

**FLORIDA INTERNATIONAL UNIVERSITY  
NON-DISCLOSURE/PROPRIETARY INFORMATION AGREEMENT**

It is understood that it is the mutual desire of both The Florida International University Board of Trustees with a principal place of business at 11200 S.W. 8<sup>th</sup> Street, Miami, Florida 33199 (hereinafter referred to as "FIU"), and \_\_\_\_\_ with a principal place of business at \_\_\_\_\_ (hereinafter referred to as "Contracting Entity/Person") to disclose certain confidential information pursuant to this agreement ("Agreement").

FIU shall be:                             A Disclosing Party     A Receiving Party     Both

Contracting Entity/Person shall be:  A Disclosing Party     A Receiving Party     Both

The specific purpose of the disclosure of confidential information is \_\_\_\_\_

\_\_\_\_\_

The confidential information to be supplied under the provisions of this Agreement relates to \_\_\_\_\_

\_\_\_\_\_

Confidential information includes any and all information, whether oral, written, in a physical embodiment or otherwise, which is disclosed for the purpose as set forth above and which is identified by the Disclosing Party at the time of disclosure as being proprietary. Information transmitted in writing must be marked "Proprietary," or "Confidential" or other similar designation in order for it to be covered under this Agreement. Information transmitted orally or visually and identified at the time as being proprietary shall be confidential information covered under this Agreement if it is identified at the time of disclosure by the Disclosing Party as being confidential or proprietary and thereafter reduced to writing by the Disclosing Party, confirming in the writing that the information is confidential or proprietary, and such writing is transmitted to the Receiving Party within ten (10) days after the oral or visual disclosure of the information.

1. The Receiving Party Agrees:
  - a. To use the confidential information only for the purpose set forth above.
  - b. To treat the information as being confidential and to protect the information with no less standard of care than the Receiving Party uses to protect its own confidential information.
  - c. To restrict circulation and disclosure of the confidential information to its employees, directors, officers or attorneys who have a need to know in connection with the purpose of the disclosure as set forth above, and to ensure that such persons are informed of the confidential nature of such information.
  - d. To hold such confidential information in confidence, and not to disclose the confidential information to any other party without the written authorization of the Disclosing Party.
  - e. To return or destroy the confidential information promptly upon request of the Disclosing Party, or, in any event, upon termination or completion of this Agreement, together with any and all copies, negatives, or reproductions thereof. One copy may be retained for archival purposes.
  
2. The Disclosing Party acknowledges that Receiving Party shall not be liable for disclosure or use of the confidential information which:
  - a. Was in the public domain at the time of its disclosure or becomes part of the public domain subsequent to time of disclosure under this Agreement through no fault of the Receiving Party; or
  - b. Was known to the Receiving Party at the time of disclosure; or
  - c. Is disclosed with the written approval of the Disclosing Party; or

- d. Is independently developed by the Receiving Party without the use of the confidential information; or
  - e. Is rightfully furnished to the Receiving Party by a third party; or
  - f. Is disclosed by the Disclosing Party to others on a non-restricted basis; or
  - g. Is disclosed as required by law or judicial action.
3. This Agreement shall come into force as of the date of signature of the last party to sign the Agreement and shall be for a term of one (1) year thereafter; provided, however, that either party upon thirty (30) days' written notice to the other party, may terminate this Agreement on an earlier date. The Receiving Party agrees that during the term of this Agreement and for a period of three (3) years after the earlier to occur of this Agreement's expiration or termination, the Receiving Party shall not disclose the Disclosing Party's confidential information in contravention to the requirements of this Agreement nor shall the Receiving Party use such confidential information for any purpose other than as permitted by this Agreement.
  4. The Receiving Party agrees that all confidential information of the Disclosing party shall remain the property of the Disclosing party, and that the Disclosing Party may use such confidential information for any purpose without obligation to the Receiving Party. No license, express or implied, in the Disclosing Party's confidential information is granted to the Receiving Party other than to use the confidential information in the manner and to the extent authorized by this Agreement. Nothing in this Agreement obligates either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement at any time.
  5. None of the confidential information which may be submitted and/or exchanged by the parties shall constitute any representation, warranty, assurance, guarantee or inducement by either party to the other with respect to the infringement of trademarks, patents, copyrights or any right of privacy, or any rights of third persons.
  6. This Agreement shall be deemed to be a contract made under the laws of the State of Florida and for all purposes it, plus any related supplemental documents and notices shall be construed in accordance with and governed by the laws of such state. In no event shall either party be entitled to indirect, punitive or consequential damages relating to this Agreement.
  7. This Agreement constitutes and expresses the entire agreement and understanding between the parties as relates to the subject matter contained in this Agreement and supersedes any previous discussions, promises, representations, and understandings relative thereto, if any.
  8. Nothing in this Agreement will prevent FIU from complying with the requirements of Chapter 119 and Section 1004.22(2) of the Florida Statutes regarding disclosure of public documents.
  9. The undersigned individuals executing this Agreement hereby represent and warrant that they have the authority to enter into this Agreement on behalf of their respective entity.
  10. If either party loses or makes unauthorized disclosure of the other party's confidential information, it shall notify such other party immediately and take all steps reasonable and necessary to retrieve the lost or improperly disclosed information.
  11. Contracting Entity/Person intends that the confidential information it discloses does not contain export control-listed technology or technical data identified on any US export control list, including the Commerce Control List (CCL) at 15 CFR 774 and the US Munitions List (USML) at 22 CFR 121. In the event Contracting Entity/Person intends to provide FIU with export control-listed information, Contracting Entity/Person will inform the FIU \_\_\_\_\_, beforehand in writing. Contracting Entity/Person agrees not to provide any export control-listed information to FIU without the prior written authorization of the FIU \_\_\_\_\_.
  12. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party. This document contains the entire and exclusive agreement between the parties with respect to the subject matter hereof. Parole or extrinsic evidence shall not be used to vary or contradict the express terms of this Agreement, and recourse may not be had to alleged dealings, usage of trade, course of dealing, or course of performance to explain or supplement the express terms of this Agreement. Any party's failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision by that party. This Agreement may not be amended or modified except by a writing signed by both parties hereto. This

Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

In witness whereof, the duly authorized representative of each party has caused this Agreement to be duly executed on the dates set forth under their names, effective as of the date last signed below.

The Florida International University Board of Trustees

\_\_\_\_\_

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Read and acknowledged:

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

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

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

Date: \_\_\_\_\_