# CONFIDENTIAL Disclosure Agreement

 **THIS CONFIDENTIAL DISCLOSURE AGREEMENT** (this “**Agreement**”) is entered into as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (the “Effective Date”) by and between Trustees of Dartmouth College., (hereinafter referred to as "**Dartmouth**") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,an individual with an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "**Receiving Party**").

**1. Background.** Receiving Party has requested that Dartmouth disclose to Receiving Party certain information for the sole purpose of enabling the parties to mutually evaluate the possibility of entering into a business relationship with respect thereto (the “Purpose”).

**2. Definition.** "Confidential Information" means (a) any scientific, technical, trade or business information disclosed by or on behalf of Dartmouth or any of its employees, researchers or students to Receiving Party, whether in oral, written, graphic or machine-readable form, which (x) if in tangible form, is clearly designated as confidential or proprietary at the time of disclosure, (y) if in non-tangible form, is identified as confidential or proprietary at the time of disclosure or (z) that the Receiving Party knows or reasonably should know is confidential information of Dartmouth; and (b) the fact that the parties are engaged in discussions regarding the Purpose. Confidential Information shall not include information that (i) was known to the Receiving Party at the time it was disclosed, other than by previous disclosure by or on behalf of Dartmouth or any of its employees, researchers or students, as evidenced by Receiving Party**’**s written records at the time of disclosure; (ii) is at the time of disclosure or later becomes publicly known under circumstances involving no breach of this Agreement; (iii) is lawfully and in good faith made available to Receiving Party by a third party who is not subject to obligations of confidentiality to Dartmouth with respect to such information; or (iv) is independently developed by Receiving Party without the use of or reference to the Confidential Information, as demonstrated by documentary evidence.

**3.** **Nondisclosure of Confidential Information.** Without Dartmouth’s express written consent, Receiving Party shall not directly or indirectly publish, disseminate or otherwise disclose, deliver or make available to any person outside its organization any of the Confidential Information. Receiving Party may disclose the Confidential Information to persons within its organization who have a need to receive such Confidential Information in order to further the Purpose and who are legally bound to protect the Confidential Information by agreements which impose confidentiality and non-use obligations comparable to those set forth in this Agreement.

**4. Limitation on Use of Confidential Information.** Without Dartmouth’s prior written consent, Receiving Party shall not use the Confidential Information for any purpose, other than the Purpose.

**5. Ownership.** Confidential Information is and shall remain the sole property of Dartmouth. Nothing contained in this Agreement shall be construed, either expressly or implicitly, to grant to the Receiving Party any rights by license or otherwise in any Confidential Information or to any patent, copyright, trademark or other intellectual property right related thereto. Receiving Party shall not reverse engineer, disassemble, decompile or design around Dartmouth’s Confidential Information.

**6. Disclaimer.** Dartmouth makes no representation or warranty as to accuracy, completeness, condition, suitability, or performance of the Confidential Information, and Dartmouth shall have no liability whatsoever to Receiving Party resulting from its use of the Confidential Information.

**7. Protection of Confidential Information**. Receiving Party agrees to use the same standard of care in protecting the Confidential Information of Dartmouth as it uses to protect its own confidential and proprietary information, but in no case less than a commercially reasonable degree of care.

**8. Remedies**. Receiving Party agrees that Dartmouth’s Confidential Information is of a special and unique kind, the protection of which is essential to its operation. Receiving Party agrees that if there is a breach by Receiving Party of its obligations under this Agreement, Dartmouth could have no adequate remedy at law. Therefore, in addition to any other remedies which may be available at law, Receiving Party agrees that Dartmouth shall be entitled to injunctive relief, specific performance or other equitable relief or any or all of the foregoing, for any breach or threatened breach of this Agreement without the necessity of proving damages and without waiving any other remedies otherwise available at law or in equity.

**9. Termination; Return of Confidential Information.** Either party may terminate this Agreement upon thirty (30) days prior written notice; however, (i) Receiving Party’s non-disclosure and non-use obligations under this Agreement shall not expire until five (5) years from the last date of disclosure of any Confidential Information and (ii) the provisions of Section 8 (Remedies) and all rights of Dartmouth against Receiving Party shall survive indefinitely, notwithstanding any termination of this Agreement or expiration of confidentiality obligations. Upon termination of this Agreement, or sooner upon Dartmouth’s request, Receiving Party shall promptly return to Dartmouth all Confidential Information and return or destroy all copies, summaries, synopses or abstracts of the Confidential Information in its possession (whether in written, graphic or machine-readable form).

**10. Miscellaneous.**  This Agreement may not be assigned or transferred by Receiving Party without Dartmouth’ prior written consent. This Agreement shall be governed by and construed in accordance with the laws of New Hampshire, without regard to any choice of law principle that would dictate the application of the law of another jurisdiction, and sole jurisdiction is granted to the competent court in New Hampshire. If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect, it shall be ineffective to the extent of such invalidity, illegality or unenforceability, and the validity, legality and enforceability of the remaining provisions contained in this Agreement shall remain in effect. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together shall constitute one and the same instrument. An executed copy of this Agreement that is delivered by facsimile or other electronic means shall be sufficient to show execution and delivery thereof. This Agreement embodies the entire agreement between the parties concerning the subject matter of this Agreement, and may be amended only by a written document signed by authorized signatories of the parties. No waiver of any provision of this Agreement shall be valid or binding unless set forth in writing and duly executed by the party against which enforcement of the waiver is sought. No failure by a party to exercise, and no delay by a party in exercising, any right hereunder will operate as a waiver of such right, nor will any single or partial exercise by a party of any right hereunder preclude any future exercise of that right, or any other right, by that party.

[Signature Page Follows]

In witness whereof, the parties have executed this Agreement as of the date set forth above.

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| **TRUSTEES OF DARTMOUTH COLLEGE**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: Nila BhakuniTitle: Director, Technology Transfer | [insert Receiving Party’s name] By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |