



## NON-DISCLOSURE AGREEMENT

This Agreement entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 governs the disclosure of information by **University of Central Florida** (hereinafter "University") to \_\_\_\_\_ (hereinafter "Receiving Party"), (having a place of business / address) at \_\_\_\_\_

**WHEREAS**, Receiving Party will be under contract with the University, working either alone or together with other University employees, and will have access to certain information relating to hazardous materials, proprietary information, classified/sensitive information, and/or personally identifiable information (hereinafter "Confidential Information.")

**WHEREAS**, University has the right and obligation to protect University Confidential Information due to local, state, or federal statute, safety concerns, or other reasons deemed appropriate by the University; the University requires the following:

### **ARTICLE 1. DEFINITION OF CONFIDENTIAL INFORMATION**

**1.1** For purposes of this Agreement, "Confidential Information" means any data or information that is of a proprietary or security interests to the University, and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to: (i) any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of such party, its affiliates, subsidiaries and affiliated companies; (ii) plans for products or services, and customer or supplier lists; (iii) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; (iv) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; (v) information that relevant to the safety, security, or general wellbeing of University staff, faculty, student, or the general public; and (vi) any other information that should reasonably be recognized as confidential information of the University Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The Receiving Party acknowledges that the Confidential Information is of a proprietary or security interests to the University, has been developed, obtained, or protected through great efforts by the University and that University regards all of its Confidential Information as sensitive and protected information.

**1.2** Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which: (i) was known by the Receiving Party prior to receiving the Confidential Information from the University; (b) becomes rightfully known to the Receiving Party from a third-party source not known (after diligent inquiry) by the Receiving Party to be under an obligation to University to maintain confidentiality; (c) is or becomes publicly available through no fault of or failure to act by the Receiving Party in breach of this Agreement; (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of Article 4 of this Agreement hereof shall apply prior to any disclosure being made; and (e) is or has been independently developed by employees, consultants or agents of the Receiving Party without violation of the terms of this Agreement or reference or access to any Confidential Information.

### **ARTICLE 2. DISCLOSURE OF CONFIDENTIAL INFORMATION**

**2.1** From time to time, the University may disclose Confidential Information to the Receiving Party. The Receiving Party will: (a) limit disclosure of any Confidential Information to its directors, officers, employees, agents or representatives (collectively "Representatives") who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Agreement relates, and only for that purpose; (b) advise its Representatives of the proprietary nature of the Confidential Information and of the obligations set forth in this Agreement and require such Representatives to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a

reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties, except as otherwise provided for herein. At a minimum, all electronic transmissions of documents must have appropriate security measures, including but not limited to, one or more of the following: password protection, individual user authentication, and/or expiration dates of the storage of digital content.

**2.2** Regardless if Receiving Party is a representative of a larger, company, sole proprietor, individual contractor, or any other person working for the University, compensated or uncompensated, the Receiving party will abide by all the requirements of this agreement, and will ensure that all Confidential Information is protected and not disclosed to any other person without the express written consent of the University.

**2.3** Receiving Party shall be responsible for any breach of this Agreement by any of their respective Representatives.

### **ARTICLE 3. USE OF CONFIDENTIAL INFORMATION**

**3.1** The Receiving Party agrees to use the Confidential Information solely in connection with the current or contemplated business relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the University. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the University. All use of Confidential Information by the Receiving Party shall be for the benefit of the University and any modifications and improvements thereof by the Receiving Party shall be the sole property of the University.

### **ARTICLE 4. COMPELLED DISCLOSURE OF CONFIDENTIAL INFORMATION**

**4.1** Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or statutory requirement, provided that the Receiving Party promptly notifies, to the extent practicable, the University in writing of such demand for disclosure so that the University, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided in the case of a broad regulatory request with respect to the Receiving Party's business (not targeted at University), the Receiving Party may promptly comply with such request provided the Receiving Party give (if permitted by such regulator) the University prompt notice of such disclosure. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the University with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the University is unable to obtain or does not seek a protective order and the Receiving Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

### **ARTICLE 5. NOTIFICATION OF UNAUTHORIZED DISCLOSURE**

**5.1** Receiving Party shall notify the University immediately upon discovery of any unauthorized, or potentially unauthorized, use or disclosure of Confidential Information by Receiving Party or its Representatives, or any other breach of this Agreement by Receiving Party or its Representatives, and will cooperate with efforts by the University to help the University regain possession of Confidential Information and prevent its further unauthorized use.

### **ARTICLE 6. TERM**

**6.1** This Agreement shall remain in effect for a ten (10) year term, subject to a five year extension at the sole discretion of the University. Notwithstanding the foregoing, the parties' duty to hold in confidence Confidential Information that was disclosed during term shall remain in effect indefinitely.

### **ARTICLE 7. REMEDIES**

**7.1** Receiving Party acknowledges that the Confidential Information to be disclosed hereunder is of a unique

and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The damages to University that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, Receiving Party hereby agrees that the University shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. University shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

**7.2** The Receiving Party shall be held liable and shall indemnify and defend the University against cost, fines, penalties, or any civil or criminal action resulting from any unauthorized disclosure of Confidential Information. The Receiving Party will be solely responsible for all harm or liability caused to the University or other parties resulting from the unauthorized disclosure of Confidential Information.

**ARTICLE 8. RETURN OF CONFIDENTIAL INFORMATION**

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**8.1** Receiving Party shall immediately return and redeliver to the other all tangible material embodying the Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes"), and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time as the University may so request; provided however that the Receiving Party may retain such of its documents as is necessary to enable it to comply with its document retention policies. Alternatively, the Receiving Party, with the written consent of the University may (or in the case of Notes, at the Receiving Party's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Receiving Party supervising the destruction.

**ARTICLE 9. DISCLAIMER**

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**9.1** Receiving Party acknowledges that the University does not warrant the accuracy or completeness of any drawings, schematics or other information provided. The use of such drawings or schematics is at Receiving Party's own risk. Receiving Party shall field verify all existing conditions applicable to the project. Any inaccuracies in the information provided by the University shall not constitute the basis for any claim for added cost or schedule by Receiving Party.

**ARTICLE 10. MISCELLANEOUS**

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**10.1** This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.

**10.2** The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of the State of Florida applicable to contracts made and to be wholly performed within such state, without giving effect to any conflict of laws provisions thereof.

**10.3** This Agreement shall be governed by, and construed under; the laws of the State of Florida, without regard to its choice of law provisions and venue shall lie in the courts in Orange County, Florida.

**10.4** Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

CONFIDENTIAL DISCLOSURE AGREEMENT

**10.5** Although the restrictions contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.

**10.6** Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery or electronic-mail, on the date of such delivery, (b) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (c) in the case of mailing, on the seventh business day following such mailing.

**10.7** This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.

**10.8** The receipt of Confidential Information pursuant to this Agreement will not prevent or in any way limit either party from: (i) developing, making or marketing products or services that are or may be competitive with the products or services of the other; or (ii) providing products or services to others who compete with the other.

**10.9** Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

**IN WITNESS WHEREOF**, a duly authorized and validly existing representatives of each party has affixed their respective signature hereto, effective as of the date first written above.

**FOR THE RECIPIENT:** \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**FOR THE OWNER: THE UNIVERSITY OF CENTRAL FLORIDA** \_\_\_\_\_

\_\_\_\_\_  
Bill Martin  
Director of Facilities Planning and Construction

\_\_\_\_\_  
Date