

## **CONFIDENTIAL DISCLOSURE AGREEMENT**

THIS AGREEMENT ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_ ("Disclosing Party") and The Texas Technology Development Center ("T3DC").

WHEREAS, Disclosing Party has certain technical, business, marketing, manufacturing, processing, financial or other trade secret information, including technology that is not yet fully developed, patented, or patentable, which Disclosing Party considers confidential, proprietary and valuable ("Confidential Information");

WHEREAS, Disclosing Party desires to disclose Confidential Information to T3DC for the purposes of review, discussion, and analysis;

WHEREAS, the parties agree that premature or uncontrolled disclosure of Confidential Information may diminish its value;

WHEREAS, the parties desire to assure the confidential and proprietary status of the Confidential Information that may be disclosed to T3DC;

NOW, THEREFORE, in consideration of the mutual terms and provisions of this Agreement, and other good and valuable consideration, Disclosing Party and T3DC agree as follows:

1. The Disclosing Party must clearly identify and mark all Confidential Information provided to T3DC. Confidential Information must be clearly marked and noted on each page and in each section of any material submitted to T3DC. All portions of the materials that are not marked as Confidential Information shall be considered non-confidential.
2. The restrictions on disclosure set forth in this Agreement shall not apply to information to the extent that such information:
  - a.is or becomes known or available to the general public through no act of T3DC, or
  - b.is or becomes known by T3DC without obligation to keep such information confidential, and without breach of any obligation of confidentiality owed by any party to Disclosing Party, or
  - c.must be disclosed by requirement of law, or
  - d.is disclosed by Disclosing Party to any other party without obligation of confidentiality, or
  - e.was in T3DC's rightful possession prior to its receipt of such information under this Agreement, or
  - f.is hereafter made available to T3DC for use or disclosure by T3DC from any third party having a legal right to do so.
3. T3DC may use the Confidential Information to review the Disclosing Party's application for an award from the McDermott Pre-Seed Fund or to assist the Disclosing Party in developing, manufacturing, licensing, and marketing its business, technology, products and/or inventions.
4. T3DC agrees to take reasonable precautions to prevent the Confidential Information from being learned or acquired by others. Except as provided in Section 5, T3DC agrees not to disclose Confidential Information received hereunder to any third party without the prior written permission of Disclosing Party, and T3DC agrees not to use Confidential Information except for the purposes described in this Agreement.

5. T3DC agrees to restrict disclosure of Confidential Information to those officers, directors, committee members, employees, agents, external reviewers, or consultants that T3DC believes will assist T3DC in carrying out the purposes of this Agreement. T3DC will require person to whom it discloses Confidential Information to execute an agreement which restricts such persons from disclosing the Confidential Information to third parties.
6. No disclosure made under this Agreement shall be construed as the grant of any license to T3DC to use technology or any other Confidential Information, whether or not patented or patentable.
7. T3DC agrees that Disclosing Party shall be the owner of all intellectual property rights related to the Confidential Information that may derive as a result of the services performed by T3DC pursuant to this Agreement.
8. T3DC agrees that it will, upon written request, return to Disclosing Party any and all Confidential Information that is in writing or other tangible form and is in T3DC's possession or control, including any and all excerpts and copies thereof; provided, however, that T3DC shall have no obligation to return any Confidential Information that has been destroyed as part of its document retention policy.
9. The Disclosing Party releases T3DC and its officers, directors, committee members, external application reviewers, employees, agents, and employees from and against any and all costs, claims, losses, liability and damages (including reasonable attorney's fees) arising out of or resulting from the disclosure of Confidential Information, except in the case of T3DC's gross negligence or willful misconduct. T3DC shall in no event be liable for the conduct of its officers, directors, committee members, external application reviewers, employees, agents, and employees if it obtains from such persons the agreement described in Section 5 of this Agreement.
10. The obligations imposed by this Agreement shall expire \_\_\_\_\_ years from the effective date of this Agreement, or sooner by written consent of the parties.
11. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Texas. Venue for any dispute under this Agreement shall be in Bexar County, Texas.
12. This Agreement shall be construed in conjunction with other agreements between the parties with respect to the assistance from the McDermott Pre-Seed Fund or T3DC. This Agreement may not be amended or modified except by a writing signed by both parties.
13. This Agreement shall be binding on and shall inure to the benefit of each of the parties and their respective successors and permitted assigns.
14. If any provision of this Agreement is declared void or unenforceable, such provision shall be appropriately modified or, if necessary severed from this Agreement, which shall otherwise remain in full force and effect.

DATED the day and year first above written.

DISCLOSING PARTY:

By: \_\_\_\_\_

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

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

The Texas Technology Development Center

By: \_\_\_\_\_

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

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