# CONFIDENTIAL DISCLOSURE AGREEMENT

This **CONFIDENTIAL DISCLOSURE AGREEMENT** (referred to as “Agreement”) made as of the [Day] of [Month], [Year] (the “Effective Date”) is entered into by and between **[Organization Name],** a [Type of Organization] duly organized under the laws of the state of [State of Incorporation], having its principal place of business at [Address] (hereinafter referred to as “ORGANIZATION”), and the **Board of Trustees of Southern Illinois University**, a body politic and corporate of the State of Illinois, by and on behalf of [SIU Campus], located at [Campus Location] (hereinafter referred to as “SIU”). Hereinafter, the term “Parties” shall mean both SIU and ORGANIZATION, and the term “Party” shall mean either of them.

**RECITALS**

WHEREAS, SIU is willing to disclose proprietary and confidential information/data with respect to a potential effort in the field of: [SIU field of disclosure];

WHEREAS, ORGANIZATION is willing to disclose proprietary and confidential information/data with respect to a potential effort in the field of: [ORGANIZATION field of disclosure];

WHEREAS, the purpose for such disclosure by SIU is to evaluate its interest in a potential arrangement for research, development, and/or commercialization and to discuss possible collaborative efforts;

WHEREAS, the purpose for such disclosure by ORGANIZATION is to evaluate its interest in a potential business arrangement for research, development, and/or commercialization and to discuss possible collaborative efforts;

# TERMS

NOW THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement, both Parties agree as follows:

1.0 Confidential Information.

1.1 For purposes of this Agreement, “Confidential Information” means all information not available to the general public that is owned by disclosing Party, including but not limited to all data, materials, programs, plants, processes, products, technology, computer programs, specifications, manuals, business plans, software, markets, marketing plans, financial information, costs, pricing, employees, research, areas of interest, equipment, operations, customers, confidential or proprietary information, and other information disclosed or submitted, to receiving Party by disclosing Party. Confidential Information also includes, without limitation:

1.1.1 All documents, disclosures, and written and oral statements, or any other media disclosed by SIU to ORGANIZATION or by ORGANIZATION to SIU or information observed by either Party during site visits or audits at the other Party’s facilities, in whatever medium or format (including orally and visually); and

1.1.2 Information concerning current, future, or proposed products, inventions, discoveries, know how, techniques, and processes disclosed pursuant to this Agreement.

2.0 Obligations of the Party to whom Confidential Information is Disclosed.

2.1 The Parties to this Agreement shall use reasonable efforts to prevent the disclosure to third parties of all Confidential Information disclosed under this Agreement except:

2.1.1 Confidential Information that, at the time of disclosure, is in the public domain;

2.1.2 Confidential Information that, after disclosure, is published or otherwise becomes part of the public domain through no fault of receiving Party;

2.1.3 Confidential Information that was in the possession of the receiving Party at the time of disclosure and was not acquired under an obligation of confidence;

2.1.4 Confidential Information that is properly obtained by receiving Party from a third party with a valid right to disclose such Confidential Information;

2.1.5 Confidential Information that receiving Party is required by law or order of a court or administrative body of competent jurisdiction to disclose; provided that disclosing Party be notified promptly by receiving Party of any such request;

2.1.6 Confidential Information that is independently developed by the receiving Party without use of or reference to Confidential Information received from the disclosing Party.

2.2 The Parties shall not disclose (or cause to be disclosed) or make (or cause to be made) commercial use of any Confidential Information revealed to receiving Party without the prior written approval of disclosing Party.

2.3 Receiving Party agrees to make the Confidential Information disclosed available only to those persons within the receiving Party’s business (including employees, officers, directors, members, affiliates, agents, and consultants) who are necessary for collaboration or evaluation thereof (“Representatives”), and that when such Confidential Information is disclosed or transmitted to a Representative that the receiving Party will inform each Representative who receives such Confidential Information of the confidential nature of such Confidential Information and of these conditions.

3.0 Injunctive Relief. Both Parties acknowledge and agree that injunctive relief may be appropriate for any breach or threatened breach hereof.

4.0 Intellectual Property. No license to the receiving party under any trademark, patent, or copyright, or application for same (that are now or hereafter may be obtained by the disclosing party), is either granted or implied by conveying the Confidential Information to the receiving party. None of the Confidential Information that is disclosed by the disclosing party shall constitute any representation, warranty, assurance, or guarantee by the disclosing party to the receiving party with respect to infringement of trademarks, patents, copyrights, or any rights of privacy or any rights of any third parties.

5.0 Export Controls. Each party shall comply with all relevant United States laws governing the exports and re-exports of MATERIALS made under this Agreement, including, but not limited to, the U.S. Department of Commerce’s Export Administration Regulations and the regulations administered by the Office of Foreign Assets Control. Prior to providing SIU with any items subject to export control laws, ORGANIZATION will notify SIU and identify the items at issue and the applicable export control laws. If the items are subject to the Export Administration Regulations (“EAR”), ORGANIZATION will either furnish to SIU the applicable Export Control Classification Numbers or indicate that EAR 99 applies. If the items are subject to the International Traffic in Arms Regulations (“ITAR”), ORGANIZATION will notify SIU of the relevant ITAR categories and subcategories. SIU may decline to accept any export-controlled items. ORGANIZATION hereby gives written assurance that it will comply with, and will cause its affiliates to comply with all United States export control laws and regulations, that it bears sole responsibility for any violation of such laws and regulations by itself or its affiliates, and that it will indemnify, defend and hold SIU harmless for the consequences of any such violation. ORGANIZATION will not disclose export controlled items or information unless and until a plan for the transfer, use, dissemination and control of the items or information has been approved by SIU’s Export Control Director.

6.0 Legal Authority. ORGANIZATION warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the ORGANIZATION to its terms. ORGANIZATION warrants the person(s) executing this Agreement on behalf of ORGANIZATION has/have full authorization to execute this Agreement.

SIU warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind the SIU to its terms. SIU warrants the person(s) executing this Agreement on behalf of SIU has/have full authorization to execute this Agreement.

7.0 Return of Information. Any and all Confidential Information disclosed to receiving Party, upon request, shall be promptly returned to disclosing Party, except receiving Party may retain one copy of such Confidential Information in its confidential files, solely for record purposes.

8.0 Agreement Confidential. No publicity matter having or containing any reference to a Party to this Agreement, other than the facts of any agreements that exist between the Parties, shall be used by either Party, except upon prior approval by the other Party in writing.

9.0 Governing Law. This Agreement, and any dispute arising thereunder, shall be governed by and construed under the laws of the State of Illinois, without regard to the conflict of laws provisions thereof. The Parties agree that the jurisdiction and venue for any legal controversy arising hereunder shall lie exclusively in a court of competent jurisdiction sitting within the State of Illinois. All claims against SIU arising from this Agreement are subject to the Illinois Court of Claims Act and the exclusive jurisdiction of the Illinois Court of Claims.

10.0 Waiver. No delay or failure to enforce any provision of this Agreement shall constitute a waiver or limitation of rights enforceable under this Agreement. This Agreement may not be amended or assigned without the prior written consent of both Parties.

11.0 Entire Agreement. This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, between the Parties with respect to such subject matter are hereby superseded in their entirety.

12.0 Term. The term of this Agreement shall be for five (5) years from the Effective Date unless sooner terminated or extended by written agreement of the Parties. Any Confidential Information disclosed during the term of this Agreement (including any extensions hereof) shall be subject to this Agreement for a period of three (3) years from the date of expiration or termination of this Agreement. Either Party may terminate this Agreement by giving sixty (60) days written notice to the other Party. Termination of this Agreement shall not relieve a Party from its obligations incurred prior to the effective date of termination.

13.0 Counterparts and Electronic Signature. This Agreement may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Agreement, all of which shall constitute one agreement to be valid as of the date of this Agreement. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

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IN WITNESS WHEREOF, the authorized representatives have hereunto executed this Agreement as of the date first set forth above.

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| [ORGANIZATION Name] (“ORGANIZATION”)  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: [Signing Official Name]  Title: [Signing Official Title]  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | BOARD OF TRUSTEES OF SOUTHERN ILLINOIS UNIVERSITY (“SIU”)  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: [Signing Official Name]  Title: [Signing Official Title]  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Reviewed and Acknowledged:  By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: [SIU Scientist Name]  Title: [SIU Scientist Title]  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |