

NON-DISCLOSURE AGREEMENT  
UTA 11-\_\_\_\_

This Non-Disclosure Agreement (the "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 Section 1, signature is also required on Exhibit B from the Contact Person for The University of Texas at Austin.

<b>1. Parties (name, address for notice)</b>	
The University of Texas at Austin ("UT") Attn: Associate Director, Office of Sponsored Projects Addr: 101 E.27 <sup>th</sup> Street, Suite 4.300 Austin, Texas 78713-7726 Phone: 512.471.6424	[Insert Name of Party 2] Attn: _____ Addr: _____ Phone: _____
[Insert Name of Party 3] Attn: _____ Addr: _____ Phone: _____	[Insert Name of Party 4] Attn: _____ Addr: _____ Phone: _____
<b>2. Party's Contact Person (name, address for exchanging information)</b>	
For UT Name: _____ Addr: _____ Phone: _____ Email: _____	For [Insert Name of Party 2] Name: _____ Addr: _____ Phone: _____ Email: _____
For [Insert Name of Party 3] Name: _____ Addr: _____ Phone: _____ Email: _____	For [Insert Name of Party 4] Name: _____ Addr: _____ Phone: _____ Email: _____

<b>3. General Terms</b>	
<i>Purpose</i>	The purpose of this NDA is
<i>Effective Date</i>	_____, 201__
<i>Agreement Term</i>	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.
<i>Confidentiality Term</i>	From the Effective Date until the fifth anniversary of the Effective Date.

<b>4. Disclosing Party Information (complete one row for each Disclosing Party)</b>	
<i>Name of Disclosing Party</i>	<i>Description of Confidential Information</i>

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 \_\_\_\_\_  
Name David Hawkins  
Title Associate Director  
Office of Sponsored Projects  
Date \_\_\_\_\_

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

**[Insert Name of Party 3]**

**[Insert Name of Party 4]**

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

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_  
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 Section 3 of the NDA.

“Confidential Information” means any non-public information of a Disclosing Party described in Section 4 of the NDA which is maintained as confidential, including as examples, biological materials, computer source codes, diagrams, electronic files, trade secrets, invention disclosures, patent applications, technical and scientific information, research data, draft publications, technical reports, research plans, business plans, financial reports, projections, agreement terms, and so forth, but excluding however any information which Receiving Party can establish by competent written proof (a) was in the public domain as of the Effective Date or comes into the public domain during the term of the Agreement through no fault of Receiving Party; (b) was known to Receiving Party prior to the Effective Date and was not acquired, directly or indirectly, from a Disclosing Party or from a third party under a continuing obligation of confidentiality or limited use; (c) was independently developed by Receiving Party without substantive knowledge of or assistance from the Confidential Information; or (d) was lawfully disclosed to Receiving Party from a third party who did not require Receiving Party to hold it in confidence or limit its use and who did not acquire it, directly or indirectly, from Disclosing Party under a continuing obligation of confidentiality.

“Confidentiality Term” means the period identified as such in Section 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 Section 2 of the NDA.

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

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

“Parties” means the entities identified as the Parties in Section 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 Section 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**

Any disclosure of Confidential Information is made in the strictest confidence. 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 plus a reasonable opportunity for Disclosing Party to object to such disclosure and to 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 ten (10) days after the written request from Disclosing Party or termination of discussions relating to the Purpose, each Receiving Party 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 Section 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 performance of the Agreement is subject to compliance with applicable United States laws, regulations, or orders including those that may relate to the export of technical data and equipment, such as International Traffic in Arms Regulations ("ITAR") and/or Export Administration Act/Regulations ("EAR"), as may be amended, and agree to comply with all such laws, regulations or orders. No Party will export, directly or indirectly, any Confidential Information without first obtaining any required export license or government approval and, in the case of Confidential Information disclosed by University, without first obtaining permission from University's Office of Sponsored Projects. In the event any Confidential Information is export-controlled, the Disclosing Party shall provide Receiving Party with written notice containing the nature of the export-controlled information, prior to any exchange of export-controlled Confidential Information.

## **11. Contacts**

Notices under the Agreement will be given to a Party's person set forth in Section 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 Section 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 Section 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 and understand my obligations, 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.

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Are you a citizen or permanent resident of the U.S.? Yes\_\_\_ No\_\_\_

Date: \_\_\_\_\_

**Additional UT Individual Acknowledgement.** To be signed by each additional UT 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 and understand my obligations, 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 UT 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: \_\_\_\_\_

Printed name: \_\_\_\_\_

Are you a citizen or permanent resident of the U.S.?

Yes\_\_\_ No\_\_\_

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Are you a citizen or permanent resident of the U.S.?

Yes\_\_\_ No\_\_\_

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Are you a citizen or permanent resident of the U.S.?

Yes\_\_\_ No\_\_\_

Signature: \_\_\_\_\_

Printed name: \_\_\_\_\_

Are you a citizen or permanent resident of the U.S.?

Yes\_\_\_ No\_\_\_