**NON-DISCLOSURE AGREEMENT**

**(University Receiving)**

This non-disclosure agreement (“Agreement”) entered into as of \_\_\_\_\_\_\_\_, 20\_\_\_ (“Effective Date”) between The University of Texas at \_\_\_\_\_\_\_\_\_\_ located at [ADDRESS], a member institution of The University of Texas System (“University”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Disclosing Party”), a corporation having a business address at [ADDRESS]. University and Disclosing Party may each be referred to as “Party” or collectively as the “Parties”.

**RECITALS**

A. Disclosing Party wishes to disclose and University wishes to receive certain information from Disclosing Party represented by Disclosing Party to be confidential and proprietary information (hereinafter collectively, “Confidential Information”) pertaining to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. This exchange includes all communication of Confidential Information between the parties in any form whatsoever, including oral, written and machine readable form, pertaining to the above.

B. University wishes to receive and Disclosing Party wishes to disclose the Confidential Information for the sole purpose of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Purpose”) and regards certain parts of the Confidential Information it possesses to be secret and desires to protect those parts from unauthorized disclosure or use (such secret parts being hereafter collectively referred to as “Confidential Information”).

C. Disclosing Party is willing to disclose Confidential Information (as “Owning Party”) and University is willing to receive Confidential Information (as “Receiving Party”) on the terms and conditions set forth herein.

**AGREEMENTS**

Therefore, University and Company agree, as follows:

1. “Confidential Information” is proprietary and/or secret information owned or controlled by the Disclosing Party and which is discussed or disclosed during any meeting or discussions regarding the Purpose or otherwise disclosed in connection with the Purpose. Confidential Information includes, but is not limited to, all communications by Disclosing Party with the University in any form whatsoever including oral, written and machine-readable form, video, audio, phonorecord, recorded media, drawings, schematics, samples, devices, software, formulas, biological materials, applications for intellectual property protection, services, processes, procedures, trade secrets, intellectual property, pricing, costs, business or strategic plans, and marketing or advertising strategies.

2. The University shall only use Confidential Information for the Purpose. Specifically, but without limitation, the University will not use any of the Confidential Information for any commercial purpose or development of any products or technology and shall not use or attempt to practice any invention arising from or disclosed in the Confidential Information, or any part thereof, without first entering into an agreement with the Disclosing Party permitting such use or practice.

3. The Confidential Information shall remain the sole property of Disclosing Party.

4. Since the disclosure of Confidential Information by Disclosing Party is in strictest confidence, University agrees to:

a. Not disclose to any other person the Confidential Information, and use at least the same degree of care and discretion to maintain the Confidential Information secret as University uses in maintaining as secret its own Confidential Information, but always at least a reasonable degree of care and discretion;

b. Not disclose such Confidential Information to any third parties or to use, duplicate, reproduce, copy, distribute, or otherwise disseminate such Confidential Information, except as permitted pursuant to this Agreement;

c. Restrict disclosure of the Confidential Information solely to those employees of University having a need to know such Confidential Information in order to accomplish the Purpose;

d. Advise each such employee, before he or she receives access to the Confidential Information, of the obligations of University under this Agreement, and require each such employee to maintain those obligations;

e. Within thirty (30) days following request of Disclosing Party return to the Disclosing Party all documentation, copies, notes, diagrams, computer memory media and other materials containing any portion of the Confidential Information, or confirm to Disclosing Party, in writing, the destruction of such materials.

5. Nothing in this Agreement shall be interpreted as placing any obligation or expectation of confidentiality or non-use on the part of University with respect to any portion of the Confidential Information received from Disclosing Party that:

(a) can be demonstrated to have been in the public domain as of the date of this Agreement, or comes into the public domain during the term of this Agreement through no fault of the Receiving Party;

(b) can be demonstrated by tangible evidence to have been known to University prior to disclosure by Disclosing Party and as to which the University has no obligation not to disclose or use it,

(c) is lawfully obtained by University from a third party under no obligation of confidentiality, and which did not acquire it, directly or indirectly, from the Disclosing Party under a continuing obligation of confidentiality;

 (d) can be demonstrated by tangible evidence to have been independently developed by University without a violation of this Agreement and without use or reference to Disclosing Party’s Confidential Information;

(e) is generally disclosed by Disclosing Party to a third parties without anyconfidentiality obligation on the third parties; or

(f) is disclosed as required by law.

In the event any Confidential Information is required to be disclosed pursuant to governmental law, regulation, or judicial or administrative proceeding, University shall provide prompt notice of such request to the Disclosing Party and shall cooperate fully in seeking a protective order or other assurance that confidential treatment will be accorded to the Confidential Information required to be disclosed, should Disclosing Party seek such order or assurance. In the event that such protective order or other remedy is not obtained, or that Disclosing Party waives compliance with the provisions hereof, University and its employees and agents agree to furnish only that portion of the Confidential Information of Disclosing Party which is legally required to be furnished. Furthermore, such Confidential Information shall continue to be considered and treated by the University as Confidential Information for all other purposes. Confidential Information required to be so disclosed shall not be deemed part of the public domain by virtue of such disclosure.

6. This Agreement imposes no obligation on University with respect to any portion of the Confidential Information disclosed by Disclosing Party, unless such portion is:

(a) disclosed in a written document or machine readable media marked “CONFIDENTIAL” at the time of disclosure, or

(b) disclosed in any other manner and summarized in a memorandum mailed to University within thirty (30) days of the disclosure.

Confidential Information disclosed by Disclosing Party in a written document or machine readable media and marked “CONFIDENTIAL” includes, but is not limited to, the items, if any, set forth in Schedule A attached hereto. Schedule A is incorporated herein by reference. University hereby acknowledges receipt of the items listed in Schedule A, if any.

7. University agrees it will not export, directly or indirectly, any technical data acquired from Company or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval, without first obtaining such license or approval.

8. In the event of a breach or threatened breach or intended breach of this Agreement by either Party, the other Party, in addition to any other rights and remedies available to it at law or in equity, shall be entitled to seek preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach, or requiring specific performance of the Party’s obligations hereunder, even if monetary damages are available and readily quantifiable and without proof of actual damage.

9. The validity, construction, and performance of this Agreement are governed by the laws of the State of Texas. The Texas state courts of \_\_\_\_\_\_\_ County, Texas (or, if there is exclusive federal jurisdiction, the United States District Court for the \_\_\_\_\_\_\_ District of Texas) shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement, and Disclosing Party hereby consents to jurisdiction in such courts

10. If any mediation, litigation or other legal proceeding relating to this Agreement occurs, the prevailing party shall be entitled to recover from the other party (in addition to any other relief awarded or granted) its reasonable costs and expenses, including attorney’s fees, incurred in the proceeding.

11. The rights and obligations of the Parties under this Agreement may not be sold, assigned or otherwise transferred. This Agreement shall not be amended or modified without mutual consent of the Parties to such amendment or modification.

12. Neither Party may use the other Party’s name without prior written consent.

13. Either party may terminate this Agreement at any time without cause upon thirty (30) days written notice to the other Party, or for cause effective upon written notice to the other Party.

14. LIMITATIONS. DISCLOSING PARTY AND UNIVERSITY AGREE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A TEXAS STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INLCUDING THE TEXAS PUBLIC INFORMATION ACT AS SET FORTH IN CHAPTER 552 OF THE TEXAS GOVERNMENT CODE. ACCORDINGLY, THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE ONLY BINDING ON UNIVERSITY TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE TO TEXAS. Disclosing Party and University specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University’s or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.

15. This Agreement is binding upon University and Disclosing Party, and upon the directors, officers, employees and agents of each. This Agreement is effective as of the Effective Date and will continue for a period of three (3) years, unless earlier terminated pas provided herein. However, University’s obligations of confidentiality and restrictions on use of the Confidential Information disclosed by Disclosing Party shall survive termination of this Agreement.

16. This Agreement constitutes the entire and only agreement between the Parties for the confidentiality of Confidential Information related to the Purpose. Nothing herein requires either Party to proceed with any proposed transaction or relationship in connection with which the Confidential Information may be disclosed.

**IN WITNESS WHEREOF,** the Parties have caused this Agreement to be executed by their duly authorized representatives.

**The University of Texas at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Name:\_\_\_\_\_\_\_\_\_\_\_\_\_
Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**(Company)**

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Name:\_\_\_\_\_\_\_\_\_\_\_\_\_
Title:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_