NON-DISCLOSURE AGREEMENT

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This Non-Disclosure Agreement (“NDA”) is entered into between the Parties identified below. In consideration of the mutual covenants and premises contained herein, the parties hereby agree as follows:

The Terms and Conditions for Non-Disclosure Agreement attached hereto as Exhibit A are incorporated herein by reference in their entirety (the “Terms and Conditions”). Capitalized terms used in this NDA without definition shall have the meanings given to them in the Terms and Conditions. In addition to the signatures of each Party identified in Block 1 below, signature is also required on Exhibit B from the Contact Person for The University of Texas at Austin.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **1. Parties (name, address for notice)** | | | | | |
| THE UNIVERSITY OF TEXAS AT AUSTIN (“University”) | | | [INSERT NAME OF PARTY 2] | | |
| Attn: | Director  Office of Industry Engagement |  | Attn: |  |  |
| Addr: | 3925 West Braker Lane, Bldg. 156 |  | Addr: |  |  |
|  | Ste 3.370, MC A9300 |  |  |  |  |
|  | Austin, TX 78759 |  | Phone: |  |  |
|  |  |  |  |  |  |
| Phone: | 512.471.3866 |  |  |  |  |
|  | | |  | | |
| [INSERT NAME OF PARTY 3] | | | [INSERT NAME OF PARTY 4] | | |
| Attn: |  |  | Attn: |  |  |
| Addr: |  |  | Addr: |  |  |
|  |  |  |  |  |  |
| Phone: |  |  | Phone: |  |  |
|  | | |  | | |

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| --- | --- | --- | --- | --- | --- |
| **2. Party’s Contact Person (name, address for exchanging information)** | | | | | |
| FOR THE UNIVERSITY OF TEXAS AT AUSTIN | | | FOR [INSERT NAME OF PARTY 2] | | |
| Attn: | University PI |  | Attn: | Party 2 Researcher |  |
| Addr: |  |  | Addr: |  |  |
|  |  |  |  |  |  |
| Phone: |  |  | Phone: |  |  |
| Email: |  |  | Email: |  |  |
|  | | |  | | |
| FOR [INSERT NAME OF PARTY 3] | | | FOR [INSERT NAME OF PARTY 4] | | |
| Attn: |  |  | Attn: |  |  |
| Addr: |  |  | Addr: |  |  |
|  |  |  |  |  |  |
| Phone: |  |  | Phone: |  |  |
| Email: |  |  | Email: |  |  |
|  | | |  | | |

|  |  |
| --- | --- |
| **3. General Terms** | |
| *Purpose* | The purpose of this NDA is |
| *Effective Date* | , 20\_\_ |
| *Agreement Term* | From the Effective Date until the first to occur of (a) the first anniversary of the Effective Date, or (b) written notice of termination from any Party. |
| *Confidentiality Term* | From the Effective Date until the third anniversary of the Effective Date. |

|  |  |
| --- | --- |
| **4. Disclosing Party Information (complete one row for each Disclosing Party)** | |
| *Name of Disclosing Party* | *Description of Confidential Information* |
| University |  |
|  |  |

**5.** This Agreement may be signed in separate counterparts, and facsimile and electronic signatures will be accepted as originals.

In witness whereof, the parties hereto have caused their duly authorized representatives to execute this Non-Disclosure Agreement.

|  |  |  |  |
| --- | --- | --- | --- |
| **The University of Texas at Austin** | | **[Insert Name of Party 2]** | |
|  |  |  |  |
| By |  | By |  |
| Name |  | Name |  |
| Title |  | Title |  |
|  |  |  |  |
| Date |  | Date |  |
|  |  |  |  |
|  |  |  |  |
| **[Insert Name of Party 3]** | | **[Insert Name of Party 4]** | |
|  |  |  |  |
| By |  | By |  |
| Name |  | Name |  |
| Title |  | Title |  |
|  |  |  |  |
| Date |  | Date |  |

Exhibit A  
TERMS AND CONDITIONS FOR  
NON-DISCLOSURE AGREEMENT

These Terms and Conditions (“Terms and Conditions”) are attached to and incorporated into a Non-Disclosure Agreement (“NDA”). All Section number references in these Terms and Conditions shall be references to provisions in these Terms and Conditions unless explicitly stated otherwise.

Background

Disclosing Party or Disclosing Parties identified in the NDA own rights in such Party’s Confidential Information. Each Disclosing Party considers it desirable to make Party’s Confidential Information available to Receiving Party or Parties for pursuing the Purpose identified in the NDA, subject to the terms and conditions hereof.

# 1. Definitions.

“Agreement” means collectively (i) these Terms and Conditions, and (ii) the NDA.

“Agreement Term” means the period identified as such in Block 3 of the NDA.

“Confidential Information” means any non-public information of a Disclosing Party described in Block 4 of the NDA which is marked in accordance with Section 2 of this Exhibit and maintained as confi­dential, including as examples, computer source codes, diagrams, electronic files, invention disclosures, patent applications, technical and scientific information, research data, draft publications, technical reports, research plans, business plans, financial reports, projections, and so forth, but excluding however any information which Receiving Party can establish by competent written proof (a) is or becomes a matter of public knowledge through no fault of Receiving Party; (b) was in the Receiving Party’s possession before receipt from the Disclosing Party; (c) was independently developed by Receiving Party without use of the Confidential Information; or (d) is received by Receiving Party, without restriction as to further disclosure, from a third party having an apparent bona fide right to disclose the information to Receiving Party.

“Confidentiality Term” means the period identified as such in Block 3 of the NDA.

“Contact Person” means the person designated by a Party as responsible for that Party’s receipt and/or delivery of Confidential Information as indicated in Block 2 of the NDA.

“Disclosing Party” means each Party that is identified as such in Block 4 of the NDA.

“Effective Date” means the date identified as such in Block 3 of the NDA.

“Parties” means the entities identified as the Parties in Block 1 of the NDA; and “Party” means any one of the Parties.

“Purpose” means the reason that the Parties wish to enter into the Agreement as set forth in Block 3 of the NDA.

“Receiving Party” means each Party that receives Confidential Information from a Disclosing Party.

“US Export Controlled Information” means information subject to export control by the U.S. government under the laws indicated in Section 10 hereof or otherwise.

**2. Confidential Relationship**

Each Receiving Party will make all reasonable efforts to ensure the protection, confidentiality, and security of any Confidential Information of Disclosing Party in its possession, such efforts to be no less than the degree of care employed by Receiving Party to preserve and safeguard its own confidential information, but in no event less than a reasonable degree of care. Confidential Information will be transmitted in writing and clearly marked “Confidential,” “Proprietary,” or similarly, or if disclosed orally will be reduced to writing by Disclosing Party, clearly marked “Confidential,” “Proprietary,” or similarly, and transmitted to the Contact Person of Receiving Party within thirty (30) days after oral disclosure.

**3. Non-Disclosure**

Receiving Party will not disclose the Confidential Information of the Disclosing Party, except as is expressly authorized by the Agreement. Each Receiving Party may disclose the Confidential Information of Disclosing Party to its own employees assisting in making an evaluation of the Confidential Information; provided, however, that such employees are advised of the confidentiality and non-use obligations hereunder and are legally obligated by written agreement or otherwise to maintain the confidentiality and non-use of the Confidential Information. In no event will a Receiving Party disclose Confidential Information to third parties unless it obtains the prior written consent of Disclosing Party; provided, that prior to any such disclosure, Receiving Party shall first obtain a written non-disclosure agreement from such third party containing terms and conditions substantially similar to those set forth herein. If requested, a copy of such executed agreement will be provided to Disclosing Party. In addition, if there are three or more parties to the Agreement, then Confidential Information may be shared among multiple Receiving Parties, unless Disclosing Party provides a written notice restricting such sharing of information.

If a Receiving Party is legally required by court order, law, or other governmental regulation or authority to disclose certain Confidential Information received from a Disclosing Party, such disclosure may be made only after giving written notice to Disclosing Party of such legal requirement so that Disclosing Party may object to such disclosure and seek a protective order; and in any event, the disclosure shall be limited to only that portion of the Confidential Information which is legally required to be disclosed.

**4. Non-Use**

Receiving Party will not use any Confidential Information of Disclosing Party for any reason other than the Purpose without the prior written consent of Disclosing Party.

**5. Copies**

Each Receiving Party agrees not to copy or record any Confidential Information of a Disclosing Party except as reasonably necessary to further the Purpose. Within thirty (30) days after the written request from Disclosing Party, each Receiving Party’s designated Contact Person will deliver all copies or records of Confidential Information in its possession or control to the appropriate Disclosing Party’s Contact Person, or will certify in writing to Disclosing Party that the Confidential Information of such Disclosing Party has been destroyed. Notwithstanding the foregoing, each Receiving Party may retain one archival copy of the Confidential Information received from Disclosing Party in a secure location to be used solely to determine its obligations under the Agreement.

**6. Continuing Obligations**

Each Receiving Party’s obligations under the Agreement will survive termination of the Agreement and will continue until the end of the Confidentiality Term.

**7. No License or Warranty**

No license under or title to any invention, patent, trademark, trade name or other intellectual property or other rights or interests in the Confidential Information now or hereafter owned by or controlled by any Party is granted either expressly, by implication, estoppel or otherwise by the Agreement. No Party will use the name of another Party without prior written consent from such other Party. All Confidential Information is provided “AS IS” and without warranty, express or implied, of any kind.

**8. Term**

Disclosures of Confidential Information pursuant to the Agreement are to be made only during the Agreement Term as defined in Block 3 of the NDA; provided, however, the obligations of the Agreement will survive until the end of the Confidentiality Term.

**9. Injunction**

The Parties agree that, in the event of breach or threatened breach or intended breach of the Agreement, each Party, in addition to any other rights and remedies available to it at law or in equity, may seek injunctive or equitable relief without the necessity of posting bond or proving that it has no adequate remedy at law.

**10. Compliance with Laws; U.S. Export Compliance**

The Parties acknowledge that, because University is an institution of higher education and has many foreign persons who are students, employees and visitors, University conducts its research activities as “fundamental research” under export control regulations (as set forth in ITAR 120.10(5) and 120.11, and EAR 15 C.F.R. 734(b)(3) and 734.7 through 734.11). Each Party acknowledges that this Agreement and the performance thereof are subject to compliance with any and all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data, and each Party agrees to comply with all such laws, regulations and orders, including, if applicable, all requirements of the International Traffic in Arms Regulations and/or the Export Administration Act, as may be amended. Each Party further agrees that if the export laws are applicable, it will not disclose or re-export any technical data under this Agreement to any countries for which the United States government requires an export license or other supporting documentation at the time of export or transfer, unless the Disclosing Party has obtained prior written authorization from the U.S. Office of Export Control or other authority responsible for such matters.

**11. Contacts**

Notices under the Agreement will be given to a Party’s person set forth in Block 1 of the NDA either by prepaid, first class, certified mail, return receipt requested or by internationally recognized overnight courier to the addresses set forth in Block 1 of the NDA or other addresses as may be given from time to time under the terms of this Section 11. Notice will be deemed given once the written notice is delivered at the designated address. Delivery via e-mail will not constitute notice.

Confidential Information shall be delivered to the Contact Person for such Receiving Party indicated in Block 2 of the NDA or other persons specified from time to time by Receiving Party as its Contact Person by notice given in accordance with this Section 11.

**12. Other Provisions**

The Agreement will be governed by the laws of the State of Texas, without regard to choice of law principles. No amendment to the Agreement will be effective unless in writing and signed by the Parties. Neither the Agreement nor the rights and obligations of the Parties hereunder may be sold, assigned or otherwise transferred. If any provision of the Agreement is held to be unenforceable, all other provisions will continue in full force and effect. The Agreement supersedes any and all prior understandings or previous agreements between the Parties, oral or written, relating to the subject matter herein and constitutes the sole and complete agreement between the Parties related to the subject matter hereof.  Any delay by a Party to enforce any right under the Agreement shall not act as a waiver of that right, nor as a waiver of the Party’s ability to later assert that right relative to any particular factual situation. The Parties acknowledge that nothing in the Agreement shall constitute a waiver of sovereign immunity by Parties that are state agencies.

[End of Terms and Conditions]

**EXHIBIT B**

**Acknowledgement Of Contact Person For The University Of Texas At Austin:**

I have read the NDA and Terms and Conditions, understand my obligations and agree to comply, including that if Confidential Information to be exchanged is export-controlled, I will consult with University’s export controls officer before the disclosure of any export-controlled Confidential Information. As University’s Contact Person I agree I will not use University facilities, including physical desk or file storage and/or computer hard disks and/or other electronic medium owned or maintained by University, to file, store, or maintain export-controlled Confidential Information without prior approval from the Office of Sponsored Projects which is responsible for export controls compliance. I agree to obtain the written agreement of the University employees, students, staff, administrators, faculty and any other person or entity who gains access to Confidential Information under this Agreement to keep the information confidential in accordance with its terms. A copy of these signed acknowledgements shall be provided to the Office of Industry Engagement upon request. I also agree to limit internal dissemination of Confidential Information within the University to individuals whose duties justify the need to know such information and then only provided that there is a clear understanding by such individuals of their obligation to maintain the confidential status of such information and to restrict its use solely to the purpose specified herein.

|  |  |
| --- | --- |
| Signature: |  |
| Printed Name: |  |
| Title: |  |
| Are you a citizen or permanent resident of the U.S.? | | Yes  No |
| Date: |  |

***Additional University Individual Acknowledgement.*** To be signed by each additional University individual with access to the Confidential Information of another party (complete below or state “Not applicable at this time”).

I have read the NDA and Terms and Conditions, understand my obligations and agree to comply, including that if Confidential Information to be exchanged is export-controlled, I will consult with the Contact Person named above and, if needed, University’s export controls officer before the disclosure of any export-controlled Confidential Information. As a University individual with access to the export-controlled Confidential Information, I agree I will not use University facilities, including physical desk or file storage and/or computer hard disks and/or other electronic medium owned or maintained by University, to file, store, or maintain export-controlled Confidential Information without prior approval from the Office of Sponsored Projects which is responsible for export controls compliance.

|  |  |  |  |
| --- | --- | --- | --- |
| Signature: |  | Signature: |  |
| Printed name: |  | Printed name: |  |
| Are you a citizen or permanent resident of the U.S.? | | Are you a citizen or permanent resident of the U.S.? | |
| Yes  No | | Yes  No | |
|  |  |  |  |
| Signature: |  | Signature: |  |
| Printed name: |  | Printed name: |  |
| Are you a citizen or permanent resident of the U.S.? | | Are you a citizen or permanent resident of the U.S.? | |
| Yes  No | | Yes  No | |