NONDISCLOSURE AGREEMENT

This Agreement is entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ ("Company"), a corporation organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and having a primary location of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and the University of Maryland, a public agency and instrumentality of the State of Maryland, located in College Park, Maryland 20742 ("University"), each a “Party” and collectively the “Parties,” and is effective on the date of last signature (“Effective Date”).

1. **Purpose:** The Parties recognize that it may be necessary to disclose information to the other that the Disclosing Party considers its proprietary and confidential information (“Confidential Information”) to fulfill the following purpose (the “Purpose”):

[INSERT DESCRIPTION OF THE NATURE OF DISCUSSIONS (SCOPE)]

1. **Definition of Confidential Information:**
2. Confidential Information means information that one Party discloses (the “Disclosing Party”) in written, oral, graphic, electronic or physical form to the other Party (the “Recipient”) that (a) is not generally known to the public and concerns scientific knowledge, know-how, processes, inventions, techniques, formulae, products, data, plans, software, and similar information; (b) is clearly marked, if disclosed in a tangible form, by the Disclosing Party as Confidential Information at the time of initial disclosure to the Recipient and/or, if disclosed verbally, is identified as being Confidential Information at the time of disclosure, then summarized and identified as Confidential Information in a writing marked “Confidential” furnished by the Disclosing Party to the Recipient within ten (10) business days of initial disclosure.
3. Confidential Information does not include information that (a) the Recipient develops independently and without the benefit of Confidential Information of the Disclosing Party; (b) the Recipient lawfully obtains from a third Party under no obligation of confidentiality; (c) is or becomes publicly available through no wrongful act of the Recipient; (d) is known to the Recipient prior to receiving the information from the Disclosing Party; and/or (e) Recipient is obligated to produce to comply with applicable laws or regulations, including but not limited to the Maryland Public Information Act, or pursuant to an order of a court of competent jurisdiction or a valid administrative or congressional subpoena provided that, if legally practicable, the Recipient notifies the Disclosing Party prior to making such a disclosure so it may take appropriate action.
4. **Describe the Confidential Information to be released and that meets the definition above:**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. **Disclosure of Confidential Information:** The Disclosing Party will furnish Confidential Information only to the Recipient’s Technical Contact identified in Section M.
2. **Disclosure of Export Controlled Information:** The Parties do not anticipate the need to disclose to each other technical data that are subject to control under the Commerce Control List of the Export Administration Regulations (excluding “EAR99”), the US Munitions List of the International Traffic in Arms Regulations, or “Sensitive Nuclear Technology” subject to the Atomic Energy Act (collectively, “Export Controlled Information”). University faculty and/or students involved in fulfilling the Purpose may qualify as foreign persons under those Export Control regulations and University email systems are NOT certified for transmitting and receiving Export Controlled Information. **Disclosure of Export Controlled Information is NOT permitted under this agreement unless the Disclosing Party has received written approval from the University’s Export Compliance Office and the Disclosing Party agrees to follow any protocol provided by the Export Compliance Office for transmitting Export Controlled Information to the University.** If it becomes necessary to disclose Export Controlled Information to the University, Company must first contact the University’s Export Compliance Office (export@umd.edu) and provide a description of information to be sent. The University will incur no liability if it elects not to accept Export Controlled Information.
3. **Disclosure of Trade Secrets:** The Parties do not anticipate the need to disclose trade secrets to each other. If it becomes necessary for Company to disclose trade secrets to the University, Company must first receive written permission from the University’s Administrative Contact as set forth below in Section N and Company must explicitly mark the information with the proprietary markings: [BEGIN TRADE SECRET] and [END TRADE SECRET]. The University is not required to accept trade secrets and any such acceptance is at the University’s sole discretion. The University will incur no liability if it elects not to accept trade secrets and a decision not to accept trade secrets shall not be deemed a breach of this Agreement.
4. **Restrictions on Use:** The Recipient of Confidential Information and/or Export Controlled Information will:
5. Hold Confidential Information in confidence using at least the same degree of care it uses to prevent the disclosure of its own proprietary or confidential information, but in any event using no less than a reasonable standard of care; and
6. Use Confidential Information solely in support of the Purpose; and
7. Limit disclosure of Confidential Information to those of Recipient’s employees, students, and agents who have a need to know in order to fulfill the Purpose and obtain the agreement of such persons to maintain and safeguard the confidentiality of Confidential Information and, in the case of Export Controlled Information disclosed to the University, to individuals who have received approval from the University’s Export Compliance Officer; and
8. Reproduce Confidential Information only as needed to fulfill the Purpose and ensure that all copies clearly identify the information as Confidential Information; and

5. Not disclose Confidential Information to any third Party without the prior written consent of the Disclosing Party and then only pursuant to a separate written nondisclosure agreement that is at least as restrictive as this Agreement.

1. **Duration of Obligations:** The obligations of confidentiality imposed under Section F shall continue for a period of one (1) year from the date of disclosure or until Confidential Information becomes publicly available through no fault of the Recipient, whichever occurs first. Obligations with respect to Export Controlled Information and/or trade secrets shall last for so long as the data continue to be subject to export controls or trade secret restrictions, respectively.
2. **No License:** This Agreement shall not be construed to grant any right or license, express or implied, to the Recipient under any patent, copyright or application therefore except to the extent specified in this Agreement. Title in Confidential Information and/or Export Controlled technical data shall remain with the Disclosing Party.
3. **Limited Warranties:** The Parties acknowledge that Confidential Information is or may be experimental in nature. THE DISCLOSING PARTY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR ARISING BY OPERATION OF LAW, ORAL OR WRITTEN, WITH RESPECT TO THE ACCURACY, UTILITY, SAFETY, OR APPROPRIATENESS FOR A PARTICULAR USE OF CONFIDENTIAL INFORMATION OR ITS FREEDOM FROM INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.
4. **Liability:** In no event will either Party or their officers, agents, or employees be liable for any claims, demands, or damages arising out of this Agreement, including but not limited to incidental, special, indirect, exemplary or consequential damages of any kind, even if the Party has been advised of the possibility of such damages.
5. **Authority:** The Disclosing Party represents that it has the right to disclose Confidential Information and/or Export Controlled technical data to the Recipient.
6. **Term and Termination:** This Agreement will commence on the Effective Date and expire \_\_\_\_\_\_\_\_ year(s) from the Effective Date. Within sixty (60) days of the expiration of this Agreement, the Recipient will destroy or return, as directed by the Disclosing Party, the originals and any copies of Confidential Information and/or Export Controlled technical data in its possession or control.
7. **Contact:** Until otherwise notified in writing, each Party designates the following person as its sole contact on all matters related to the delivery, receipt, use and protection of Confidential Information and/or Export Controlled technical data:
8. For University of Maryland:

Administrative/Contractual Contact (authorized official):

Name: Cory M. Whitman, Contract Manager

Address: 3112 Lee Building

7809 Regents Drive

University of Maryland

College Park, MD 20742

Telephone: 301-405-6269

E-mail: oranma@umd.edu

 Technical Contact: (DO NOT SEND EXPORT CONTROLLED INFORMATION)

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

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

University of Maryland, College Park, MD 20742

Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Facsimile: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. For Company:

Administrative/Contractual Contact (authorized official):

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

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Facsimile: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Technical Contact:

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

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Facsimile: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 E-mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **General:**
	1. The failure of either Party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.
	2. This Agreement may not be modified in any way without the prior written consent of the authorized representatives of each Party. Any attempt to modify this Agreement in any way without the prior written consent of those persons shall render the proposed modification null and void.
	3. This Agreement shall be governed and interpreted in accordance with the laws of the State of Maryland excluding its conflict of laws rules.
	4. The terms and conditions herein constitute the entire agreement and understanding of the Parties and shall supersede all other communications, negotiations, arrangements, and agreements, either oral or written, with respect to the subject matter herein.
	5. This Agreement may be executed in several counterparts and all counterparts so executed by all the Parties and affixed to this Agreement shall constitute a valid and binding agreement, even though all the Parties have not signed the same counterpart.

IN WITNESS WHEREOF, each of the Parties to this Agreement has caused this Agreement to be signed.

AGREED TO:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ UNIVERSITY OF MARYLAND

COMPANY

BY \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature of authorized signatory Signature of University authorized signatory

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Print name of authorized signatory Name of University authorized signatory

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Date Date