## Internal University Use Only

**OTC Agreement No.:**

**OTC Docket No.(s):**

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**NON-DISCLOSURE AGREEMENT**

**UNIVERSITY DISCLOSING TO RECIPIENT**

, a , under the laws of the of **,** having a place of business at  (the “Recipient”) has requested Confidential Information (as that term is defined below) from Regents of the University of Minnesota, a constitutional corporation under the laws of the state of Minnesota, having a place of business at 1000 Westgate Drive, Suite 160, Saint Paul, Minnesota 55114 (the “University”) (individually, a “Party” and collectively, the “Parties). The University is willing to disclose such Confidential Information to Recipient provided Recipient agrees to the following terms and conditions regarding such Confidential Information.

 **NOW, THEREFORE**, in consideration of receiving the Confidential Information, the Recipient agrees to the following terms and conditions:

**1.** **Definition of Confidential Information.** “Confidential Information” means any of the following: (i) written or tangible information disclosed by the University, which at the time of disclosure is clearly and conspicuously labeled “Confidential” or “Proprietary”; (ii) oral and visual information disclosed by the University which is identified as confidential at the time of such disclosure and which is confirmed and summarized in writing by the University within       (     ) days of the disclosure; provided, however, the absence of written confirmation does not necessarily imply that the disclosed information is non-confidential or non-proprietary; and (iii) the information set forth below, whether or not marked “Confidential” or “Proprietary” and (if disclosed orally or visually) whether or not summarized in a subsequent writing. The Parties expect the University to disclose the following information under this Agreement:

**2.** **Confidentiality and Non-disclosure.**

 2.1 The Recipient shall hold the Confidential Information in strict confidence except as permitted under this Agreement. Until the       (     ) anniversary of its receipt of Confidential Information, the Recipient shall not (a) disclose the Confidential Information to any person who is not employed by, or agent of, the Recipient, or who is not under contract with the Recipient with non-disclosure terms and obligations in such contract at least as restrictive as those contained in this Agreement, or (b) use the Confidential Information for any purpose other than:

 2.1.1 Permitted Use of Confidential Information by the Recipient (Select only one box):

 **[ ]** To evaluate one or more inventions or other intellectual property of the University for commercial development.

 **[ ]** For non-commercial research purposes only.

**[ ]**  Other:

 2.2 The Recipient’s obligation not to use or disclose the Confidential Information does not apply to those portions of the Confidential Information that:

(i) was generally available in the public domain at the time the University disclosed it to the Recipient, or after the University’s disclosure of it to the Recipient, was placed in the public domain through no act or fault of the Recipient or its employees, agents or representatives;

(ii) the Recipient had actual knowledge of as evidenced by written records, provided the Recipient acquired such knowledge in conformance with all applicable laws and not as the recipient, directly or indirectly, of such information in violation of a valid and enforceable confidentiality agreement;

(iii) the Recipient obtained from a third party not bound by confidentiality obligations to University; or;

(iv) the Recipient developed independently, for which the Recipient can demonstrate by written records that independent development occurred without knowledge or use of Confidential Information.

 2.3 Notwithstanding any provision of this Agreement to the contrary, the Recipient may disclose the Confidential Information to its employees who have a legitimate business need to know such Confidential Information and who have been informed of the terms of this Agreement and the confidential nature of the Confidential Information and have been directed to use, hold and protect the Confidential Information in strict accordance with the terms of this Agreement.

 2.4 The Recipient may disclose the Confidential Information as required by law or a governmental agency or body, including under a valid subpoena or court order issued by a court of competent jurisdiction over the Recipient and its properties. In such event, the Recipient shall deliver written notice to the University of its obligation and intention to disclose Confidential Information at least fifteen (15) days prior to the intended date of disclosure.

**3. Ownership of the Confidential Information.** The University hereby retains all rights, titles and interests in and to the Confidential Information. Within ten (10) days after its receipt of a written request, the Recipient: (i) shall deliver to the University all written, electronic, or computerized material in its or its employees’, agents’ or representatives’ possession containing or reflecting the Confidential Information; or (ii) shall certify to the University the destruction of all such material. Notwithstanding the foregoing, the Recipient may retain no more than one copy, extract, or other reproduction of such written, electronic, or computerized material to be used solely by the Recipient to evidence the performance of its obligations under this Agreement.

**4.** **Amendment and Waiver.** This Agreement may be amended from time to time only by a written instrument signed by the Parties. A Party’s failure to exercise a right or remedy granted it under this Agreement or its failure to demand prompt performance by the other Party of an obligation under this Agreement is not deemed a waiver of such right or remedy or of the requirement for timely performance. No waiver by a Party of any default or nonperformance hereunder will be deemed a waiver of any subsequent default or nonperformance.

**5.** **Applicable Law and Jurisdiction.** The internal laws of the state of Minnesota govern the validity, construction and enforceability of this Agreement, without giving effect to the conflict of laws principles thereof. All suits, actions, claims and causes of action relating to the construction, validity, performance and enforcement of this Agreement will be in the courts of Hennepin County, Minnesota.

**6. Export Controls and Sanctions**. The parties shall comply with export controls and sanctions statutes and regulations, including the Export Administration Regulations (EAR, 15 C.F.R. pts. 730-774), the International Traffic in Arms Regulations (22 C.F.R. pts. 120-130), and the Foreign Assets Control Regulations (31 C.F.R. pts. 500-599), to the extent such statutes and regulations are applicable to the parties' activities. Recipient shall not use any technology, technical data, commodity, or software relating to this Agreement contrary to the requirements in Part 744 of the EAR, Control Policy: End-Use and End-User Based (15 C.F.R. pt. 744).

**7.** **Entire Agreement.** This Agreement is intended by the Parties as the final and binding expression of their contract and agreement and as the complete and exclusive statement of the terms thereof. This Agreement is binding upon the Recipient and its directors, officers, employees and agents. This Agreement cancels, supersedes and revokes all prior negotiations, representations and agreements, whether oral or written, relating to the subject matter hereof.

**8.** **No License.** Except for the right to use Confidential Information as provided above, the University does not grant the Recipient under the terms of this Agreement any license, option to grant a license or any other right of any nature to use the Confidential Information or the inventions or other intellectual property described in the Confidential Information.

**9.** **Survival.** The obligations of this Agreement survive the Recipient’s return or destruction of the Confidential Information.

**10. Breach.** In the event of the breach or threatened breach of any provision of this Agreement, the Recipient acknowledges that the University would suffer irreparable harm and that monetary damages would not fully compensate the University for its loss, and the University may seek injunctive relief, including an order restraining the Recipient’s use or disclosure of the Confidential Information. The Recipient shall reimburse the University all its costs and expenses, including attorneys’ fees and investigative costs, to enforce the terms of this Agreement.

**11. No Warranties or Liability.** **The RECIPIENT accepts the CONFIDENTIAL INFORMATION “as is, with all faults.” The RECIPIENT acknowledges not HAVING relied upon any statements made by the University concerning the CONFIDENTIAL INFORMATION. The university disclaims all WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED CONCERNING THE CONFIDENTIAL INFORMATION, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT OF A THIRD PARTY’S INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS. IN NO EVENT SHALL THE UNIVERSITY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PECUNIARY, EXPECTANCY OR COMPENSATORY DAMAGES, INCLUDING LOST PROFITS** **OR LOST BUSINESS OPPORTUNITY, ARISING OUT OF THIS AGREEMENT.**

**12. Release.** The Recipient, for itself and its directors, employees and agents, releases the University and its regents, employees, and agents from any claim, suit, action or liability arising out of the use of the Confidential Information.

**13. Indemnification.** The Recipient shall defend, indemnify, and hold the University and its regents, employees and agents harmless from any loss, claim, damage, or liability, of whatsoever kind or nature, that may arise from or in connection with this Agreement, including without limitation, the use of the Confidential Information, except to the extent such loss, claim, damage, or liability arose from the University’s negligent acts or omissions.

**14. Term.** This Agreement is effective as of the date of Recipient’s signature below. This Agreement expires on the       (     ) anniversary of the Effective Date.

By:

Name:

Title:

Date: