**MUTUAL NON-DISCLOSURE AGREEMENT**

This Mutual Nondisclosure Agreement (“Agreement”) is between [Institution], a member of The Texas A&M University System, an agency of the State of Texas (“Institution”), and [Company], a [state of formation] [entity type] (“Company”).

Company and Institution wish to exchange certain information, certain parts of which may be proprietary, confidential, and have value to that party. The parties wish to protect this information from unauthorized disclosure or use, so Institution and Company are willing to disclose and receive this information on the following terms and conditions.

1. **Definitions**
   1. “Confidential Information” means information that is:
      1. Disclosed by Discloser to Recipient during the Disclosure Period;
      2. Proprietary, confidential, and has value to the Discloser; and
      3. Either:
         1. Marked at the time of disclosure to show its confidential nature; or
         2. Unmarked but treated as confidential at the time of disclosure and described in detail and designated to show its confidential nature in a writing delivered to Recipient within 15 days of the disclosure.
   2. “Discloser” means the party disclosing information to the Recipient.
   3. “Disclosure Period” means the period beginning on the Effective Date and lasting [term].
   4. “Effective Date” means [effective date].
   5. “Exception” means, as to each particular item of Confidential Information, that the particular item:
      1. Was known to Recipient before disclosure by Discloser;
      2. Is publicly known or readily ascertainable by proper means;
      3. Is rightfully obtained by Recipient from a third party without a duty of confidentiality;
      4. Is independently developed by Recipient; or
      5. Is disclosed by Discloser to a third party without a duty of confidentiality on the third party.
   6. “Protection Period” means, as to each particular item of Confidential Information, the period beginning on the date that particular item is disclosed by Discloser to Recipient and lasting either [term] or until that item satisfies an Exception, whichever is earlier.
   7. “Purpose” means [purpose].
   8. “Recipient” means the party receiving information disclosed by Discloser.
2. **Recipient’s Obligations** 
   1. During the Protection Period only, Recipient:
      1. Must use at least the same degree of care to maintain the confidentiality of Confidential Information as Recipient uses in maintaining the confidentiality of its own confidential information, but always at least a reasonable degree of care.
      2. May use Confidential Information only for the Purpose.
      3. Must restrict disclosure of Confidential Information solely to those employees of Recipient having a need to know Confidential Information to accomplish the Purpose.
      4. Must advise each such employee, before he or she receives access to Confidential Information, of Recipient’s obligations under this Agreement, and require each employee to maintain those obligations.
      5. Must, within 15 days following a written request by Discloser, return to Discloser all documentation, copies, notes, diagrams, computer memory media, and other materials containing Confidential Information, or confirm to Discloser, in writing, the destruction of those materials.
   2. Despite any provision of this Agreement to the contrary, Recipient may disclose Confidential Information as required by law. “Required by law” includes, but is not limited to, disclosures compelled by lawful subpoena, court order, or demand, or any other lawful process; provided, however, that immediately upon receipt of such a subpoena, order, or demand, Recipient must notify Discloser of the impending disclosure to allow Discloser an opportunity to prevent the disclosure. Recipient is not required to pursue any claim, defense, cause of action, or legal process or proceeding on Discloser’s behalf.
   3. Company acknowledges that Institution must strictly comply with the Public Information Act, Chapter 552, *Texas Government Code*, in responding to any request for public information. This obligation supersedes any conflicting provisions of this Agreement.
3. **Publication.** Institution, as a state institution of higher education, engages only in research activities compatible, consistent, and beneficial to its role and mission. Therefore, significant results of research must be reasonably available for publication. The parties acknowledge that Institution may publish data, information, and results relating to the same subject matter as Company’s Confidential Information. However, during the Protection Period for any specific item of Company’s Confidential Information, Institution will provide Company 30 days to review and comment on any such proposed publication. During the applicable Protection Period, Institution may not include any of Company’s Confidential Information in any published material without the advance approval of Company.
4. **Effect of Disclosure.** Confidential Information, including any documents, drawings, sketches, designs, materials or samples supplied, remain the property of Discloser and no rights are granted to Recipient in those materials except the limited right to use Confidential Information for the Purpose.
5. **No Warranties.** **Neither party makes any representations or warranties, written or oral, express or implied, as to Confidential Information, including without limitation, any warranty of merchantability or of fitness for a particular purpose.**
6. **Exports.** The Recipient may not export, directly or indirectly, any technical data acquired from Discloser or any product utilizing any such data to any country for which the U.S. Government at the time of export requires an export license or other governmental approval, without first obtaining that license or approval.
7. **Miscellaneous**
   1. Institution is an agency of the State of Texas and nothing in this Agreement waives or relinquishes Institution’s right to claim any exemptions, privileges, and immunities as may be provided by law.
   2. The laws of the State of Texas govern and determine the validity of this Agreement and all matters related to this Agreement, including but not limited to matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction. Venue for any claim arising under this Agreement will be as provided under Texas law.
   3. Headings appear solely for convenience of reference, are not part of this Agreement, and may not be used to construe it.
   4. If a court of competent jurisdictions holds any provision or provisions of this Agreement to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired.
   5. Any notices required by this Agreement must be delivered to the following addresses:

If to Institution: [address]

If to Company: [address]

* 1. This Agreement contains the entire understanding of the parties asto the confidentiality of Confidential Information, and supersedes all other written and oral agreements between the parties as to those matters. The parties may execute other contracts, but those other agreements will not change or alter this Agreement unless expressly stated in writing.

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| **[Institution]** |  | **[Company]** |
| By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| [Name] |  | [Name] |
| [Title] |  | [Title] |
| Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |