CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

**Between:**

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| National Taiwan university of Science and technology  #43, Sec. 4, Keelung Road  Taipei City  Taiwan, R.O.C.  10607  hereinafter referred to as “**NTUST**” | [*Company name*] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [*address*] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  [*country*] \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  hereafter referred to as the “**Company**” |

NTUST and the Company are hereinafter each referred to as a “**Party**” and jointly, the “**Parties**”.

**WITNESSETH**

1. The Parties are interested in working together in relation to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter, the “**Project**”);
2. Both Parties, for their mutual benefit and success of the Project, agree and acknowledge that certain information of a confidential nature be disclosed between them;
3. Each Party acknowledges that it may obtain certain information of a confidential nature relating to each other, to any company within the other Party’s group of companies, and/or their customers or other parties contracting with the other Party; and
4. Both Parties are willing to disclose said information on the basis that said information be protected according to the following

**CLAUSES**

* 1. **OBJECT**

The object of this Confidentiality and Non-disclosure Agreement (hereinafter, the “**Agreement**”) is to regulate and define the terms and conditions governing the Parties regarding the Confidential Information (as defined hereunder), which belongs to or is held by NTUST and/or the Company and disclosed directly to each other, or to which each of the Parties might have access to as a result of the Project.

1. **CONFIDENTIAL INFORMATION**

The term “**Confidential Information**” shall be deemed to include, but not limited to, any kind of information, know-how, technical data, engineering, models, and, as the case may be, industrial or intellectual property, which belongs to either Party or in their possession, disclosed by either Party, in the framework of the Project, whether oral or written, included in notes, analyses, compilations, studies, samples, models, interpretations, presentations or in other documents or materials prepared by either Party, irrespective of the medium in which such information or data is embedded, whether or not identified as “confidential” or “secret” at the time of disclosure.

Any information which the receiving Party learns as a result of its dealings with the disclosing Party and which is prepared by the receiving Party, by any means whatsoever, which contains, reflects or is based on the Confidential Information of the disclosing Party shall also be considered Confidential Information.

The term Confidential Information shall not include any of such information which:

* 1. is in or comes into the public domain without breach of this Agreement by the receiving Party;
  2. the receiving Party can show (i) was in its possession or known to it by being in its use or being recorded in its files prior to receipt from the disclosing Party and was not acquired by the receiving Party from the disclosing Party under an obligation of confidence; or (ii) to have been independently developed by or for the receiving Party by persons who have not had access to such Confidential Information;
  3. the receiving Party obtains or has available from a source other than the disclosing Party without breach by the receiving Party or such source of any obligation of confidentiality or non-use;
  4. is hereafter furnished by the disclosing Party to a third party without restriction on disclosure or use; or
  5. is disclosed by the receiving Party with the prior written approval of the disclosing Party.

1. **OBLIGATION OF NON-DISCLOSURE AND CONFIDENTIALITY**

In consideration of the covenants herein contained and the mutual exchange and disclosure of Confidential Information, each Party undertakes in relation to Confidential Information received from the other Party or from a third party on behalf of the other Party:

(a) to treat such Confidential Information in confidence and to use such Confidential Information only for the purpose for which it was disclosed by the other Party and for no other purpose and in particular, but without prejudice to the generality of the foregoing, not to use such Confidential Information for any commercial purpose other than pursuant to a further agreement with the other Party;

(b) not to copy or reduce to writing any such Confidential Information except it obtains express prior consent from the other Party and only as may be reasonably necessary for said purpose and that any copies or reductions so made shall be the property of the disclosing Party;

(c) not to disclose such Confidential Information whether to its employees or to third parties except to such of its employees, representatives, directors or advisors who need to know such Confidential Information for said purpose, provided that: (i) they are informed beforehand of the confidential nature of the Confidential Information and be bound by the terms contained herein, (ii) they handle Confidential Information in compliance with the terms and conditions contained herein, and (iii) when expressly requested by the disclosing Party, they shall subscribe this Agreement;

(d) to be responsible for the performance of this Agreement on the part of its employees, representatives, directors or advisors to whom Confidential Information is disclosed pursuant to sub-clause (c) above;

* 1. to take any actions to preserve or refrain from actions that could harm Confidential Information;
  2. to notify the disclosing Party of any breaches of these undertakings which come to its attention and to co-operate with that Party in any steps taken to restrict and limit the damage done by such disclosure, and
  3. to maintain such Confidential Information with the same degree of care which the receiving Party uses to maintain its own confidential or proprietary information and which the receiving Party warrants as providing adequate protection of such information from unauthorised disclosure, copy or use.

1. **OBLIGATION TO RETURN**

At the time of termination of this Agreement, or upon request by the disclosing Party the receiving Party shall:

1. return to the disclosing Party all Confidential Information provided or obtained, including all copies thereof, or at the express request of the disclosing Party, to destroy said Confidential Information and all copies thereof and to certify such destruction in writing; and
2. no longer use the Confidential Information or any documentation, in any form whatsoever, prepared by the receiving Party which is based on or related to the Confidential Information, whether containing all or part of the Confidential Information.

The return or destruction of the Confidential Information in accordance with the provisions of this clause shall not release the receiving Party from its other obligations under this Agreement.

**5**. **LEGAL OBLIGATION TO DISCLOSE**

In the event that the receiving Party is required to disclose the Confidential Information, in whole or in part, pursuant to a law, regulation or by the rules of any applicable regulatory authority or pursuant to the terms of a valid and effective order issued by a court, the receiving Party may do so, provided that, the receiving Party agrees, if reasonably practicable, to:

(a)immediately notify the disclosing Party of the occurrence of such event, to the extent legally possible and before complying with such request or requirement, and its intentions to comply therewith, in such a way as to allow the disclosing Party to take any action necessary to preserve the Confidential Information; and

(b)to assist the disclosing Party in any action directed to preserve the Confidential Information, and to consult with the disclosing Party about the advisability of taking legally available steps to resist or narrow such request and use reasonable to protect the Confidential Information in compliance with the provisions of this Agreement.

**6. BREACH OF THIS AGREEMENT**

Without limiting any of their other rights and remedies, each Party acknowledges that damages would not be an adequate remedy for breach of this Agreement, as any breach may cause irreparable harm to the disclosing Party, and accordingly, the affected Party may:

(a) under threat or fear of disclosure, take any legal actions preventing a breach or requiring the receiving Party to perform its obligations herein; and

(b) seek indemnification from the receiving Party, for any costs, expenses, losses or damages, whether directly or indirectly related to that breach, whether tangible or intangible, suffered by the disclosing Party as a result of such breach, including, but not limited to, legal and procedural expenses, lawyers’ fees and related costs incurred by the disclosing Party to remedy the mentioned breach.

**7. NO TRANSFER OF OWNERSHIP RIGHTS**

No rights or obligations other than those expressly recited herein are to be implied from this Agreement. In particular, this Agreement shall in no way be interpreted to expressly or implicitly grant, confer, transfer or create any ownership, license or rights of use in favor of the receiving Party of the Confidential Information or any part thereof (know-how, intellectual or industrial property right) other than the right to review the Confidential Information in the framework of the Project, in accordance with the terms and conditions of this Agreement.

Therefore, the receiving Party agrees not to claim any know-how, industrial and/or intellectual property right whatsoever based on the Confidential Information or the elements to which it refers. The receiving Party further agrees not to undertake, incorporate or use, whether directly or indirectly, any of the Confidential Information for its own benefit.

**8. TERM**

This Agreement shall enter into effect on \_\_\_\_\_\_\_\_\_\_\_ and throughout the entire term of the development of the Project and for a term of 1 year thereafter.

Notwithstanding the above, the receiving Party acknowledges and agrees that its duty not to disclose Confidential Information shall remain in full force and effect, and therefore, shall survive any termination hereof.

**9. FINAL PROVISIONS**

Each Party agrees to keep the existence and nature of this Agreement confidential and not to use the same or the name of the other Party in any publicity, advertisement or other disclosure with regard to this Agreement or otherwise without the prior written consent of the other Party.

Acceptance or receipt of the other Party’s Confidential Information shall not preclude or in any way impair or restrict the accepting or receiving Party from continuing to engage in its business otherwise than in breach of the terms of this Agreement.

The present Agreement may not be interpreted as to create a *de facto* company, joint venture, agency, partnership, foundation or association of any nature whatsoever between the Parties.

This Agreement constitutes all the agreements reached by the Parties in relation to the subject-matter hereof and replaces any other oral or written agreements existing to date, which the Parties deem to have been terminated and satisfied.

No amendment or correction to this Agreement shall be valid unless made in writing and signed by both Parties.

The headings of the clauses in this Agreement were included to facilitate its reading.

Should any clause of this Agreement be found to be void or unenforceable, whether in whole or in part, by a court of law, the remaining clauses of this Agreement shall remain in full force and effect.

Any failure by the disclosing Party to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision of this Agreement.

This Agreement may be executed by fax or email. The signatures in the fax or scanned documents shall be deemed original signature. The Agreement will not be considered executed until both Parties have received a signed signature page and confirm its receipt to the other Party.

IN WITNESS WHEREOF, this Agreement has been executed by an authorized representative of each Party as of the date set forth beneath such party's designated representative's signature.

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| **National Taiwan University of**  **Science and Technology** | **­** |

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| (Signature) | (Signature) |
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