

MUTUAL NON-DISCLOSURE AGREEMENT

This **MUTUAL NON-DISCLOSURE AGREEMENT** ("Agreement") is by and between **WICHITA STATE UNIVERSITY**, a state educational institution of Kansas, located at 1845 Fairmount, Wichita, KS 67260-_____, contracting on behalf of _____ (hereinafter "WSU"), and _____ and its employees, subsidiaries and affiliates, located at _____ (hereinafter "COMPANY").

WHEREAS, WSU and Company (hereinafter referred to individually as a "PARTY" and collectively as the "PARTIES"), desire to exchange and discuss information related to _____ (hereinafter referred to as "PROJECT"); and,

WHEREAS, during the course of these discussions and evaluations, the PARTIES may disclose certain confidential and proprietary information concerning, without limitation, trade secrets, devices, designs, specifications, plans, or other ideas or inventions relating to the PROJECT, and desire such information to be treated as PROPRIETARY INFORMATION.

NOW, THEREFORE, in consideration of the above premises and the individual and mutual promises of the parties hereinafter set forth, and for other good and valuable consideration, it is hereby agreed by and between the parties:

1. DEFINITIONS.

- 1.1. "DISCLOSING PARTY" means the PARTY disclosing information to the other in furtherance of the PROJECT.
- 1.2. "RECEIVING PARTY" means the PARTY receiving information from the other in furtherance of the PROJECT.
- 1.3. "PROPRIETARY INFORMATION" means any information, knowledge or data received by the RECEIVING PARTY from the DISCLOSING PARTY in furtherance of or pursuant to the PROJECT that is clearly marked with proprietary legends by the DISCLOSING PARTY at the time of disclosure and, if the information is orally or visually disclosed, that is identified as proprietary at the time of said first disclosure and is clearly marked with proprietary legends and/or is reduced to writing within thirty (30) days of oral or visual disclosure.

2. RESTRICTIONS ON USE AND DISCLOSURE.

- 2.1. The PARTIES agree, subject to the provisions of the Kansas Open Records Act, K. S. A. 45-215 *et seq.*, that all documents received from and marked as PROPRIETARY INFORMATION shall be kept confidential and shall not be disclosed to third parties and will be treated by the PARTIES with the same degree of care with which each treats and protects its own PROPRIETARY INFORMATION. In addition, PROPRIETARY INFORMATION shall only be disclosed to those personnel within its organization or affiliates requiring access to perform tasks contemplated by this Agreement, and any such personnel or affiliates shall be made aware of the restrictions

imposed on the use of the PROPRIETARY INFORMATION.

- 2.2. RECEIVING PARTY shall use such PROPRIETARY INFORMATION only for the mutual benefit of the PARTIES and in furtherance of the PROJECT. RECEIVING PARTY shall not use such PROPRIETARY INFORMATION for any other purpose, such as competing with DISCLOSING PARTY.
- 2.3. In the event that DISCLOSING PARTY furnishes sample products or other equipment or material ("ITEMS") to RECEIVING PARTY, which are suitably marked to identify them as encompassing PROPRIETARY INFORMATION of DISCLOSING PARTY, ITEMS so received shall be used and the PROPRIETARY INFORMATION derived from said ITEMS shall be treated as PROPRIETARY INFORMATION transferred pursuant to this Agreement. RECEIVING PARTY agrees not to cause or permit the reverse engineering, reverse assembly, or reverse compilation of ITEMS.
- 2.4. All PROPRIETARY INFORMATION ITEMS shall remain the property of DISCLOSING PARTY and shall be promptly returned to DISCLOSING PARTY or destroyed upon written request, except as allowed under paragraph 5.3 or as required by applicable law and/or regulation. The requested action will be at the expense of DISCLOSING PARTY.
- 2.5. The obligations of confidentiality and non-use under this Agreement do not apply to:
 - 2.5.1. Such information is in the public domain at the time of initial disclosure to RECEIVING PARTY by DISCLOSING PARTY, or subsequently becomes publicly known through no wrongful act of RECEIVING PARTY;
 - 2.5.2. Such information is known to RECEIVING PARTY prior to the time of initial disclosure, as evidenced by competent and contemporaneous written documentation;
 - 2.5.3. Such information is furnished to a third party by DISCLOSING PARTY without confidentiality restrictions substantially similar to those herein;
 - 2.5.4. Such information is rightfully received by RECEIVING PARTY, without restriction as to further disclosure, from a third party that had the lawful right to disclose such information;
 - 2.5.5. Such information is independently developed by RECEIVING PARTY without the use of or reference to PROPRIETARY INFORMATION; or
 - 2.5.6. Such ITEM is required to be disclosed pursuant to applicable law or proper governmental or judicial process. Where such information is required to be disclosed under this section 2.5.6, prompt notice of such disclosure shall be provided to DISCLOSING PARTY in order that it may have every reasonable opportunity to intervene in such process to contest such disclosure.
- 2.6. The identification of any of the occurrences, (2.5.1) - (2.5.6) above, will be promptly communicated between the parties to this Agreement

3. DISCLAIMERS.

- 3.1. DISCLOSING PARTY does not, by virtue of disclosure of PROPRIETARY INFORMATION to RECEIVING PARTY, grant RECEIVING PARTY any right or license under any patents, copyrights or trade secrets, other than those rights granted to RECEIVING PARTY in section 2.2.
- 3.2. Neither PARTY makes any warranty or representation as to the accuracy or completeness of any PROPRIETARY INFORMATION disclosed under this Agreement.

4. TERM AND TERMINATION.

- 4.1. This Agreement shall expire five (5) years after the effective date hereof unless terminated earlier upon the end of a thirty (30) day period after receipt of a written notice by one PARTY from the other. Such termination shall not affect RECEIVING PARTY'S obligations relative to PROPRIETARY INFORMATION received prior to the effective date of such termination, as defined in section 4.2 below.
- 4.2. The obligations under this Agreement as to any PROPRIETARY INFORMATION shall continue for five (5) years from the date of first disclosure of such PROPRIETARY INFORMATION to RECEIVING PARTY, notwithstanding any earlier expiration or termination of this Agreement.

5. COMPLIANCE.

- 5.1. Each PARTY certifies that to the best of its knowledge neither it nor any of its principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations §120.27, or otherwise declared ineligible for the award of contracts by any Federal agency. If at any time a PARTY learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances, that PARTY shall provide immediate written notice to the other PARTY.
- 5.2. Each PARTY further agrees, to the extent applicable, to comply with all U.S. Laws relating to the 22 U.S.C. 2778-2780 of the Arms Export Control Act (AECA) and the International Traffic in Arms Regulations (ITAR) (22 Code of Federal Regulations Parts 120-130), and the Export Administration Regulations (EAR) 15 Code of Federal Regulations Parts 730-774. DISCLOSING PARTY shall notify the RECEIVING PARTY in writing prior to disclosure of any technical data or other items subject to EAR or ITAR. The PARTIES will reasonably cooperate with and support each other in obtaining the correct Export Control Classification Number (ECCN), the Harmonized Tariff Schedule (HTS) number or classification of a defense article.
- 5.3. PARTIES agree that each PARTY may retain one archival copy of all documents from the PROJECT for the purposes of (a) proving what information it did or did not receive hereunder in the event of a future dispute, or (b) complying with governmental regulatory requirements.

6. DESIGNATED REPRESENTATIVES AND NOTICES.

6.1. The following individuals are designated as the persons to receive PROPRIETARY INFORMATION and primarily responsible for compliance with the terms of this Agreement:

If to Wichita State University: Attn: _____ Company: <u>Wichita State University</u> Address: <u>1845 Fairmount Street</u> Address: <u>Wichita, KS 67260-</u> E-Mail: _____	If to COMPANY: Attn: _____ Company: _____ Address: _____ Address: _____ E-Mail: _____
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With a copy of all notices sent to: <u>Gc.contracts@wichita.edu</u>	With a copy of all notices sent to: _____ _____
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6.2. All notices, demands, requests, approvals, reports, instructions, consents or other communications (collectively "notices") which may be required or desired to be given by either Party to the other shall be in writing and sent by certified mail or overnight traceable delivery and addressed to the individuals set forth above, unless any other person or address may be designated by notice from one Party to the other.

6.3. Either PARTY can change the individual designated by written notice to the other. Receipt of PROPRIETARY INFORMATION by any individual other than the designated receiver shall not affect the obligations of the RECEIVING PARTY.

7. **USE OF MARKS, LOGOS AND MARKETING.** COMPANY shall not use the name, logos, insignias or trademarks of WSU, WSU, any affiliates of WSU, or any PROJECT member, in any publicity, advertising, promotional materials, news release or websites except as set forth in this Agreement or as authorized in writing by WSU in each instance. COMPANY may use the name of WSU in a document required to be filed with, or provided to, any governmental authority or regulatory agency to comply with applicable legal or regulatory requirements.

8. **ASSIGNMENT.** This Agreement and the rights and duties hereunder may not be assigned or otherwise transferred by either of the PARTIES without the prior written consent of the other. If this Agreement is so assigned or otherwise transferred, it shall be binding on all successors and assigns.

9. **CAPTIONS.** The captions and headings in this Agreement are for reference only and do not define, describe, extend or limit the scope or intent of this Agreement.

10. **SEVERABILITY.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, to any extent, the remainder of this Agreement shall not be affected and each provision of this Agreement shall be enforced to the fullest extent permitted by law.

11. **WAIVER.** Any waiver shall be in writing and provided to all other parties. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any PARTY hereto.

12. **COUNTERPARTS / EXECUTION.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signature pages may be executed via “wet” signature, authorized signature stamp or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means.

13. **ELECTRONIC SIGNATURES.** The PARTIES agree that this Agreement may be signed with electronic signatures. If an electronic signature is used, the PARTIES agree that it is the legally binding equivalent to the signing PARTY’s handwritten signature. Whenever either PARTY executes an electronic signature on this Agreement, it has the same validity and meaning as a handwritten signature. The PARTIES agree that neither PARTY will, at any time in the future, repudiate the meaning of an electronic signature or claim that an electronic signature is not legally binding.

14. **ENTIRE AGREEMENT.** This Agreement may not be superseded, amended or modified except by written agreement between the PARTIES, and signed by a duly authorized official of each of the PARTIES.

15. **CHOICE OF LAW AND VENUE.** This Agreement shall be subject to, governed by and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this Agreement shall reside only in courts located in the State of Kansas.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and/or authorized same to be executed by their duly authorized representatives as of the date shown below the respective signatures, said Agreement to become effective as of the later date.

WICHITA STATE UNIVERSITY	COMPANY
SIGNATURE	SIGNATURE
Dr. John Tomblin	
PRINTED NAME	PRINTED NAME
Senior Vice President for Industry and Defense Programs	
TITLE	TITLE
DATE	DATE
CONTACT INFO:	CONTACT INFO:

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ACKNOWLEDGMENT

I, the undersigned, having read this Agreement, hereby agree to act in accordance with all the terms and conditions herein and further agree to ensure that all participants of WSU are informed of their obligations under this Agreement.

By: _____

Name: _____

Title: _____

Date: _____