



MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (“Agreement”) is entered into by and between the Texas A&M Engineering Experiment Station, a member of the Texas A&M University System (“System”) and the non-System Party or Parties listed below, together the “Parties,” to assure the protection and preservation of confidential information anticipated to be disclosed to each other for the purpose identified below:

1. PARTIES AND PRIMARY CONTACTS:

a) System Party

<i>Party and Notice Contact:</i>	<i>Individual(s) exchanging Confidential Information:</i>
Member: Texas A&M Engineering Experiment Station	Member: Texas A&M Engineering Experiment Station
Attn: Marcie Avery	Attn:
Address: 1111 RELIS Parkway, Contracts Office Bryan, Texas 77807	Address:
Phone: 979-317-3810	Phone:
Email: mavery@tamu.edu , cc: innovationsandcontracts@tamu.edu	Email:

b) Non-System Party

<i>Party and Notice Contact:</i>	<i>Individual(s) exchanging Confidential Information:</i>
Name:	Name: same
Attn:	Attn:
Address:	Address:
Phone:	Phone:
Email:	Email:

2. PURPOSE AND SPECIFICS: In consideration for making confidential and/or proprietary trade and business information (“Confidential Information”) available to the other Party, the Parties hereby agree to the terms set out herein including the following summary set out for purposes of convenience:

<i>Purpose:</i>
<i>Effective Date:</i>
<i>Duration:</i> Two years from the Effective Date.
<i>Confidentiality Term:</i> Three years from the date of disclosure of Confidential Information

3. CONFIDENTIAL INFORMATION: Subject to the limitations set forth in Article 4, all non-public information exchanged between the Parties shall be deemed to be Confidential Information. In order for the Parties to appreciate when non-public information is being conveyed, to the reasonable extent possible, information disclosed in tangible form shall be clearly identified at the time of disclosure as being Confidential Information by an appropriate and conspicuous marking. Similarly, to the reasonable extent possible, information disclosed in intangible form (e.g., oral or visual) shall be identified as being Confidential Information at the time of disclosure, and shall be confirmed as such in writing to the Receiving Party within thirty (30) days after such disclosure.

Confidential Information shall include as examples, without limitation:

- a) All information of a Disclosing Party which has been maintained as confidential, including draft publications, technical reports, research plans and results, processes, techniques, know-how, biological materials, computer source code, diagrams, electronic files, financial information, customer lists, trade secrets, invention disclosures, patent applications or test data;

- b) all existing and future plans of the Disclosing Party, which have been maintained as confidential, including plans relating to existing and planned products, research, development, engineering, manufacturing, marketing, servicing, or financing;
 - c) all past, present and future business or commercial relationships of the Disclosing Party, which have been maintained as confidential, including suppliers, service providers, clients, customers, employees, or investors; or
 - d) information that has generally been considered and treated by the Disclosing Party as confidential prior to the time of disclosure and is clearly identified as “Confidential” or “Proprietary” when disclosed to the other Party.
- 4. EXCLUSIONS FROM CONFIDENTIAL INFORMATION:** Confidential Information shall not be deemed to include information that the Receiving Party can demonstrate by competent written proof:
- a) is now, or later becomes, publicly known or available through no act or failure to act on the part of the Receiving Party;
 - b) was known by the Receiving Party at the time of receipt of such information as evidenced by its records;
 - c) is furnished to the Receiving Party by a third party and without violating any confidentiality obligation to the Disclosing Party; or
 - d) was independently developed by employees of the Receiving Party without use, access to, or knowledge of the Confidential Information of the Disclosing Party.
- 5. USE OF CONFIDENTIAL INFORMATION:** Each Party agrees that it will use the Confidential Information of the other solely for the Purpose and for no other purpose whatsoever. In particular, the Receiving Party shall not file any patent application containing any claim to subject matter derived in whole or in part from the Disclosing Party’s Confidential Information. The Confidential Information, including any documents, drawings, sketches, designs, materials or samples supplied hereunder, shall remain the property of the Party disclosing the same and no rights or licenses are granted to the other Party in the same except the limited right to use the Confidential Information for the Purpose as set forth above in Article 2.
- 6. CONFIDENTIAL OBLIGATIONS:** The Parties agree to exert reasonable efforts to maintain each other’s Confidential Information in confidence and to take all necessary and reasonable precautions to prevent its unauthorized disclosure, and to ensure it does not fall into the public domain or the possession of unauthorized third parties. Each Party shall restrict access to the Confidential Information of the other Party to those officers, employees, consultants, agents, and students (in the case of Member) of the Receiving Party having a need to know the Confidential Information to fulfill the Purpose, provided however, that each Party shall ensure that any individual having access to the Confidential Information is made expressly aware of the obligation of confidence according to the terms hereof prior to gaining access to the Confidential Information. To the extent that a Party perceives a need for disclosure of the Confidential Information it receives from the other Party to any third party, such third party shall be prospectively identified, and written permission to disclose shall be obtained. A written non-disclosure agreement shall be obtained from the third party contractor and a copy shall be promptly provided to the Party whose Confidential Information is being disclosed.
- 7. REQUIRED DISCLOSURE:** If a Receiving Party is legally required by court order, law, or other governmental regulation or authority to disclose certain Confidential Information received from a Disclosing Party, such disclosure may be made only after giving written notice to the Disclosing Party and providing a reasonable opportunity for pursuit of appropriate process to prevent or limit such disclosure. In any event, required disclosure shall be limited to only that portion of the Confidential Information which is legally required to be disclosed. The Receiving Party is not however, required to pursue any claim, defense, cause of action, or legal process or proceeding on the Disclosing Party’s behalf.
- 8. RETURN OF DOCUMENTS:** It is understood that the Confidential Information disclosed by each Party shall remain the property of the Disclosing Party. All material or documents furnished by the Disclosing Party, including all copies, shall upon request of the Disclosing Party be promptly returned to the Disclosing Party or destroyed, except that the Receiving Party may securely retain one copy in its files solely for record purposes of its obligations under

this Agreement, and copies in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense.

9. **PUBLICITY:** The Parties agree that the name of the other Party will not be used in any advertising, sales promotion, or other publicity matter without the prior written approval of that other Party.
10. **INJUNCTION:** The Parties agree that, in the event of breach or threatened breach or intended breach of the Agreement, each Party, in addition to any other rights and remedies available to it at law or in equity, may seek injunctive or equitable relief.
11. **DISCLAIMER OF WARRANTIES:** The Parties make no warranties whatsoever regarding the Confidential Information. Neither Party makes any representations or warranties, written or oral, express or implied, as to Confidential Information, including without limitation, any warranty of merchantability, fitness for a particular purpose, or non-infringement.
12. **TERM:** This Agreement shall continue in full force and effect for the Duration set out in Article 2. This Agreement may be terminated by either Party at any time upon thirty (30) days written notice to the other Party. The confidentiality and non-use obligations of each Party with respect to Confidential Information disclosed under this Agreement shall remain in effect for the Confidentiality Term set out in Article 2 and will survive the termination of this Agreement.
13. **NOTIFICATIONS:** The Parties shall promptly advise each other in writing of any known misappropriation or misuse by any person of Confidential Information and shall take prompt and effective steps to prevent a recurrence of such misappropriation or misuse. Any notices required or permitted hereunder shall be given to the appropriate Party at the address specified in Article 1 or at such other address as the Party shall specify in writing. Such notice shall be deemed given upon the personal delivery, or three (3) days after the date of mailing when sent by certified or registered mail, postage prepaid.
14. **GOVERNING LAW:** This Agreement shall be interpreted and enforced by the laws of the State of Texas. Venue for any claim arising under this Agreement shall be as provided by Texas State law.
15. **MISCELLANEOUS:**
 - a) State Agency: TEES is an agency of the State of Texas and nothing in this Agreement waives or relinquishes Member's right to claim any exemptions, privileges, and immunities as may be provided by law.
 - b) No Future Commitments: No agency, partnership, joint venture, or exclusive relationship is created by this Agreement and each Party is free to pursue other opportunities such as those contemplated under the Agreement. No further obligations are created under this Agreement except those stated herein.
 - c) Export Control: The Parties agree to comply with U.S. export control regulations. If a Party desires to disclose to another Party, whether directly or indirectly, any information, technology or data that is identified on any U.S. export control list, including the Commerce Control List of 15 C.F.R. Part 774 and the U.S. Munitions List of 22 C.F.R. 121, the Disclosing Party will advise the Receiving Party at the time of disclosure and the Receiving Party will advise the Disclosing Party if it desires to take receipt of the export-controlled materials. No information subject to export controls may be provided to another party without the written consent of the Receiving Party's Notice Contact identified in Article 1.

The Parties certifies that none of their Representatives participating in the Purpose is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.

- d) Assignment: The Parties' rights and obligations under this Agreement will bind and inure to the benefit of their respective successors, heirs, executors and administrators and permitted assigns. Neither Party shall assign or

delegate its obligations under this Agreement, in whole or in part, without the prior written consent of the other Party.

- e) Severability: A failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof. The invalidity or unenforceability of any provision of this Agreement shall not affect the remaining provisions or portions thereof.
- f) Entire Agreement: This Agreement sets forth the entire agreement of the Parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings relating to its subject matter. This Agreement may not be amended or superseded except by a written agreement signed by an authorized representative of each Party.
- g) Authority and Counterparts: The person executing this Agreement on behalf of a Party warrants that such person has full authorization to execute this Agreement. Executing counterparts to this Agreement will be deemed to constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the later date written below:

<p>_____</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>TEXAS A&M ENGINEERING</p> <p>EXPERIMENT STATION</p> <p>_____</p> <p>By: _____</p> <p>Name: <i>Marcie Avery</i></p> <p>Title: <i>Director, TEES Contracting Officer</i></p> <p>Date: _____</p>
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