

NON-DISCLOSURE AGREEMENT FOR THE PROTECTION OF INFORMATION

between

Name
Address
City
Country

- referred to hereinafter as: "**NN**" –

And

Name
Address
City
Country

- referred to hereinafter as: "**NN**" -

the parties to this Non-Disclosure Agreement being hereinafter referred to separately as "Party" and collectively as the "Parties"

WHEREAS The Parties are working together in the Helix Nebula Initiative;

WHEREAS The Helix Nebula Initiative is an arrangement between public and private organisations started in 2012 with the objectives to establish a multi-tenant, multi-provider cloud infrastructure, to identify and adopt policies for trust, security and privacy, to create a governance structure and to define funding schemes;

WHEREAS the Parties:

- a) have been discussing and intend to discuss further a possible cooperation on the development and future operation of a joint European Research Computing Cloud under the following title (hereinafter referred to as the "Subject Matter"): Helix Nebula, The Science Cloud.
- b) may, in the course of their discussions of the Subject Matter, disclose or caused to be disclosed, either orally or in writing, proprietary and/or business confidential information which may include financial data, business and other plans, ideas, discoveries, inventions, specifications, formulae, models, requirements, standards, trade and manufacturing secrets, drawings, samples, devices, computer programs, demonstrations, trade secrets, technical information, as well as any and all intellectual and industrial property rights contained therein or in relation thereto, title to which belongs to the disclosing Party or which the disclosing Party has a right to disclose and which shall receive protection if it is clearly and conspicuously marked or notified to the receiving Party as being business confidential or proprietary information, (the "Proprietary Information");
- c) wish to define and protect their rights with respect to the Information,
- d) acknowledge the specific status of some Parties that are intergovernmental organisations and that are granted a set of privileges and immunities for themselves and their staff necessary for the fulfilment of their objectives and for the exercise of their functions.

NOW THEREFORE the Parties agree as follows:

1. Any Party may, at its discretion, and in accordance with paragraph c above, provide Proprietary Information or cause Proprietary Information to be provided to any other Party in connection with the Subject Matter.
2. The Proprietary Information and all rights to it, disclosed to the receiving Party shall be considered the exclusive property of the disclosing Party. The receiving Party shall protect the Information from disclosure to anyone other than its own employees who have a need-to-know, shall maintain the Proprietary Information or any part thereof in strict confidence and secrecy, in the furtherance of the Subject Matter of this Non-Disclosure Agreement (the "Agreement"), using the same degree of care as the receiving Party uses with its own valuable proprietary information. The receiving Party will not use the Proprietary Information for any purpose other than to advance the mutual interest of the Parties in the Subject Matter; provided, however, that in no event the receiving Party will reveal any Information to any third party without the express written consent of the disclosing Party.

Notwithstanding the foregoing, each receiving Party may disclose any of the Proprietary Information to

- (i) its directors, officers, employees, accountants, legal and other advisors (collectively, its "Representatives")
- (ii) its Affiliates and their respective Representatives;
- (iii) any other person to whom the disclosing party consents in writing

(together: "Permitted Disclosee") on a need-to-know basis and on condition that such Permitted Disclosee shall be informed by such receiving party of the confidential nature of such information and shall agree to treat such information confidentially and to comply with all other provisions of this agreement in writing.

to

The term "Affiliate" as used herein shall mean any legal entity which, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a Party, respectively; "Control" in this context means the ownership, directly or indirectly, through one or more intermediaries of voting share bearing in the aggregate at least fifty percent of the aggregate voting rights of all classes of all voting share of an entity, or the right or power in fact to direct, directly or indirectly, the management of such entity.

3. The receiving Party has no obligation with respect to any Proprietary Information which:
 - (a) was already known by the receiving Party without restriction prior to receipt from the disclosing Party, as evidenced by prior existing records of the receiving Party, or
 - (b) is or becomes generally known to the public through no wrongful act of the receiving Party, as evidenced by documents which are generally published, or
 - (c) is received from a third party without similar restriction and without breach of these or other confidentiality undertakings, or
 - (d) is independently developed by the receiving Party, provided that the receiving Party can demonstrate that such development was carried out by persons without access to the Information, or
 - (e) is required to be disclosed by law or a court of competent jurisdiction, provided that the receiving Party has given the disclosing Party timely notice of such required disclosure and has exhausted all reasonable means of maintaining the confidentiality of such information.

If only a part of any Proprietary Information falls under one or more of the preceding exceptions, the remaining Information shall continue to be subject to the prohibitions and restrictions set forth in this Agreement.

4. The communication of the Proprietary Information supplied pursuant to this Agreement does in no event confer or imply the grant or agreement to grant any license (patent, copyright or other) or other rights to the receiving party. The communication of Proprietary Information does not permit or entitle the receiving party to use, lease, sell, disclose, or otherwise dispose for the benefit of any party or person other than the disclosing Party, of the analysis, products, sub-assemblies, assemblies, or components, manufactured, designed or otherwise generated on the basis or by making use of the Information or by using the Proprietary Information in combination with other information.
5. The disclosing Party has endeavoured to provide the receiving Party with the proper information for the purposes set forth herein. The disclosing Party, however, makes no representations or warranties that the Proprietary Information disclosed to the receiving Party
 - a) is complete, exact, accurate, fit or sufficient for any particular purpose or for any use of the results based on the Information, or
 - b) will not infringe on proprietary rights of third parties.
6. None of the Parties shall be liable for any indirect, special, incidental and consequential damages including, but not limited to, the loss of income, profit or availability of systems and equipment.

7. This Agreement shall come into force upon its signature by all Parties and shall remain in force until 31 December 2014. Upon the expiration of this Agreement, any receiving Party shall, if required by the disclosing Party, either
- (a) return all disclosed Information and copies to the disclosing Party, or
 - (b) destroy all disclosed Information and copies and provide the disclosing Party with a certificate of destruction, duly executed by an authorized officer of the receiving Party.
8. The obligations contained in this Agreement shall continue for a period of five (5) years from the date of expiration of this Agreement, even if the Agreement is terminated or expires in accordance with its terms. If a contract is entered into by the Parties in respect of the Subject Matter, this Agreement shall be deemed incorporated into such contract, unless the contract explicitly provides otherwise with specific reference to this Agreement. In any such case, any Party shall use Information disclosed only to the extent necessary for the performance of the contract.
9. This Agreement shall be construed in accordance with and governed by the substantive laws of Germany. Nothing herein shall be deemed or interpreted as a waiver, express or implied, of any privileges or immunities accorded to CERN, EMBL, ESA or UNESCO by its constituent documents or international law.
10. Any disagreement or dispute that arises under, out of, in connection with or in relation to this Agreement or the breach thereof and which the Parties are unable to settle amicably between themselves shall be finally settled in accordance with the rules for Conciliation and Arbitration of the International Chamber of Commerce by three (3) arbitrators to be appointed in accordance with such rules. The arbitration shall take place in Frankfurt am Main, Federal Republic of Germany, and shall be conducted in the English language, unless otherwise agreed upon in writing.
11. All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any term of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the Parties that the remaining terms hereof shall constitute their agreement with respect to the subject matter hereof and all such remaining terms shall remain in full force and effect.
12. No failure on the part of a Party to exercise, and no delay by such Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by a Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver or assent by any Party to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other condition hereof.
13. Nothing contained in this Agreement shall be deemed to grant to any Party the right to make commitments of any kind for, on behalf of, or for the account of any other Party without such Party's prior written consent.
14. The Parties agree to perform their respective obligations hereunder without any charge or expenses to each other.
15. No amendment to the terms and conditions of this Agreement shall be valid unless made in writing and signed by an authorized representative of each Party. This Agreement may not be assigned without the prior written Agreement of the other Parties.
16. This Agreement shall be binding upon the Parties and their respective successors, assigns, subsidiaries and affiliates.
17. No Party shall make (and shall procure that its subcontractors, agents and Personnel shall not make) any reference to the Helix Nebula Initiative or any media release or any other kind

of public announcement concerning the existence of the terms of or otherwise concerning this Agreement without the express prior written consent of the authorised representatives of the other Parties. All public announcements must present the Parties in an equal and neutral way.

The Parties hereto have agreed to execute this Agreement in the following way: Each party signs one original copy and sends it electronically to T-Systems. T-Systems will deliver all received signed Agreements in a file distributed to all Parties. Upon entry of a new member, the respective Party is added to the Agreement and an update of the signed Agreement distributed to all Parties. The Parties acknowledge that the Agreement is validly made without having all signatures on one page.

Place, _____ 2014		Place, _____ 2014
For and behalf of NN		For and behalf of NN
_____ Name Title of Signatory		_____ Name Title of Signatory