

*Please Note – Georgia State has provided this template agreement as a courtesy to our industry partners; no single template can account for the wide variety of collaborations and disclosures in which the university may engage. The terms and conditions of any confidential disclosure agreement will be impacted by the specific details of the collaboration/disclosure, the intent of the parties, and our negotiations.*

### **MUTUAL NON-DISCLOSURE AGREEMENT**

This Agreement, effective this \_\_\_\_ day of \_\_\_\_\_, 2021 is made by and between the Georgia State University Research Foundation, Inc. (“GSURF”), with a mailing address of 58 Edgewood Avenue, 3rd Floor, Atlanta, GA 30303, and \_\_\_\_\_ (“Company”), with offices located at \_\_\_\_\_.

WHEREAS, GSURF is a cooperative organization of Georgia State University (“GSU”) as established by the Board of Regents of University System of Georgia;

WHEREAS, GSURF has confidential information relating to its proprietary technology, data, inventions, and research expertise, including, but not limited to, information concerning GSU TechID \_\_\_\_\_, titled “\_\_\_\_\_” from \_\_\_\_\_ (hereinafter, the “Invention”); and

WHEREAS, Company has confidential information relating to its business activities; and

WHEREAS, GSURF and Company would like to disclose this confidential information to the other for the purpose of \_\_\_\_\_ (“Disclosure Purpose”);

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, GSURF and Company agree as follows:

1. **Term and Termination.** This Agreement shall begin on the Effective Date above and terminate one (1) year thereafter, provided that either party may terminate this Agreement earlier upon thirty (30) days’ written notice.
2. **Confidential Information.**
  - (a) Hereinafter, a party disclosing Confidential Information (defined below) will sometimes be referred to as a “disclosing party” and a party receiving Confidential Information hereunder will sometimes be referred to as a “receiving party.”
  - (b) All information disclosed hereunder by Company related to \_\_\_\_\_ and by GSURF (or GSU employees or students) related to the Invention, which is considered by the disclosing party to be confidential and proprietary, shall be deemed “Confidential Information” hereunder, provided that such information is either:
    - (i) in writing and marked “Confidential”; or
    - (ii) if disclosed orally, is identified as confidential at the time of disclosure, and is thereafter reduced to a writing (clearly marked “Confidential”) that is received by the receiving party within thirty (30) days of the oral disclosure.
3. **Treatment of Confidential Information.** GSURF and Company each agree:
  - (a) that all Confidential Information it receives hereunder shall not be disclosed to any third party (including, without limitation, persons, firms, or entities) and shall be maintained in confidence for a period of three (3) years from the receipt of such Confidential Information;
  - (b) not to use the other party’s Confidential Information for any purpose other than the Disclosure Purpose set forth above without the prior written consent of the other party;
  - (c) to limit access to Confidential Information it receives hereunder to its employees, agents, and other representatives who have a need-to-know in order to effectuate the Disclosure Purpose and who are bound to maintain Confidential Information received hereunder under non-disclosure terms at least as restrictive as those contained herein; and

- (d) to use the same standard of care to protect the confidentiality of Confidential Information it receives hereunder that it uses to protect its own confidential information, but in no event less than a reasonable standard of care.
4. Exclusions. Notwithstanding anything to the contrary herein, a receiving party hereunder shall have no obligations (of non-disclosure or otherwise) with respect to any:
- (a) information that, at the time of disclosure, is in the public knowledge;
  - (b) information that, after disclosure, becomes part of the public knowledge by publication or otherwise, except by breach of this Agreement;
  - (c) information that was already in the receiving party's possession at the time of disclosure, which prior possession can be proven by documentary evidence;
  - (d) information received from third parties, provided such information was not obtained, to the receiving party's actual knowledge, by said third parties on a confidential basis;
  - (e) information that is independently developed by the receiving party's personnel (which can be proven by documentary evidence) who were not privy to the disclosing party's Confidential Information; and
  - (f) information that is required to be disclosed by the receiving party to comply with law, governmental regulation or court order, provided that written notice of such required disclosure is furnished to the disclosing party as soon as practicable in order to afford the disclosing party an opportunity to seek a protective order.
5. No License or Additional Rights.
- (a) The disclosure of Confidential Information hereunder shall in no way be considered a license under any patent, patent application, copyright, trademark, mask work, or other form of intellectual property, and any rights not explicitly granted herein by a disclosing party are expressly reserved.
  - (b) Without limiting the foregoing, each receiving party agrees that it will refrain from using the other party's Confidential Information for any purpose other than the Disclosure Purpose, and explicitly agrees not to manufacture and/or sell any product that is based in whole or in part on the Confidential Information of the other party.
6. Return or Destruction of Documents/Materials. All written documents containing Confidential Information and other material in tangible form received by GSURF or Company under this Agreement shall remain the property of the disclosing party, and all such documents (together with any copies or excerpts thereof) shall be promptly returned to the disclosing party or destroyed upon request, provided that the receiving party may retain one archival copy of such Confidential Information for the sole purpose of determining its obligations hereunder.
7. Choice of Law, Jurisdiction & Venue. This Agreement shall be governed and construed under the laws of the State of Georgia without regard to conflict of law principles. The parties agree that only state and federal courts in Atlanta, Georgia, U.S.A. shall have jurisdiction and venue to hear and decide any controversy or claim between the parties arising under or relating to this Agreement.
8. Failure to Enforce. The failure of either party hereto at any time, or for any period of time, to enforce any of the provisions of this Agreement shall not be construed as a waiver of such provision(s) or of the right of such party thereafter to enforce each and every such provision.
9. Third Party Beneficiary. GSU may own certain information, know-how, data, or results, any or all of which may be part of the Confidential Information exchanged under this Agreement. The Parties expressly agree that GSU is an intended third-party beneficiary of the rights and obligations created by this Agreement and has standing to enforce its terms.
10. Entire Agreement & Amendments. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all other agreements or understandings with regard to such subject matter. Any amendment to this Agreement must be in writing, be signed by authorized representatives of each party, and expressly refer to this Agreement.

- 11. Severability. If any term of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining terms of this Agreement shall constitute their agreement with respect to the subject matter hereof, and all of its remaining terms shall remain in full force and effect.
- 12. Counterparts. This Agreement may be executed electronically and in counterparts, each of which is deemed an original, but all of which together shall constitute one and the same instrument.
- 13. Survival. Paragraphs 2, 3, 4, 6, 7, 8, 10, 14 and 15 shall survive expiration or termination of this Agreement.
- 14. Notices. All notices to a party hereunder shall sent by hand delivery, private shipping service (e.g. FedEx or UPS) with delivery confirmation, email with delivery confirmation (provided that the recipient manually replies to confirm receipt), or certified or registered U.S. mail with delivery confirmation, to the address of such party as indicated below. All notices shall be deemed effective only upon receipt.

To GSURF: Georgia State University Research Foundation, Inc.  
 c/o GSU Office of Technology Transfer and Commercialization  
 58 Edgewood Avenue, 3<sup>rd</sup> Floor  
 Atlanta, GA 30303  
 Attn: Director  
[intellectualproperty@gsu.edu](mailto:intellectualproperty@gsu.edu)

with a copy to: Georgia State University  
 Office of Legal Affairs  
 100 Auburn Avenue, 3<sup>rd</sup> Floor  
 Atlanta, GA 30303  
 Attn: University Attorney

- 15. Headings. All headings in this Agreement are for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

**IN WITNESS THEREOF**, GSURF and Company have caused this Agreement to be signed by their duly authorized representatives as indicated below.

[Company Name]

**Georgia State University Research Foundation, Inc.**

\_\_\_\_\_  
 Signature  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Signature  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Investigator Acknowledgement:**

\_\_\_\_\_  
 Signature  
 Name: \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Signature  
 Name: \_\_\_\_\_  
 Date: \_\_\_\_\_