

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the “**Agreement**”), dated as of [DATE] (“**Effective Date**”), is between [DISCLOSING PARTY NAME], located at [ADDRESS] (“**Disclosing Party**”), and The Trustees of Indiana University (“**Receiving Party**”). The Disclosing Party and Receiving Party are referred to individually as a “**Party**” and collectively as the “**Parties**”.

1. Purpose.

WHEREAS, in connection with [DESCRIPTION OF PURPOSE] (the “**Purpose**”), the Receiving Party desires to receive certain information from the Disclosing Party that is non-public, confidential, or proprietary in nature; and

WHEREAS, the Disclosing Party desires to disclose such information to the Receiving Party, subject to the terms and conditions of this Agreement.

2. Confidential Information.

“**Confidential Information**” means all non-public proprietary and confidential information of Disclosing Party that, if disclosed in writing or other tangible form is clearly labeled as “confidential,” or if disclosed orally, is identified as confidential when disclosed and within fourteen (14) days thereafter, is summarized in writing and confirmed as confidential; provided, however, that Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party’s breach of this Agreement. (b) is obtained by Receiving Party or its representatives on a non-confidential basis from a third party that, to Receiving Party’s knowledge, was not contractually restricted from disclosing such information; (c) was in Receiving Party’s or its representatives’ possession before Disclosing Party’s disclosure hereunder; or (d) was or is independently developed by Receiving Party or its representatives without using any Confidential Information.

Notwithstanding the foregoing, Disclosing Party acknowledges and agrees that Receiving Party is a state agency subject to the provisions of the Indiana Open Records Law, I.C. 5-14-et-seq., and that disclosure of some or all Confidential Information provided pursuant to this Agreement, and the Agreement itself, may be compelled pursuant to that law. In the event that Receiving Party is required by the Indiana Open Records Act, or any other law, to disclose Disclosing Party’s Confidential Information, Receiving Party shall promptly notify Disclosing Party, consult with Disclosing Party regarding whether there are legitimate grounds to narrow or contest such disclosure, and only disclose that information that Receiving Party, in the opinion of its legal counsel, is obligated to disclose.

3. Protection of Confidential Information.

The Receiving Party shall:

- a) protect and safeguard the confidentiality of all such Confidential Information with the same degree of care as the Receiving Party would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care;
- b) not use the Disclosing Party’s Confidential Information, or permit it to be accessed or used, for any purpose other than the Purpose or any related transactions between the Parties;
- c) not disclose any such Confidential Information to any person or entity, except to the Receiving Party’s representatives who:
 - a. need to know the Confidential Information to assist the Receiving Party, or act on its behalf, in relation to the Purpose or to exercise its rights under the Agreement;
 - b. are informed by the Receiving Party of the confidential nature of the Confidential Information; and
 - c. are subject to confidentiality duties or obligations to the Receiving Party that are no less restrictive than the terms and conditions of this Agreement.

4. Representations and Warranties.

Each Party represents and warrants to the other that (a) this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms; (b) no authorization or approval from any third party is required in connection with such Party's execution, delivery or performance of this Agreement; and (c) the execution, delivery and performance of this Agreement does not violate the terms or conditions of any other agreement to which it is a Party or by which it is otherwise bound.

5. Term; Termination.

The term of this Agreement shall commence on the Effective Date and shall expire one (1) year from the Effective Date, provided that either Party may terminate this Agreement at any time by providing written notice to the other Party. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive the expiration or termination of this Agreement for a period of two (2) years from the date of such expiration or termination, even after the return or destruction of Confidential Information by the Receiving Party.

6. Limitations on Liability.

- a) To the extent permitted by applicable law, neither Party nor its representatives will be liable for any indirect, consequential, exemplary, punitive, special, or incidental damages, or damages for lost profits, revenues, or business interruption, arising under or in connection with this Agreement or the performance thereunder, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable.

7. Miscellaneous.

- a) This Agreement constitutes the entire agreement, and supersedes any and all prior agreements, whether written or oral, between the Parties with regard to the subject matter hereof. This Agreement is binding on the Parties, their successors, and assigns. This Agreement may not be amended or modified except by a writing signed by both Parties.
- b) In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.
- c) This Agreement shall be construed in accordance with and pursuant to the internal laws of the State of Indiana, without regard to choice of law rules. Further, the Parties: (i) Agree that litigation initiated by either Party concerning the interpretation or implementation of this Agreement shall exclusively be brought and litigated in a state court of competent jurisdiction in Monroe County, Indiana, or in federal court of competent jurisdiction in the Southern District of Indiana; (ii) Consent to the personal jurisdiction of such courts; and (iii) Waive any defense of *forum non conveniens*.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

AGREED:

The Trustees of Indiana University

[] Disclosing Party

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

**I, [IU faculty/staff name], have read the
terms and conditions of this Agreement,
and I hereby agree to comply with such
terms and conditions.**

By: _____

Name: _____

Title: _____

Date: _____