majeure.** The Parties are not liable for any direct and indirect consequence for the implementation of the present Agreement, in case of an event of Force Majeure (to be construed as per the applicable law).

The Party invoking a Force Majeure event shall notify the other as soon as reasonably possible, such notice describing the nature of the respective event and its probable duration.

Every Party shall make any reasonable efforts to limit the consequences and duration of such event.

After the Force Majeure event is over, every Party shall make any reasonable efforts to resume the application of this Agreement.

In case the event of Force Majeure is lasting more than three (3) months, Parties may decide to terminate the Agreement, without any kind of compensation for the Parties.

- 7.2. **Governing Law & Jurisdiction.** This Agreement shall be exclusively governed by, and construed and enforced in accordance with, the laws of the Kingdom of Belgium, without giving effect to its conflict of law provisions and/or principles.
- 7.3. **Amicable settlement.** Any and all claims, controversies or disputes or disagreement between the Parties arising out of, connected with, or relating in any way to this Agreement, its existence, negotiation, (non-) performance, interpretation, termination or the relationship between the Parties established hereby shall be settled amicably between the Parties.
- 7.4. **Courts.** Unresolved issue(s) shall be finally settled by the competent court.
The court's proceedings shall take place in Brussels in English.

8. Notices

- 8.1. **Notice.** Any notice under this Agreement or in connection to it shall be made in writing, addressed to the Party to be notified at the following address, or any update as may be later designated in writing:

<p>To XXX: For YYY Address 1 Address 2 Phone: +zz ... Email: email@address</p>	<p>To CRESYM: For Sebastien Lepy Square de Meeûs, 38-40 1000 Brussels BELGIUM Phone: +33 6 66 54 36 54 Email: sebastien.lepy@cresym.eu</p>
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Notices shall be given either by registered mail or by e-mail (with acknowledgement of receipt).

- 8.2. **Use of electronic means.** The Parties acknowledge and agrees that their electronic exchanges (emails, SMS, etc.) have the same value as any other written material and that their content is deemed genuine unless the evidence of a fraud is brought.

9. Final Provisions

- 9.1. **English.** This Agreement and all documents exchanged in application of this Agreement must be in English or translated in English in order to be considered valid.
- 9.2. **Non-Exclusivity.** Nothing in this Agreement shall prohibit a Party from providing any service to third parties during the term of this Agreement, provided that they do not adversely interact with, or limit, the undertaking of the Project or the foreseen exploitation of the Project Results.
- 9.3. **No waiver.** No failure or delay by a Party hereto in exercising any right, power, privilege or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, privilege or remedy hereunder.

9.4. **Waiver and remedies.** No Party shall be deemed to have waived any rights or remedies arising out of this Agreement or out of any default or breach hereunder unless such Party executes the waiver in writing.

If a Party waives a right or remedy arising out of this Agreement or out of any default or breach hereunder, such waiver shall not be construed to constitute a waiver of any other rights or remedies.

The rights and remedies of a Party under the Agreement apply cumulatively with and do not exclude any other rights and/or remedies granted to such Party under the Agreement and/or applicable law.

9.5. **No transfer.** The Parties undertake to not assign nor transfer or otherwise cede any of their rights or obligations under the Agreement to any third party without the other Party's prior written approval.

9.6. **Amendments.** This Agreement may be amended or modified only by a written amendment signed by the duly authorised representatives of the Parties.

9.7. **No Tail.** This Agreement does not compel either Party to disclose any Information or Confidential Information to the other or to enter into any other agreement or arrangement with the other Party.

10. Signatures

10.1. **Electronic signatures.** The Parties agree that each of them may sign the Agreement, or any related document, by affixing an electronic signature on the DocuSign platform or similar method and acknowledges that this electronic signature will have the same legal value as a handwritten signature.

The signature of the documents by electronic means in the meaning of Regulation (EU) 910/2014 on electronic identification and trust services for electronic transactions in the internal market and electronic transmission (jointly, an "Electronic Signature"), including via facsimile, DocuSign, or other similar method, shall have the same force and effect as an original and bind the Parties to the terms of these documents.

The Parties agree that the electronic transmission by DocuSign (or other similar platform) of the electronically signed Agreement, or related document, constitutes proof between the Parties of the existence, content, sending, integrity, timestamping and receipt of the Agreement, or related document, signed electronically between the Parties; and that the Agreement, or any related document, signed electronically constitutes the original of the document, has the same probative value as a writing on paper and may validly be opposed to them; that it is prepared and will be kept under conditions likely to guarantee its integrity and that it is perfectly valid between them.

10.2. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed shall be deemed to be an original but all of which together shall constitute one and the same agreement.

IN WITNESS WHEREOF, THE PARTIES TO THIS AGREEMENT HAVE EXECUTED OR HAVE CAUSED THEIR DULY AUTHORIZED REPRESENTATIVES TO EXECUTE THIS AGREEMENT ON THEIR BEHALF AS OF THE EFFECTIVE DATE.

MADE IN TWO (2) ORIGINAL COPIES, ONE (1) FOR EACH PARTY

On: For CRESYM:	On: For XXX:
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Sébastien LEPY

[First & LAST name]

Appendix: excerpt from CRESYM's Internal Rules, Article 4.12 & 5.5,

version 9th April 2024

(...)

4.12 Transparency principle & confidentiality policy

The Association's activities and management shall be run in a transparent manner whenever possible, provided all obligations of the Association, Members and Observers (see section 5.5) – collectively, the “**Persons**” – toward any other party are complied with, including, but not limited to, competition law obligations.

4.12.1 – Confidentiality

Each Person shall treat as confidential all information provided by any other Person which is declared or explicitly indicated by such providing Person to be confidential.

All confidential information provided by a Person (i) shall be used by any other Person solely for the purposes of fulfilling its obligations pursuant to the By-Laws, the Internal Rules or any agreement or activity that the considered Persons undertake in relation to the Association, and (ii) except as may be required in carrying out the terms of aforementioned By-Laws, Internal Rules and agreements, shall not be disclosed to any third party without the prior consent of such providing Person.

The foregoing shall not be applicable to any information that is publicly available when provided or which thereafter becomes publicly available other than in contravention of this Article 4.12 or which is required to be disclosed by any regulatory authority in the lawful and appropriate exercise of its jurisdiction over a Person, any auditor of the Persons, by judicial or administrative process or otherwise by applicable law or regulation.

4.12.2 – Transparency

Otherwise, by default, i.e. if no confidentiality is explicitly required, transparency shall be ensured based on the following rules:

- Every information disclosed during a meeting of any Body of Association is deemed shared or sharable to all Members' representatives, except where a specific conflict of interest involving a Member is identified (see section 5.3.1).
- Every Member representative is entitled to use any piece of information disclosed by a Member's representative or an Association staff in the course of the Association's framework, free of charge on a non-exclusive, non-transferable and non-sublicensable basis provided that such use is limited to the sole purpose of carrying out the related Association's action and for the duration required by the related Association's action.
- The minutes of any Body of Association's shall be made publicly available on request, with publicity of such measure on the Association's website, in order to ensure a level playing field to all possible competitors to the Association's Members via a vis the information shared within the Association.
- Any information disclosed to the Association's staff in a specific framework (e.g. a Project team) (resp. in no framework) is deemed shared/sharable within this framework (resp. to all Members'

- representatives).
- By exception to the above, access to every piece of information that is identified as confidential vis à vis one or more Member must be restricted accordingly, especially on the Association's workspaces.

4.12.3 – Confidentiality breach

All concerned parties shall do their best effort in good faith to remedy a confidentiality breach, if possible.

Any Member who is deemed by the General Assembly to have caused a serious confidentiality breach, may be excluded by the General Assembly from exercising its rights as a Member.

(...)

5.5 Observers

An “**Observer**” is any Non-Member organisation that is compelled to comply with the confidentiality rules set out in § 4.12 by i/ their signature of a Non-Disclosure Agreement with the Association (see template C1) or ii/ their application to the Association (see template M1) and the granting the Observer status by the Association. Conversely, the signature of this NDA compels CRESYM and its Members to consider the Observer as if they were Member as far as § 4.12 applies.

An Observer may be, but not compulsorily, invited to meetings; nor are they compelled to attend the meetings they are invited to. Thanks to the present set of rules and the NDA signature, §4.12 shall apply to all participants to the meeting in equal terms, Members and Observers alike.

The Board may limit or forbid the access of Observers to discussions and information to preserve the Association's interest and prevent conflicts of interest.

(...)

End of the document