

MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

This Mutual Confidential Disclosure Agreement (“Agreement”), effective as of _____, 201_, is entered into by _____ (“Company”) and VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY (“Virginia Tech”) for the purpose of protecting and preserving the patent, trade secret and other proprietary rights in information to be disclosed or made available to each other pertaining to the following subject matter: _____

The Parties agree as follows:

1. “Proprietary Information”, for the purposes of this Agreement, shall mean certain proprietary or confidential business or technical information including, but not limited to, technical, financial, commercial, marketing or other business information relating to the above subject matter, that the disclosing party desires to protect against unrestricted disclosure or competitive use. Information to be subject to this Agreement shall be disclosed in writing and labeled with an appropriate proprietary legend. When disclosed verbally or visually, the Proprietary Information shall be designated as proprietary at the time of such disclosure, with subsequent confirmation provided in writing within ten (10) calendar days following such disclosure, referencing the date and description of the Proprietary Information disclosed with an appropriate proprietary legend affixed thereto. Proprietary Information disclosed by Virginia Tech may include invention disclosures or other confidential information of Virginia Tech Intellectual Properties, Inc. (VTIP), a nonprofit corporation that manages and licenses intellectual properties assigned to it by Virginia Tech.
2. The “Purpose” for which Proprietary Information shall be disclosed is the use and evaluation of Proprietary Information in connection with: _____
3. For a period of three (3) years from the date of disclosure (or in case of trade secrets, as long as such proprietary information remains a trade secret), the receiving party shall:
 - (a) Protect received Proprietary Information from disclosure to third parties with at least the same degree of care (but no less than a reasonable degree of care) as it uses to protect its own proprietary or confidential information of like kind from unauthorized use or disclosure; and
 - (b) Limit the access to and dissemination of received Proprietary Information only to those individuals that have a need for such information to fulfill the Purpose stated herein and have been notified of and agree to the obligations imposed by this Agreement; and
 - (c) Use received Proprietary Information only in furtherance of the Purpose; and
 - (d) Not reproduce received Proprietary Information or incorporate it into derivative works or notes unless necessary to fulfill the Purpose, and in such case only if that Proprietary Information continues to be identified as Proprietary Information of the disclosing party.
4. The foregoing shall not apply to any information that the receiving party can show by competent evidence:
 - (a) Was known to it prior to the disclosure of that information by the disclosing party; or
 - (b) Is independently developed by or for it without breach of this Agreement by persons who have not been exposed to the Proprietary Information; or
 - (c) Was publicly available and readily ascertainable in substantially the same form at the time of disclosure, or became publicly available and readily ascertainable in such form without breach of this Agreement; or
 - (d) Was or is publicly disclosed (by the disclosing party, or is rightfully received by the receiving party from a third party, without an obligation of confidentiality; or
 - (e) Is required by statutory, regulatory, administrative or judicial order or requirement to be disclosed, provided that the disclosing party gives prompt notice of such intended disclosure.

Proprietary Information shall not be deemed to be within the above exceptions merely because it is (i) embraced by more general public information, or (ii) a combination derivable from separate sources of public information, none of which discloses the combination itself.

5. **Export and Sanctions Compliance.** It is understood that both parties are subject to U.S. export control laws and regulations including but not limited to the International Traffic in Arms Regulations (“ITAR”, 22 CFR 120-130) and the Export Administration Regulations (“EAR”, 15 CFR 300-799). Export-controlled “Items” are hereby defined as defense articles, technical data, or defense services subject to the ITAR or any technology or source code controlled under the EAR. Both parties acknowledge that Virginia Tech is a public university and there exists a likelihood that Virginia Tech faculty and/or students involved in fulfilling this agreement may be foreign persons (22 CFR 120.16 and 15 CFR 772). As such, Virginia Tech requires written notification to Virginia Tech’s Office of Export and Secure Research Compliance at oesrc@vt.edu prior to the exchange of any export-controlled Items. Parties agree to provide a description of the Items and export control classification. Virginia Tech shall have the right to decline or limit the receipt of such Items, and any task requiring receipt of such Items. The transfer or release of export-controlled Items may require a license from the cognizant agency of the U.S. government. The parties agree to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement.

It is understood that both parties are subject to U.S. sanctions executive orders, laws and regulations controlling transactions of goods and services with sanctioned or embargoed countries, entities, and individuals (“denied parties/persons”), which includes but are not limited to persons or entities designated as U.S. Treasury Department Specially Designated Nationals List, Department of Commerce Entity List, Denied Persons List, Unverified List, and U.S. Department of State Debarred List. Each party will take reasonable steps to ensure that no goods or services are exported or imported to denied parties/persons without proper authorization from the cognizant agency.

6. Proprietary Information remains the property of the disclosing party. Upon written request of the disclosing party, the receiving party shall immediately return or destroy the Proprietary Information supplied by the disclosing party, including any and all copies thereof and including all analyses, compilations, summaries, studies and other material prepared by such party or its employees and based in whole or in part on, or otherwise containing or reflecting, any of the Proprietary Information.
7. It is agreed by the receiving party that the disclosure by disclosing party of its Proprietary Information does not grant any rights, either expressly, by implication, estoppel, or otherwise to intellectual property or any other right or license, except as specifically set forth herein. None of the Proprietary Information that may be submitted 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, copyright, or any rights of privacy, or other rights of third persons.
8. Neither this Agreement nor the disclosure or receipt of Proprietary Information shall create an obligation for either party to make any further agreement or business arrangement, purchase products or services, or engage in any present or future marketing activities. This Agreement imposes no obligation to disclose Proprietary Information, nor to purchase, sell, license, transfer, otherwise dispose of, or practice any products services or information.
9. No failure or delay by a party in exercising any right, power, or privilege under this Agreement or enforcing any provision of this Agreement shall operate as a waiver thereof, nor preclude the party from any later exercise thereof or the exercise of any other right, power, or privilege under this Agreement, nor seeking enforcement or any available remedy. Each party acknowledges that any injury due to the improper disclosure or use of Proprietary Information may be irreparable. Therefore, the injured party is entitled to seek an injunction to prevent the threatened or actual disclosure or use of Proprietary Information in addition to all other remedies that may be available.
10. Unless earlier terminated, this Agreement shall continue in full force and effect for so long as the parties continue to exchange Proprietary Information. This Agreement may be terminated by either party at any time upon thirty (30) days written notice to the other party. The termination of this Agreement shall not relieve either party of its obligations with respect to Proprietary Information received under this Agreement.
11. Neither party will use the name of the other in any advertising or make any form of representation or statement in relation to this Agreement which would constitute an express or implied endorsement of any commercial product or service without first having obtained written permission of the other Party.

12. This Agreement does not create any agency, partnership, joint venture, employment, or independent contractor relationship between the parties.
13. This Agreement shall be binding upon the parties, their successors, and assignees. This Agreement is personal to, and may not be assigned or transferred by, the parties without the prior written consent of the other.
14. Any amendment to or termination of this Agreement must be made in writing and signed by the parties. Any waiver of a provision of this Agreement must be in writing signed by the party making the waiver.
15. This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia, without giving effect to principles of conflict of law.
16. This Agreement sets forth the entire understanding between the parties hereto relative to the subject matter hereof, and supersedes all previous or contemporaneous understandings, commitments, or agreements, written or oral, on this subject.

IN WITNESS WHEREOF, the parties have, through duly authorized representatives, executed this Agreement effective as of the date in the preamble hereof.

Virginia Polytechnic Institute and State University

Company

By: _____
Signature

By: _____
Signature

Linda Bucy _____
Name

Name

AVP & Interim Director of OSP

Title

Title

Date

Date