

## **CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**

This AGREEMENT is effective as of the latter date of the signatures appearing below and is made by and between [party's legal name], a [enter party's State of incorporation] corporation, having offices at [party's office location] (hereinafter “[party's short name]”), and Bowling Green State University, a state-assisted institution of higher education established by an Act of the State of Ohio, having offices at [BGSU office location] Bowling Green, Ohio (hereinafter “BGSU”). [party's short name] and BGSU may also be referred to collectively as, “we”, “us”, “our” or the “Parties”, and each respectively, as a “Party”, the “Other Party”, a “Disclosing Party”, or a “Receiving Party”, as appropriate.

### **PREMISES**

**WHEREAS**, [party's short name] and BGSU are interested in exploring the possibility of [DESCRIBE PROJECT] (hereinafter the “Project”); and

**WHEREAS**, pursuant to the terms of this AGREEMENT [party's short name] and BGSU may exchange, orally, in writing, by electronic means, or by inspection, certain information, technology, data, material and documents regarding the Parties’ businesses, assets, liabilities, financial conditions, operations, identity of [STUDENTS OR OTHERS], personnel, intellectual property, including “trade secrets” and other related information, all of which relating solely to the Project (collectively and individually referred to as “Proprietary Information”).

**NOW THEREFORE**, in consideration of the Premises and Covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **COVENANTS**

#### **1.0 PROPRIETARY INFORMATION.**

**1.1 Access And Use.** Except as provided in paragraph 1.2, the existence of this AGREEMENT, the provisions contained herein, discussions between the Parties pursuant to this AGREEMENT, and all Proprietary Information hereafter furnished by a Disclosing Party, or on its behalf, to a Receiving Party, shall be deemed confidential and shall be kept in confidence under appropriate safeguards at least as stringent as those used to protect the Receiving Party’s own information of like nature, but in no event shall the Receiving Party use less than reasonable safeguards to protect such Proprietary Information.

**1.2 Exceptions.** Without Disclosing Party’s prior written consent, and subject to the provisions of Section 1.5, Receiving Party shall not directly or indirectly:

- (a) disclose or reveal the information described in paragraph 1.1 or any Proprietary Information to any person, firm or entity, except to a limited

group of Receiving Party's directors, trustees, officers, employees, attorneys, professional advisors or representatives (including agents, accountants, financing sources and financial advisors) who are actively and directly participating in discussions regarding the Project (collectively, "Receiving Party Representatives"), each of whom shall be informed by Receiving Party of the confidential nature of the Proprietary Information and of its obligations hereunder;

- (b) use the Proprietary Information in any way detrimental to Disclosing Party, or for any purpose other than in connection with discussions regarding the Project; or
- (c) disclose to any person (other than Receiving Party Representatives) the terms, conditions or other facts with respect to these discussions (including, without limitation, the existence and status thereof or the fact that discussions between the Parties are either taking place or have terminated), or that Proprietary Information has been made available to the Receiving Party.

**1.3 Rights.** Other than the limited right of access to and use of the Proprietary Information as provided for herein, no title, license, interest, or right shall be granted, either expressly, by implication, by estoppel or otherwise, to the Receiving Party under any patent, trademark, copyright, trade secret or other proprietary right now or hereafter owned or controlled by the Disclosing Party.

**1.4 Notification Of Disclosure.** The Receiving Party shall promptly notify the Disclosing Party, in writing, if the Receiving Party becomes aware of any unauthorized use, disclosure, or theft of the Proprietary Information, and shall describe the Receiving Party's actions to prevent any further unauthorized use, disclosure, or theft of such Proprietary Information.

**1.5 Permitted Disclosure.** The Receiving Party shall not be liable hereunder for the disclosure or use of information if such information was:

- (a) in the public domain at the time of disclosure;
- (b) already known or independently developed by the Receiving Party prior to receipt from the Disclosing Party;
- (c) publicly known or available through no breach of this AGREEMENT by the Receiving Party;

- (d) disclosed by the Receiving Party in response to a proper request under The Public Records Act of Ohio (Ohio R.C. Chapter 149), a valid subpoena, court order or other legal process, and not subject to a protective order; provided that, if disclosure is so required, the Receiving Party shall promptly notify the Disclosing Party, in writing, of such subpoena, order or other legal process; or
- (e) obtained from a third party and was disclosed based on the reasonable belief of the Receiving Party that the third party had a valid right of disclosure.

**1.6 Injunctive Relief.** Each Party acknowledges that in the event the Receiving Party breaches its nondisclosure obligations hereunder, the Disclosing Party will not have an adequate remedy at law and, therefore, the Disclosing Party shall be entitled to seek immediately an injunction against such breach or further breach from any court of competent jurisdiction. The right to obtain such injunctive relief shall not limit the Disclosing Party's right to seek other remedies.

**1.7 Obligation Survives Agreement.** Each Party's nondisclosure obligations under this AGREEMENT shall survive for five (5) years after termination or expiration of the AGREEMENT.

## **2.0 TERMINATION OR EXPIRATION**

Upon the termination or expiration of this AGREEMENT or upon request by the Disclosing Party, the Receiving Party shall cease all use of the Proprietary Information and, at the request of the Disclosing Party, return or destroy Proprietary Information and any copies thereof, as may be directed by the Disclosing Party.

## **3.0 REMEDIES.**

All remedies available to either Party for breach of this AGREEMENT by the other Party are and shall be deemed cumulative and may be exercised separately or concurrently. The exercise of a remedy shall not be an election of such remedy to the exclusion of other remedies available at law or in equity.

## **4.0 ASSIGNMENT**

Neither Party shall assign or otherwise transfer this AGREEMENT, or any right or obligation under this AGREEMENT, without the prior written consent of the other Party. The obligations of either party hereunder shall not terminate upon any assignment attempted without such prior written consent.

## **5.0 WAIVER**

Any delay or failure by either Party to insist upon strict performance of any obligation hereunder, or exercise any right or remedy provided hereunder, shall not be a waiver of such Party's right to demand strict compliance in the future, irrespective of the length of time for which such delay or failure continues. No term or condition of this AGREEMENT shall be waived and no breach excused unless such waiver or excuse of a breach has been put in writing and signed by the Party claimed to have waived or excused. No consent or waiver to or of any right, remedy or breach shall constitute a consent or waiver to or of any other right, remedy or breach in the performance of the same or any other obligation hereunder.

## **6.0 INDEPENDENT PARTIES**

This AGREEMENT shall not be construed to create, give effect to, or otherwise imply a joint venture, partnership, or business association of any kind. BGSU and [party's short name] are independent Parties and neither shall act as an agent for or partner of the other Party for any purpose. This AGREEMENT does not limit or restrain in any way either Party's right to execute similar agreements with other parties.

## **7.0 SEVERABILITY**

If any term or condition of this AGREEMENT shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this AGREEMENT shall not be affected thereby, and each remaining term or condition hereof shall be valid and enforced to the fullest extent permitted by law. In the event such determination prevents the accomplishment of the purpose of this AGREEMENT, the invalid provision shall be restated to conform with applicable law and to reflect as nearly as possible the original intention of the Parties.

## **8.0 HEADINGS**

The headings used in this AGREEMENT are merely for reference and impose no obligation nor have any substantive significance.

## **9.0 GOVERNING LAW AND VENUE**

This AGREEMENT shall be governed by, interpreted, construed and enforced in accordance with the laws of the State of Ohio without reference to its conflict of laws provisions or principles. Suit under this AGREEMENT shall only be brought in a court of competent jurisdiction in the State of Ohio.

**10.0 ENTIRE AGREEMENT**

This AGREEMENT constitutes the entire understanding and agreement between the Parties and shall supersede any prior agreement, written or oral, not incorporated herein. The terms and conditions of this AGREEMENT shall not be amended except by written agreement signed by both Parties.

**11.0 NO FOLLOW-ON RIGHTS**

No disclosure made pursuant to this AGREEMENT shall result in any obligation on the part of either Party to enter into any further agreement or discussion relating to the Project or any other matter.

**12.0 TERM**

This AGREEMENT shall expire on the [e.g. FIRST ANNUAL ANNIVERSARY] of the effective date, unless sooner terminated at the election of either Party upon the provision of 10 days written notification to the other Party. Notwithstanding the previous of the previous sentence, the obligations described in paragraph 1.7 shall survive the termination of this AGREEMENT.

**IN WITNESS WHEREOF**, BOWLING GREEN STATE UNIVERSITY and [party's legal name], intending to be legally bound thereby, hereby execute this CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT, in duplicate originals by their duly appointed representatives.

**BOWLING GREEN STATE UNIVERSITY**

**PARTY'S LEGAL NAME**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date