

## NON-DISCLOSURE AGREEMENT

**THIS NON-DISCLOSURE AGREEMENT** (the “Agreement”), effective as of the last date of signature below (the "Effective Date"), by and between The Regents of the University of California, through the Lawrence Berkeley National Laboratory (“Berkeley Lab”), One Cyclotron Road, Berkeley, California 94720, and the entity listed below (“**Company**”), individually a “Party” and collectively the “Parties”:

Company/University/Institution name: \_\_\_\_\_

Name of responsible Company/University/Institution employee: \_\_\_\_\_

Title or position: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_ E-mail: \_\_\_\_\_

**“Confidential Information”** means confidential or proprietary technical or business information disclosed by either party ("Disclosing Party") to the other party ("Recipient"). Berkeley Lab’s Confidential Information may include, without limitation, information regarding \_\_\_\_\_ Berkeley Lab Confidential Information is developed under Berkeley Lab’s management and operation contract with the U.S. Department of Energy (“DOE”). **Company/University/Institution** Confidential Information may include, without limitation, information regarding \_\_\_\_\_

**“Purpose of Disclosure”** means the use of Confidential Information in connection with a potential research or licensing transaction with Berkeley Lab. **(or whatever the Purpose is).**

**“Term”** means \_\_\_\_\_ ( ) years from the Effective Date of this Agreement.

With regard to Confidential Information, Recipient hereby agrees:

(1) not to use Confidential Information except to the extent required to accomplish the Purpose of Disclosure; and not to disclose Confidential Information to others except (i) to its employees with a need to know and who are bound by the terms of this Agreement and (ii) in the case of Berkeley Lab, in accordance with its management and operations contract with the U.S. Department of Energy (“DOE”), to DOE employees subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secret Act (18 USC 1905), without the express written permission of Disclosing Party.

(2) Recipient is not prohibited from using or disclosing Confidential Information:

- (a) that Recipient can demonstrate by written records was known to it prior to receipt from Disclosing Party;
- (b) that is now, or becomes in the future, public knowledge other than through an act or omission of Recipient;
- (c) that Recipient obtains in good faith from a third party not bound by confidentiality obligations to Disclosing Party;
- (d) that is disclosed by operation of law; or
- (e) that Recipient develops independently, for which Recipient can demonstrate by written records that independent development occurred without knowledge or use of Confidential Information.

(3) All Confidential Information disclosed under this Agreement will be in tangible form and marked as confidential or proprietary. To be considered Confidential Information, verbal, visual or other

intangible forms of disclosures will be identified as confidential at the time of disclosure, summarized in writing and delivered to Recipient within thirty (30) days of disclosure.

(4) Recipient's obligations under this Agreement remain in effect for the Term, notwithstanding any termination of this Agreement. Recipient's confidentiality and nonuse obligations under this Agreement remain in effect for 0 years after the Term.

(5) At the end of the confidentiality and nonuse period, the Confidential Information of Disclosing Party shall be returned to the Disclosing Party, or destroyed, as directed by Disclosing Party, and such return or destruction shall be confirmed in writing (email will suffice).

(6) The parties agree that the furnishing of Confidential Information to Recipient does not constitute any grant or license to Recipient under any patent or other proprietary rights now or in the future held by Disclosing Party. *The Recipient agrees that the Confidential Information is provided by the Disclosing Party "as is" without warranty of any kind, express or implied, including but not limited to implied warranties of fitness for a particular purpose and merchantability.*

(7) The provisions in this Agreement are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

(8) This Agreement embodies the entire and final understanding of the parties on this subject. It

supersedes any previous representations, agreements, or understandings, whether oral or written. No amendment or modification hereof will be valid or binding upon the parties unless made in writing and signed by an authorized representative on behalf of each party.

(9) This Agreement will be interpreted and enforced under the laws of California, without giving effect to any choice of law rules that would result in the application of laws of any jurisdiction other than California.

(10) In view of its management by an institution of higher education operating under the Fundamental Research Exclusion, Berkeley Lab hereby notifies the other parties that it has many foreign nationals who are students or employees to whom a transfer of Confidential Information and/or export-controlled items, including without limitation, products, materials, software or technical information ("items"), may be in violation of U.S. export control and sanction regulations. Accordingly, parties should not transfer to Berkeley Lab any Confidential Information and/or items with a U.S. Export Control Classification Number ("U.S. ECCN") other than EAR99 under the Export Administration Regulations, without prior written authorization from Berkeley Lab's Export Compliance Office. Berkeley Lab bears no responsibility for unauthorized exports of non-EAR99 items by a party under this Agreement to Berkeley Lab's foreign students or employees when such written authorization is not obtained. Each party shall abide by the applicable U.S. export and sanction regulations.

(11) This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument. Signatures provided by facsimile transmission or in Adobe™ Portable Document Format (PDF) sent by electronic mail will be deemed to be original signatures.

\*\*\*SIGNATURE PAGE FOLLOWS\*\*\*

COMPANY/UNIVERSITY/INSTITUTION

LAWRENCE BERKELEY NATIONAL LABORATORY

By: \_\_\_\_\_  
(Authorized Representative)

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

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

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

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

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

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

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

