

Non-Disclosure Agreement (NDA) - standard version from 2021-08-19

between

Party 1, Name and Address: _____

(hereinafter _____)

and

Party 2, Name and Address: _____

(hereinafter _____)

In the following, _____ and
_____ shall be referred to individually as *Party* or together
as *Parties*.

I. Preamble

1. The intention of the *Parties* who sign this *NDA* is to discuss projects and potential applications within the field of energy storage. This *NDA* shall govern the *Parties'* use of disclosed information.
2. Further specifics of a *Collaboration* between the *Parties* may be established by means of a separate contract.
3. Each *Party* confirms that it has made no modifications to this *NDA* in sections I to IX, compared to the standard version of this document from 2021-08-19, as published on *b-science.net*.

II. Definitions

1. *Discussions* designates all contacts between the *Parties* within the framework of this *NDA*, such as conversations, e-mail exchanges, meetings in person or other data exchanges.

2. *Collaboration* refers to projects, mandates, contracts or other forms of *Collaboration* resulting from *Discussions*.

3. *Thematic Area* refers to the subject regarding which the *Parties* exchange information within the framework of this *NDA*. The *Thematic Area* shall be: energy storage, including corresponding precursor materials and applications.

4. *Staff* are all those persons who are either formally employed by, or who work for one of the *Parties* in another capacity (e.g. students, doctoral candidates, guest scientists, interns, consultants, etc.).

5. *Confidential Information* designates all information, know-how, including technical, business and operational secrets, which are disclosed to the receiving *Party* by the disclosing *Party* orally or in writing. Written *Confidential Information* shall be marked 'confidential'. Orally disclosed *Confidential Information* has to be confirmed in writing as being confidential within ten (10) days after disclosure.

III. Confidentiality Obligation / Use of Confidential Information

1. The contents of this *NDA* are confidential. It may not be forwarded to any third party without the other *Party's* consent.

2. The confidentiality obligation means that the receiving *Party* shall handle and store with due care *Confidential Information* disclosed by the disclosing *Party* and:

a) may provide it only to those *Staff* who require access to the *Confidential Information* in order to fulfil their duties in connection with the *Discussions* and *Collaboration* and who are obliged to respect confidentiality obligations because of the conditions of their employment;

b) may not distribute it outside the area in which it is subject to their supervision and may neither publish it nor otherwise disclose it to third parties without the written authorization of the disclosing *Party*;

c) shall use it only within the scope of the *Collaboration*, not for other research & development projects or other purposes that do not relate to the *Collaboration*.

3. Neither *Party* is obliged to disclose any information to the other *Party*, or to enter into a further *Collaboration*.

4. The receiving *Party* undertakes to immediately return all *Confidential Information* (e.g. documents, plans, drawings, exemplars, models, prototypes, specifications, computer software, etc.) received from the disclosing *Party* if requested to do so in writing by the disclosing *Party*. If mandated by law or by other regulations *Parties* are obliged to follow,

Confidential Information may be stored by the receiving *Party* strictly for documentation purposes within the documentation time frame specified by the relevant mandate.

5. The *Confidential Information* shall remain the property of the disclosing *Party*. Nothing in this *NDA* shall be construed as granting to the receiving *Party* any license or right of any kind with respect to the *Confidential Information* or any intellectual property of the disclosing *Party*.

IV. Exceptions

1. The obligations imposed on the receiving *Party* by this *NDA* shall not apply to any *Confidential Information* or portion thereof disclosed by the disclosing *Party* for which the receiving *Party* is able to prove that:

a) it was in the public domain or public knowledge at the time it was transmitted to the receiving *Party*;

b) it later fell into the public domain or public knowledge for reasons other than an action or omission attributable to the receiving *Party* that is a breach of this *NDA*;

c) it was already in the receiving *Party's* possession, without any limitation regarding its disclosure at the time it was transmitted to the receiving *Party* by the disclosing *Party*, provided that such prior possession is supported by written evidence;

d) it was obtained in good faith and without any commitment relating to confidentiality from a third party entitled to disclose it;

e) it is or was independently developed by the receiving *Party* without use of *Confidential Information* of the disclosing *Party*.

2. Confidentiality obligations shall not apply to any portion of *Confidential Information* required to be disclosed as a result of a court order or pursuant to a government action, provided that the receiving *Party* shall inform the disclosing *Party* of any such order or action to give the disclosing *Party* the opportunity to request a protective order.

V. Warranty and Liability

All *Confidential Information* is provided on an *as is* basis, and all warranties, express or implied, pertaining in particular to, but not limited to, accuracy, fitness for a particular purpose, non-infringement of any patent or other intellectual property rights, are hereby disclaimed.

VI. Duration and Termination

1. This *NDA* enters into force once it is signed by the *Parties* and ends three (3) years after it entered into force. This *NDA* can be terminated at any time by one of the *Parties*, provided notice is given in writing, thirty (30) days in advance to the other *Party*.
2. The confidentiality obligation of the receiving *Party* with regard to *Confidential Information* disclosed before termination of this *NDA* shall remain in effect for a further three (3) years after termination of this *NDA*.

VII. Amendments

Amendments to this *NDA* and legally relevant correspondence shall be in writing.

VIII. Severability Clause

1. Should individual provisions of this *NDA* be invalid, in whole or in part, then the validity of the remaining provisions shall remain unaffected.
2. The *Parties* shall be mutually obliged to replace invalid provisions with legally applicable provisions which conform to the greatest possible extent to the sense and purpose of the present *NDA*.

IX. Applicable Law and Court of Jurisdiction

If *Parties* are based in the same country:

1. This *NDA* shall be governed by national law in which both *Parties* reside, without regard to principles of conflict of laws therein.
2. *Parties* agree to resolve conflicts between themselves in an amicable manner whenever possible.
3. If both *Parties* agree, one conflict arbitrator approved by both *Parties* will make the final decision regarding resolution of any conflict.
4. Upon request by any *Party* before entering conflict arbitration, the case shall be brought forward to the court of jurisdiction of the capital of their home country. If both *Parties* are based in the same local administrative entity (such as a Canton, State, Prefecture, etc.) and if both *Parties* agree, the court of jurisdiction may be moved to the capital of their administrative entity.

If *Parties* are based in different countries:

1. This *NDA* shall be governed by Swiss law, without regard to principles of conflict of laws therein.
2. *Parties* agree to resolve conflicts between themselves in an amicable manner whenever possible.
3. If both *Parties* agree, any conflict shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution in force on the date on which the Notice of Arbitration is submitted in accordance with these Rules. The number of arbitrators shall be one. The seat of arbitration shall be the city of Zurich, Switzerland. The arbitration proceedings shall be conducted in English.
4. Upon request by any *Party* before entering conflict arbitration, the case shall be brought forward to the court of jurisdiction of the city of Zurich, Switzerland, which is the exclusive place of jurisdiction.

This *Non-Disclosure Agreement (NDA)* is executed in two originals and duly signed by the authorized representatives of the *Parties* hereto:

Party 1:

Place/Date:

Signature:

Name:

Function:

Organization:

Party 2:

Place/Date:

Signature:

Name:

Function:

Organization: