

MUTUAL NON-DISCLOSURE AGREEMENT

This non-disclosure agreement (“Agreement”) is between The University of Texas at San Antonio (“University”), an agency of the State of Texas and an academic component of The University of Texas System (“System”) having a business address at One UTSA Circle, San Antonio, Texas 78249, and [REDACTED] (“Company”), having a business address at [REDACTED]

RECITALS

- A. University and Company wish to exchange certain confidential and proprietary information (hereinafter collectively “Confidential Information”) pertaining to cybersecurity in manufacturing, cybersecurity protection, energy-efficient manufacturing processes, and related areas relevant to the Cybersecurity Manufacturing Innovation Institute. This exchange includes all communication of Information between the parties in any form whatsoever, including oral, written and machine readable form.
- B. University and Company wish to exchange the Confidential Information for the purpose of discussing collaborations pertaining to the Cybersecurity Manufacturing Innovation Institute (the “Purpose”).
- C. University and Company each are willing to disclose Confidential Information (as “Owning Party”) and receive Confidential Information (as “Receiving Party”) on the terms and conditions set forth herein.

TERMS AND CONDITIONS

Therefore, University and Company agree, as follows:

- 1. The Receiving Party will:
 - a. Not disclose Confidential Information of Owning Party to any other person;
 - b. Use at least the same degree of care to maintain the Confidential Information confidential as Receiving Party uses in maintaining as confidential its own confidential information, but always at least a reasonable degree of care;
 - c. Use the Confidential Information only for the above Purpose;
 - d. Restrict disclosure of the Confidential Information of Owning Party solely to those employees of Receiving Party having a need to know such Confidential Information in order to accomplish the Purpose;

- e. Advise each such employee, before he or she receives access to the Confidential Information, of the obligations of Receiving Party under this Agreement, and require each such employee to maintain those obligations.
 - f. Within fifteen (15) days following request of Owing Party, return to Owing Party all documentation, copies, notes, diagrams, computer memory media and other materials containing any portion of the Confidential Information, or confirm to Owing Party, in writing, the destruction of such materials, provided however, that Receiving Party may retain one copy of the Confidential Information in a secure manner solely for the purpose of monitoring compliance with this Agreement.
2. For cases whereby University is the Receiving Party, recipients of Confidential Information disclosed to University by Company for the purposes hereunder may include, but are not limited to, the individual person(s) identified under this Agreement as University Project Lead.
 3. This Agreement imposes no obligation on Receiving Party with respect to any portion of the Confidential Information received from Owing Party which:
 - a. was known to Receiving Party prior to disclosure by Owing Party;
 - b. is lawfully obtained by Receiving Party from a third party under no obligation of confidentiality;
 - c. is or becomes generally known or publicly available other than by unauthorized disclosure;
 - d. is independently developed by Receiving Party without reference to Confidential Information disclosed for the Purpose of this Agreement; or
 - e. is disclosed by Owing Party to a third party without a duty of confidentiality on the third party.
 - f. is required by law, court order, or regulation to be disclosed.

In the event that information is required by law, court order, or regulation to be disclosed, the party required to make disclosure shall notify the other to allow that party to assert whatever exclusions or exemptions may be available to it under such law, court order, or regulation.

4. This Agreement imposes no obligation on Receiving Party with respect to any portion of the Confidential Information unless such portion is:
 - a. disclosed in a written document or machine readable media marked "CONFIDENTIAL", "PROPRIETARY" or equivalent at the time of disclosure; or
 - b. disclosed in any other manner and summarized in a memorandum delivered to Receiving Party within thirty (30) days of the disclosure.
5. The Confidential Information shall remain the sole property of Owing Party.

6. NEITHER PARTY MAKES ANY REPRESENTATION WITH RESPECT TO ITS CONFIDENTIAL INFORMATION AND DOES NOT WARRANT ANY CONFIDENTIAL INFORMATION PROVIDED UNDER THIS AGREEMENT, BUT SHALL FURNISH SUCH IN GOOD FAITH. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED WITH RESPECT TO THE CONFIDENTIAL INFORMATION WHICH MAY BE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM RECEIPT OR USE OF THE CONFIDENTIAL INFORMATION BY THE RECEIVING PARTY.
7. In the event of a breach or threatened breach or intended breach of this Agreement by either party, the other party, in addition to any other rights and remedies available to it at law or in equity, shall be entitled to seek preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach.
8. It is understood that both parties are subject to U.S. laws and regulations controlling the export of certain items, commodities, defense articles, Confidential Information, proprietary technical data or source code, collectively hereafter referred to as "Items." Each party is obligated to comply with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Act of 1979). Prior to providing any Items which are subject to U.S. export laws and regulations, and prior to furnishing any Items where oral instruction or inspection may disclose technical data subject to such export controls, the disclosing party shall notify receiving party's export control officer in writing of the Items and applicable export controls. Receiving party shall have the right to decline or limit the receipt of such Items, and any task requiring receipt of such Items. The transfer of Items may require a license from the cognizant agency of the U.S. government. The parties agree to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement.
9. The validity, construction, and performance of this Agreement are governed by the laws of the State of Texas, and suit may be brought in Texas to enforce the terms of this Agreement.
10. The rights and obligations of the parties under this Agreement may not be sold, assigned or otherwise transferred.
11. This Agreement is binding upon both parties and upon the directors, officers, employees and agents of each. This Agreement is effective as of January 21, 2021 and will continue for a period of one (1) year, unless terminated on thirty (30) days written notice by either party. However, Receiving Party's obligations of confidentiality and restrictions on use of the Confidential Information disclosed by Owning Party shall survive termination of this Agreement for an additional period of three (3) years.

University and Company do hereby accept and are duly bound to uphold the terms of this Agreement upon signature below by their respective authorized representatives.

**THE UNIVERSITY OF TEXAS
AT SAN ANTONIO**

COMPANY

By: _____

By: _____

Name: Jessica C. Fernandez

Name:

Title: Sr. Director for Contracts &
Industry

Title:

Agreements

Date: _____

Date: _____

UTSA Project Lead

I have read this Agreement and understand my obligations hereunder.

By: _____

Howard Grimes, Ph.D.

Associate Vice President and Associate Vice Provost for Institutional Initiatives

Date: _____