

## NON-DISCLOSURE AGREEMENT

This non-disclosure agreement (“AGREEMENT”) is between The University of Texas at Arlington, Office of Technology Management, Box 19161, Arlington, Texas 76019-0161 (“UNIVERSITY”) a State Institution of Higher Education established under the laws of the State of Texas within The University of Texas System and \_\_\_\_\_ (“COMPANY”), a corporation having a business address at \_\_\_\_\_.

WHEREAS, UNIVERSITY and COMPANY are owners of proprietary/confidential technical data and other information relative to \_\_\_\_\_ which they have developed independently of one another and some of which they desire to disclose to each other;

WHEREAS, the information of UNIVERSITY and COMPANY is not public knowledge but is secret and will be disclosed only under the terms of this AGREEMENT;

WHEREAS, both parties to this AGREEMENT consider it desirable for each to evaluate at least some of the other's information for the purpose of possible joint activity;

NOW, THEREFORE, the parties agree as follows:

1. The effective date of this AGREEMENT (“EFFECTIVE DATE”) is \_\_\_\_\_.
2. The confidential information disclosed by a party (“DISCLOSING PARTY”) under this AGREEMENT (“CONFIDENTIAL INFORMATION”) is described as:  
\_\_\_\_\_.
3. This AGREEMENT controls only CONFIDENTIAL INFORMATION disclosed between the EFFECTIVE DATE and \_\_\_\_\_.
4. A party receiving CONFIDENTIAL INFORMATION under this AGREEMENT (“RECIPIENT”) shall use the CONFIDENTIAL INFORMATION only for the purpose of:  
\_\_\_\_\_.
5. A RECIPIENT shall protect the CONFIDENTIAL INFORMATION using the same degree of care, but no less than a reasonable degree of care, as the RECIPIENT uses to protect its own similar CONFIDENTIAL INFORMATION, and to prevent any use not authorized herein, dissemination to any employee of RECIPIENT without a need to know, communication to any third party or publication of CONFIDENTIAL INFORMATION.
6. A RECIPIENT shall have a duty to protect only that CONFIDENTIAL INFORMATION which is either (a) disclosed by the DISCLOSING PARTY in writing and is marked as “Internal Data”, “Strictly Private”, “Proprietary”, “Confidential” or with a comparable legend at the time of disclosure, or (b) disclosed by the DISCLOSING PARTY in any other manner, identified as confidential at the time of disclosure and is summarized and designated as confidential in a written memorandum delivered to the RECIPIENT representative named in Section 9 of this AGREEMENT within thirty (30) days of disclosure.
7. The RECIPIENT agrees to hold in confidence any and all CONFIDENTIAL INFORMATION disclosed to it by the DISCLOSING PARTY and further agrees not to disclose CONFIDENTIAL

INFORMATION to third parties or use CONFIDENTIAL INFORMATION for three (3) years from the EFFECTIVE DATE of this AGREEMENT, except for discussion and internal evaluation purposes provided by this AGREEMENT or with written permission from the DISCLOSING PARTY. However, either party may disclose CONFIDENTIAL INFORMATION to any of its own employees and officers which are assisting that party in making an evaluation, provided that such employees and officers shall have agreed to be bound by the terms of this AGREEMENT or have entered into an agreement of similar scope and obligations with his or her employer to protect CONFIDENTIAL INFORMATION of the employer or the CONFIDENTIAL INFORMATION of third parties in the employer's possession.

8. Nothing in this AGREEMENT shall be interpreted as placing any obligation of confidentiality and nonuse on the RECIPIENT with respect to CONFIDENTIAL INFORMATION that:

- A. can be demonstrated to have been in the public domain as of the EFFECTIVE DATE of this AGREEMENT or comes into the public domain during the term of this AGREEMENT through no fault of the RECIPIENT;
- B. can be demonstrated to have been known to the RECIPIENT prior to execution of this AGREEMENT and was not acquired, directly or indirectly, from the DISCLOSING PARTY or from a third party under a continuing obligation of confidentiality or limited use;
- C. can be demonstrated to have been rightfully received by the RECIPIENT after disclosure under this AGREEMENT from a third party who did not require the RECIPIENT to hold it in confidence or limit its use and who did not acquire it, directly or indirectly, from the DISCLOSING PARTY under a continuing obligation of confidentiality;
- D. can be demonstrated to have been independently developed by RECIPIENT;
- E. can be demonstrated to have been disclosed by DISCLOSING PARTY to a third party without a duty of confidentiality on the third party, or;
- F. is released in writing from the confidentiality provisions of this AGREEMENT by the DISCLOSING PARTY.

9. The points of contact for transmitting and/or receiving CONFIDENTIAL INFORMATION are in the case of UNIVERSITY [name(s) of faculty/staff]:

\_\_\_\_\_  
\_\_\_\_\_

and in the case of \_\_\_\_\_:

\_\_\_\_\_  
\_\_\_\_\_

Notices under this AGREEMENT shall be sent in the case of UNIVERSITY to:

The University of Texas at Arlington  
ATTN: Director, Office of Technology Management  
Box 19161; ATI  
202 E. Border St.; Ste. 214  
Arlington, Texas 76019-0161  
TEL.: 817-272-1119; otm@uta.edu

and in the case of \_\_\_\_\_ to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 10. The CONFIDENTIAL INFORMATION shall remain the sole property of the DISCLOSING PARTY.
- 11. NEITHER DISCLOSING PARTY MAKES ANY REPRESENTATION WITH RESPECT TO AND DOES NOT WARRANT ANY CONFIDENTIAL INFORMATION PROVIDED UNDER THIS AGREEMENT, BUT SHALL FURNISH SUCH IN GOOD FAITH. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, NEITHER DISCLOSING PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED WITH RESPECT TO THE CONFIDENTIAL INFORMATION WHICH MAY BE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NEITHER DISCLOSING PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM RECEIPT OR USE OF THE CONFIDENTIAL INFORMATION BY THE RECIPIENT.
- 12. 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 preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach.
- 13. The validity and interpretation of this AGREEMENT, and legal relations of the parties to it, shall be governed by the laws of the State of Texas with venue in Tarrant County, Texas. If one portion of this AGREEMENT is held invalid and unenforceable, such holding shall not affect the validity of the other portions of the AGREEMENT.
- 14. A RECIPIENT shall adhere to the U.S. Export Administration Laws and Regulations and shall not export or re-export any technical data or products received from the DISCLOSING PARTY or the direct product of such technical data to any proscribed country listed in the U.S. Export Administration regulations unless properly authorized by the U.S. Government. COMPANY shall not disclose any technical data or products or the direct product of any technical data restricted to any proscribed country listed in the U.S. Export Administration regulations unless prior written notice of intent to disclose has been sent by COMPANY to UNIVERSITY and prior written

approval for disclosure has been received by COMPANY from UNIVERSITY. DISCLOSING PARTY agrees that if it intends to provide any export controlled information to RECIPIENT, it will provide export control designation information associated with such data, information, equipment or material, such as ECCNs or ITAR Munitions Control List information, in order for RECIPIENT to obtain necessary reviews, licenses, or agreements as required by export control laws and regulations.

15. Nothing in this AGREEMENT shall be construed as a representation that either party will not independently pursue, similar opportunities, provided that the obligations of this AGREEMENT are not breached.
16. This AGREEMENT is not assignable and states the entire AGREEMENT between the parties as to its subject matter and merges and supersedes all previous communications with respect to their obligations of confidentiality and no addition to or modification of this AGREEMENT will be binding on either party, unless reduced to writing and signed by each party.
17. This AGREEMENT is binding upon both parties and upon the directors, officers, employees and agents of each. This AGREEMENT may be terminated on thirty (30) days written notice by either party. However, RECIPIENT'S obligations of confidentiality and restrictions on use of the CONFIDENTIAL INFORMATION disclosed by DISCLOSING PARTY shall survive termination of this AGREEMENT.

THE UNIVERSITY OF TEXAS AT ARLINGTON

Authorized Signature:

By: \_\_\_\_\_  
Name: Dr. Kelsey Downum  
Title: Interim Vice President for Research  
Date: \_\_\_\_\_

Approved as to Content:

By: \_\_\_\_\_  
Faculty Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Department/School: \_\_\_\_\_  
Date: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

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