**MUTUAL NONDISCLOSURE AGREEMENT**

This Nondisclosure Agreement (this “Agreement”), effective as of the date of the last signature hereto, is made by and between:

Woods Hole Oceanographic Institution (“WHOI”), a Massachusetts nonprofit corporation having a principal place of business at 266 Woods Hole Road, Woods Hole, MA 02543, and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“*[XYZ-insert defined term to identify this party]*”), a *[state/country of organization] [type of entity]* having a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

WHEREAS WHOI and XYZ wish to exchange certain information for the purpose of *[describe the purpose for which the information is being exchanged]* (the “Permitted Purpose”) and each party regards certain parts of the information it possesses to be secret and desires to protect those parts from unauthorized disclosure or use; and

WHEREAS each of WHOI and XYZ is willing to disclose or otherwise make available (as “Disclosing Party”) certain of its Confidential Information (as defined below) to the other party (as “Receiving Party”) and is willing to receive Confidential Information on the terms and conditions set forth herein;

THEREFORE, WHOI and XYZ agree as follows:

1. As used in this Agreement, “Affiliate(s)” shall mean any company that, directly or indirectly, controls or is controlled by or is under common control with a party hereto, with “control” referring to the means to direct more than fifty (50) percent of the voting equity in a company.
2. “Confidential Information” shall mean any information or data of Disclosing Party, regardless of whether it is in tangible form, that (a) Disclosing Party has marked or identified as confidential or proprietary, (b) Disclosing Party identifies as confidential in writing within thirty (30) days of disclosure to Receiving Party, or (c) a person would reasonably believe, given the nature of the information or data and the nature of Disclosing Party’s business and operations, to be viewed as confidential or proprietary by Disclosing Party; provided, however, that reports and/or information related to or regarding Disclosing Party’s research projects, research and business plans, research and business methodologies, strategies, technology, specifications, development plans, customers, prospective customers, partners, suppliers, billing records, and products or servicesshall be deemed the Confidential Information of Disclosing Party even if not so marked or identified.
3. “Intellectual Property Rights” shall mean, collectively, all rights in, to, and under patents, trade secrets, copyrights and similar rights of any type under the laws of any governmental authority, including, without limitation, all applications and registrations relating to the Permitted Purpose.
4. Receiving Party will not disclose the Confidential Information to any third party and will only disclose the Confidential Information to Receiving Party’s employees, agents or Affiliates who need to know such Confidential Information for the Permitted Purpose. Receiving Party will use Confidential Information only for the Permitted Purpose. Receiving Party shall not reverse engineer any Confidential Information for any purpose. Receiving Party will not use Confidential Information in violation of applicable law.

1. Prior to the disclosure of any Confidential Information to one of Receiving Party’s employees, agents, or Affiliates, Receiving Party will require such employees, agents or Affiliates to agree to keep the Confidential Information confidential and be bound by the terms of this Agreement applicable to Receiving Party. Receiving Party shall ensure that Confidential Information is not used or disclosed by such employees, agents, or Affiliates except as permitted by this Agreement, and shall be responsible for any unauthorized use or disclosure of Confidential Information by such employees, agents or Affiliates. Without limiting any of the foregoing, Receiving Party shall use the same standard of care for protecting Confidential Information that Receiving Party uses to prevent disclosure, publication or dissemination of its own most valuable confidential or proprietary information, but always at least a reasonable degree of care.
2. The obligations of confidentiality and nonuse in Sections 4 and 5 shall not apply to any portion of Confidential Information that Receiving Party can demonstrate (a) is, at the date of disclosure, or thereafter becomes, known by or available to the general public other than through the act or default of Receiving Party, its employees, or agents or Affiliates; (b) is obtained by Receiving Party from a third party who is lawfully in possession of such information and not under any obligation of confidentiality; (c) was known to Receiving Party prior to disclosure by Disclosing Party without being obtained or derived directly or indirectly from Disclosing Party; (d) is developed independently by Receiving Party without the use of, or reference to, any Confidential Information.
3. In the event that Receiving Party is required by law to make any disclosure of Confidential Information by subpoena, judicial or administrative order or otherwise, Receiving Party shall first give written notice of such requirement to Disclosing Party, permit Disclosing Party to intervene in any relevant proceedings to protect its interests in the Confidential Information, and provide full cooperation and assistance to Disclosing Party in seeking to obtain such protection (subject to Disclosing Party’s reimbursement of Receiving Party’s reasonable out-of-pocket expenses in providing such cooperation and assistance). The Confidential Information that is disclosed pursuant to this paragraph shall remain confidential for all other purposes.
4. Receiving Party will provide upon Disclosing Party’s request a certification that access and use of Confidential Information is being controlled by Receiving Party in accordance with this Agreement.
5. Confidential Information and Intellectual Property Rights shall remain the sole property of Disclosing Party. The execution of this Agreement and the disclosure of any information hereunder, including, but not limited to, Confidential Information and Intellectual Property Rights, shall neither be construed as an actual or proposed license (except the use for the Permitted Purpose subject to the terms herein), sale or transfer by Disclosing Party of any right, title or interest in the Confidential Information or Intellectual Property Rights or as a restriction on Disclosing Party's ability to disclose, license, sell or transfer the Confidential Information or Intellectual Property Rights to a third party.
6. Upon the earlier of (a) the termination of this Agreement, (b) thirty (30) days following a written request by Disclosing Party, or (c), such time as Receiving Party no longer requires Confidential Information for the Permitted Purpose, (i) all Confidential Information in tangible form including copies thereof, and all unused samples, except for Confidential Information included in or consisting of documents, notes and other summaries prepared by or for Receiving Party, shall be promptly delivered to Disclosing Party, (ii) all electronic copies of Confidential Information and any electronic documents, notes and other summaries prepared by or for Receiving Party (including copies

thereof) that include Confidential Information shall be destroyed, and (iii) Receiving Party will deliver a written certification to Disclosing Party that it has complied with this Section 10.

1. Disclosing Party does not make any representation or warranty, express or implied, as to the accuracy or completeness of any of its Confidential Information. Any information exchanged under this agreement is provided “as is.” Receiving Party agrees that neither Disclosing Party, nor its employees, agents, or Affiliates shall have any liability whatsoever to Receiving Party arising from receipt or use of Confidential Information.
2. Failure or delay in exercising any right or remedy hereunder shall not impair such right or remedy or be construed as a waiver thereof or as acquiescence in a breach of this Agreement. Any single or partial exercise of any right or remedy shall not preclude any other or further exercise of any other right or remedy under this Agreement or applicable law.
3. Receiving Party shall not remove, overprint or deface any notice of confidentiality, copyright, trademark, logo, legend or other notices of ownership or confidentiality from any originals or copies of Confidential Information.
4. This Agreement imposes no obligations on either party to disclose any Confidential Information and does not impose any obligation on either party to purchase, sell, license, transfer or otherwise transact in any technology, services or products.
5. Confidential Information disclosed under this Agreement may be subject to export controls under the laws of the United States. Each party will comply with such laws and shall not export, re-export or transfer Confidential Information without first obtaining all required United States authorizations or licenses.
6. Receiving Party acknowledges that a breach by it of any of the terms of this Agreement would cause irreparable harm to Disclosing Party for which Disclosing Party could not be adequately compensated by money damages. Accordingly, Receiving Party agrees that, in addition to all other remedies available to Disclosing Party in an action at law, in the event of any breach or threatened breach by Receiving Party of the terms of this Agreement, Disclosing Party shall be entitled to seek temporary and permanent injunctive relief, including, but not limited to, specific performance of the terms of this Agreement without the necessity of posting any bond or other security or of pleading or proving irreparable harm or the inadequacy of money damages, and Receiving Party shall take no action in such proceeding, including interposing defenses, contrary to such rights of Disclosing Party.
7. This Agreement constitutes the entire Agreement of the parties hereto relating to the treatment of Confidential Information and supersedes any and all prior agreements between the parties relating thereto. No change, modification or amendment to this Agreement shall be effective unless it is agreed upon in writing signed by both parties. Any waiver of any provision of this Agreement shall not be effective unless made in writing. Any such waiver shall be effective only in the specific instance and for the purpose given.
8. This Agreement shall terminate thirty (30) days after one of the Parties provides written notice of termination to the other Party, or two (2) years from the Effective Date, whichever occurs first. The obligations of Receiving Party with regard to the disclosure, use and protection of Confidential Information will survive termination or expiration of this Agreement (i) as long as such Confidential Information remains not known by or available to the general public with regard to Confidential

Information that Disclosing Party identifies as a trade secret or Confidential Information that describes a process or business practice of Disclosing Party and has economic value to Disclosing Party because it is not generally known or easily discoverable by observation; and (ii) for a period of six (6) years from the date of disclosure of the applicable Confidential Information with regard to all other Confidential Information.

1. The rights and obligations under this Agreement may not be sold, assigned or otherwise transferred, provided that Disclosing Party may enforce the terms of this Agreement for the benefit of any third party to which Disclosing Party licenses, sells or transfers the Confidential Information.
2. This Agreement does not create any agency or partnership relationship between the parties hereto.
3. All disputes, claims or controversies arising out of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to its rules of conflict of laws. Each party hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the state and federal courts of the Commonwealth of Massachusetts (the “Massachusetts Courts”) for any litigation among the parties hereto arising out of or relating to this Agreement, waives any objection to the laying of venue of any such litigation in the Massachusetts Courts and agrees not to plead or claim in any Massachusetts Court that such litigation brought therein has been brought in an inconvenient forum.
4. If and to the extent any provision of this Agreement is held invalid, illegal or unenforceable at law by a court of competent jurisdiction, such provision will be stricken for the Agreement and the remainder of the Agreement will continue in effect and be valid and enforceable to the fullest extent permitted by law.
5. **Designated Representatives**. The primary points of contact for the transmittal of Confidential Information, notices, and authorizations under this Agreement are as follows:
	1. All Confidential Information shall be furnished only to the following individual employee(s) designated by each Party who is (are) responsible for further disseminating the Confidential Information only to persons expressly permitted to receive it pursuant to the terms hereof. All notices and authorizations under this Agreement shall be furnished only to the following individuals:

|  |  |
| --- | --- |
| **Woods Hole Oceanographic Institution** | **[Full name of other entity]** |
| **Name**: **Title**: **Email**: **Telephone**:**Address**:  | **Name:** **Title:****Email:** **Telephone:** **Address:**  |

1. Either Party may re-designate its respective designated representative(s) by written or electronic notice to the other Party.

In witness whereof, the parties hereto have caused this Agreement to be executed in their respective capacities as indicated below effective on the earlier of (i) the last date executed below and (ii) Disclosing Party providing any Confidential Information as contemplated hereunder to Receiving Party.

|  |  |
| --- | --- |
| **Woods Hole Oceanographic Institution****By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **Name:** **Title:** **Date:** | **[Full Entity Legal Name]****By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** **Name:** **Title:** **Date:** |