

MUTUAL NON-DISCLOSURE AGREEMENT

This **MUTUAL NON-DISCLOSURE AGREEMENT** ("Agreement") is by and between **WICHITA STATE UNIVERSITY**, a state educational institution of Kansas, located at 1845 Fairmount, Wichita, KS 67260-____, contracting on behalf of its _____ (hereinafter "WSU"), and _____ and its employees, located at _____ (hereinafter "COMPANY").

WHEREAS, WSU and COMPANY (hereinafter referred to individually as a "PARTY" and collectively as the "PARTIES"), desire to exchange and discuss information related to

(hereinafter referred to as "PROJECT"); and,

WHEREAS, during the course of these discussions and evaluations, each PARTY may disclose certain confidential and proprietary information concerning, without limitation, trade secrets, devices, designs, specifications, plans, or other ideas or inventions relating to the PROJECT, and desire such information to be treated as PROPRIETARY INFORMATION.

NOW, THEREFORE, in consideration of the above premises and the individual and mutual promises of the PARTIES hereinafter set forth, and for other good and valuable consideration, it is hereby agreed by and between the PARTIES:

1. **DEFINITIONS.** As used in this Agreement, these terms shall have the following meanings:

- 1.1. "DISCLOSING PARTY" means the PARTY disclosing information to the other in furtherance of the PROJECT.
- 1.2. "RECEIVING PARTY" means the PARTY receiving information from the other in furtherance of the PROJECT.
- 1.3. "PROPRIETARY INFORMATION" means any information, knowledge or data received by the RECEIVING PARTY from the DISCLOSING PARTY in furtherance of or pursuant to the PROJECT that is clearly marked with proprietary legends by the DISCLOSING PARTY at the time of disclosure and, if the information is orally or visually disclosed, that is identified as proprietary at the time of said first disclosure and is clearly marked with proprietary legends and/or is reduced to writing within thirty (30) days of oral or visual disclosure.
- 1.4. "PROPRIETARY ITEM" means any equipment, product, materials or other similar tangible or physical items that COMPANY intends to be treated as PROPRIETARY INFORMATION pursuant to this Agreement and that will be physically on the premises of WSU or within WSU's custody or control. For the avoidance of doubt, "PROPRIETARY ITEM" does not include technical data or information.

2. **RESTRICTIONS ON USE AND DISCLOSURE.**

- 2.1. The PARTIES agree that all documents received from and marked as PROPRIETARY INFORMATION shall be kept confidential and shall not be disclosed to third parties and will be treated by the PARTIES with the same degree of care with which each treats and protects its own PROPRIETARY INFORMATION. In addition, RECEIVING PARTY shall only disclose PROPRIETARY INFORMATION to those personnel within its organization requiring access to perform tasks contemplated by this Agreement, and any such personnel



shall be made aware of the restrictions imposed on the use of the PROPRIETARY INFORMATION.

- 2.2. RECEIVING PARTY shall use such PROPRIETARY INFORMATION only for the mutual benefit of the PARTIES and in furtherance of the PROJECT. RECEIVING PARTY shall not use such PROPRIETARY INFORMATION for any other purpose, such as competing with DISCLOSING PARTY.
- 2.3. All PROPRIETARY INFORMATION shall remain the property of DISCLOSING PARTY and shall be promptly returned to DISCLOSING PARTY or destroyed upon written request, except as allowed under paragraph 5.3 or as required by applicable law and/or regulation. The requested action will be at the expense of DISCLOSING PARTY. Notwithstanding the foregoing, RECEIVING PARTY shall be free to use and disclose any information retained in the unaided memories of its employees who have had rightful access to the PROPRIETARY INFORMATION, provided that this right does not apply to information otherwise subject to patent, copyright, and trademark protection.
- 2.4. In the event that COMPANY intends to furnish a PROPRIETARY ITEM, such PROPRIETARY ITEM must be identified as confidential prior to the time of first disclosure and suitably marked to identify them as a PROPRIETARY ITEM. If there are additional costs associated with ensuring the confidentiality of such PROPRIETARY ITEM (e.g. cost for visual obstruction of such ITEM), COMPANY agrees to negotiate in good faith with WSU regarding the payment of such costs; provided, however, that in no circumstances should COMPANY transfer the Confidential Item to WSU's premises, custody, or control prior to having an agreement regarding such costs. Once WSU agrees to accept such PROPRIETARY ITEM, it will be treated as PROPRIETARY INFORMATION unless noted otherwise elsewhere in this Agreement.
- 2.5. All PROPRIETARY ITEMS shall remain the property of COMPANY and shall be promptly returned to COMPANY upon written request, at COMPANY's expense.
- 2.6. Notwithstanding any other provision of this Agreement, the obligations of confidentiality and non-use under this Agreement do not apply to any PROPRIETARY INFORMATION that is:
 - 2.6.1. in the public domain at the time of initial disclosure to RECEIVING PARTY by DISCLOSING PARTY, or subsequently becomes publicly known through no wrongful act of RECEIVING PARTY;
 - 2.6.2. known to RECEIVING PARTY prior to the time of initial disclosure, as evidenced by competent and contemporaneous written documentation;
 - 2.6.3. furnished to a third party by DISCLOSING PARTY without confidentiality restrictions substantially similar to those herein;
 - 2.6.4. rightfully received by RECEIVING PARTY, without restriction as to further disclosure, from a third party that had the lawful right to disclose such information;
 - 2.6.5. independently developed by RECEIVING PARTY without the use of or reference to PROPRIETARY INFORMATION; or
 - 2.6.6. required to be disclosed pursuant to applicable law, subpoena, or proper governmental or judicial process, or order. Where such information is required to be disclosed under this section 2.5.6, prompt notice shall be provided to DISCLOSING PARTY, to the extent permitted by law, in order that DISCLOSING PARTY may have every reasonable opportunity to intervene in such process to contest such disclosure.



2.7. To the extent permitted by law, the identification of any of the occurrences, (2.5.1) - (2.5.6) above, will be promptly communicated between the PARTIES to this Agreement

3. **DISCLAIMERS.**

3.1. DISCLOSING PARTY does not, by virtue of disclosure of PROPRIETARY INFORMATION to RECEIVING PARTY, grant RECEIVING PARTY any right or license under any patents, copyrights or trade secrets, other than those rights granted to RECEIVING PARTY in section 2.2.

3.2. Neither PARTY makes any warranty or representation as to the accuracy or completeness of any PROPRIETARY INFORMATION disclosed under this Agreement.

4. **TERM AND TERMINATION.**

4.1. This Agreement shall expire five (5) years after the effective date hereof unless terminated earlier upon the end of a thirty (30) day period after receipt of a written notice by one PARTY from the other. Such termination shall not affect RECEIVING PARTY'S obligations relative to PROPRIETARY INFORMATION received prior to the effective date of such termination, as defined in section 4.2 below.

4.2. The obligations under this Agreement as to any PROPRIETARY INFORMATION shall continue for five (5) years from the date of first disclosure of such PROPRIETARY INFORMATION to RECEIVING PARTY, notwithstanding any earlier expiration or termination of this Agreement.

5. **COMPLIANCE.**

5.1. Each PARTY certifies that to the best of its knowledge neither it nor any of its principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations ("C.F.R.") §120.6, or otherwise declared ineligible for the award of contracts by any Federal agency. If at any time a PARTY learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances, that PARTY shall provide immediate written notice to the other PARTY.

5.2. Each PARTY further agrees, to the extent applicable, to comply with all U.S. laws relating to the 22 U.S.C. 2778-2780 of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130), and the Export Administration Regulations (EAR) 15 C.F.R. Parts 730-774. DISCLOSING PARTY shall notify the RECEIVING PARTY in writing prior to disclosure of any technical data or other items subject to EAR or ITAR. The PARTIES will reasonably cooperate with and support each other in obtaining the correct Export Control Classification Number (ECCN), the Harmonized Tariff Schedule (HTS) number or classification of a defense article.

5.3. The PARTIES agree that each PARTY may retain one archival copy of all documents from the PROJECT for the purposes of (a) proving what information it did or did not receive hereunder in the event of a future dispute, or (b) complying with governmental regulatory requirements.

5.4. Notwithstanding any other provisions of this Agreement, and to the extent required by the Defend Trade Secrets Act of 2016 (the "DTSA"), the PARTIES shall take reasonable steps to ensure that their respective employees, contractors, subcontractors or any other persons who may be operating on their behalf in regard to any information covered by this Agreement understand that:



5.4.1. An individual may not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that: (i) is made in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) is made in a complaint or other document that is filed under seal in a lawsuit or other proceeding.

5.4.2. Further, an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the employer’s trade secrets to his or her attorney and use the trade secret information in the court proceeding if the individual: (i) files any document containing the trade secret under seal; and (ii) does not disclose the trade secret, except pursuant to court order.

5.5. Nothing in this Agreement shall be construed to prevent any person from reporting fraud, waste or abuse related to the performance of a Government contract to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

6. DESIGNATED REPRESENTATIVES AND NOTICES.

6.1. The following individuals are designated as the persons to receive PROPRIETARY INFORMATION and primarily responsible for compliance with the terms of this Agreement:

If to Wichita State University:	If to COMPANY:
Attn: _____	Attn: _____
Company: <u>Wichita State University</u>	Company: _____
Address: <u>1845 Fairmount Street</u>	Address: _____
Address: <u>Wichita, KS 67260-</u>	Address: _____
E-Mail: _____	E-Mail: _____

With a copy of all notices sent to:	With a copy of all notices sent to:
<u>Gc.contracts@wichita.edu</u>	_____

6.2. All notices, demands, requests, approvals, reports, instructions, consents or other communications which may be required or desired to be given by either PARTY to the other shall be in writing and sent by certified mail or overnight traceable delivery and addressed to the individuals set forth above, unless any other person or address may be designated by notice from one PARTY to the other.

6.3. Either PARTY can change the individual designated by written notice to the other. Receipt of PROPRIETARY INFORMATION by any individual other than the designated receiver shall not affect the obligations of the RECEIVING PARTY.

7. **USE OF MARKS, LOGOS AND MARKETING.** COMPANY shall not use the name, logos, insignias or trademarks of WSU, any affiliates of WSU, or any PROJECT member, in any publicity, advertising, promotional materials, news release or websites except as set forth in this Agreement or as authorized in writing by WSU in each instance. Any permitted use of such marks shall be in compliance with WSU’s visual standards/brand identity



guidelines (available upon request). COMPANY may use the name of WSU in a document required to be filed with, or provided to, any governmental authority or regulatory agency to comply with applicable legal or regulatory requirements.

8. **ASSIGNMENT.** This Agreement and the rights and duties hereunder may not be assigned or otherwise transferred by either of the PARTIES without the prior written consent of the other. If this Agreement is so assigned or otherwise transferred, it shall be binding on all successors and assigns.
9. **CAPTIONS.** The captions and headings in this Agreement are for reference only and do not define, describe, extend or limit the scope or intent of this Agreement.
10. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, to any extent, the remainder of this Agreement shall not be affected and each provision of this Agreement shall be enforced to the fullest extent permitted by law.
11. **WAIVER.** Any waiver by a PARTY shall be in writing and provided to all other PARTIES. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any PARTY hereto.
12. **COUNTERPARTS / EXECUTION.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be executed via “wet” signature, authorized signature stamp or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud-based server, e-signature technology or other similar electronic means.
13. **ELECTRONIC SIGNATURES.** The PARTIES agree that this Agreement may be signed with electronic signatures. If an electronic signature is used, the PARTIES agree that it is the legally binding equivalent to the signing PARTY’s handwritten signature. Whenever either PARTY executes an electronic signature on this Agreement, it has the same validity and meaning as a handwritten signature. The PARTIES agree that neither PARTY will, at any time in the future, repudiate the meaning of an electronic signature or claim that an electronic signature is not legally binding.
14. **ENTIRE AGREEMENT.** This Agreement may not be superseded, amended or modified except by written agreement between the PARTIES, and signed by a duly authorized official of each of the PARTIES.
15. **MODIFICATIONS.** No supplement, modification, or amendment to this Agreement shall be binding unless made in writing and signed by a duly authorized representative of each Party.
16. **CHOICE OF LAW AND VENUE.** This Agreement shall be subject to, governed by and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this Agreement shall reside only in courts located in Sedgwick County, Kansas.

[Remainder of page intentionally left blank; signature page to follow.]



IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement and/or authorized same to be executed by their duly authorized representatives as of the date shown below the respective signatures, said Agreement to become effective as of the later date.

WICHITA STATE UNIVERSITY

COMPANY

SIGNATURE

SIGNATURE

PRINTED NAME

PRINTED NAME

TITLE

TITLE

DATE

DATE

CONTACT INFORMATION (PHONE, E-MAIL)

CONTACT INFORMATION (PHONE, E-MAIL)

FOR WSU PI

ACKNOWLEDGMENT

I, the undersigned, having read this Agreement, hereby agree to act in accordance with all the terms and conditions herein and further agree to ensure that all participants of WSU are informed of their obligations under this Agreement.

By: _____

Name: _____

Title: _____

Date: _____