

VOLUME ONE

**UNIVERSITIES
AND INSTITUTIONS
WORKING WITH INDUSTRY:

PRINCIPLES AND PRACTICES
FOR BASIC AGREEMENT**

**Michigan Universities Commercialization Initiative
May 2002**

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through the Michigan Life Sciences Corridor*



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INTRODUCTION

The *Intellectual Property Commercialization Committee (IPCC)*, composed of senior professional staff with the responsibility and expertise for implementing the transfer of technology, is the governing body of the *Michigan Universities Commercialization Initiative (MUCI)*.

The intent of this initiative is to enhance the existing technology transfer functions at Michigan's research institutions in the life sciences arena with focus on improving outcomes in economic development, especially in the area of small business creation.

Activities of the IPCC under this initiative are aimed at ensuring *Michigan Life Sciences Corridor (MLSC)* funded projects achieve commercialization potential and serving as a driving force in the creation of the new businesses in Michigan.

Major goals of MUCI include the following:

- facilitating and expediting management of intellectual property derived from Michigan's major research institutions
- identifying and performing joint activities to disseminate information in the field of technology transfer
- facilitating the development of performance indicators related to technology transfer and of mechanisms to report these data.

This document is intended to provide guidance to research institutes in the State of Michigan in the areas of technology transfer and industry research and to inform the business community about how research institutions approach the commercialization of technology.

In order to expedite the transfer of IP derived from research institutions, it is helpful to suggest common approaches to IP management and to develop common agreements as appropriate. The intent of these lists of principles and "template" agreements is to assist with all levels of research institution-industry interaction as well as institution-institution collaborations.

COMMITTEE
MEMBERS

INTELLECTUAL PROPERTY COMMERCIALIZATION COMMITTEE MEMBERS

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GRANTS AND CONTRACTS

Important distinctions must be recognized between grants and contracts—the two principal forms of contractual instruments used in agreements with industrial sponsors.

1. A *grant* is an award of funds by a sponsor to achieve some general or specific purpose. The nature of the relationship between the sponsor and the awardee has not explicitly been defined by law. While a grant is not as exacting in its provisions as a contract, it should be treated with the same respect. A grant from a federal sponsor generally is construed to allow greater discretion than a contract in the conduct of the research and to provide less specificity in the definition of the intended outcome of the research. This greater flexibility often is not as evident in research grants from industrial sponsors.
2. A *contract* involves a promise, or set of promises, the performance of which is recognized in law as a duty and obligation and for breach of which the law provides remedies. Each contract document contains a statement of work or a description of the services to be provided. This work statement should be drafted with great care. Failure by the Institution/contractor to deliver the results anticipated or to perform the work defined in the statement of work is a breach of contract.

Every grant proposal or contract application (including subcontracts to be issued to the Institution) must be submitted for prior approval through the appropriate Institution channels before being sent to the proposed sponsor. Agreement formats and requests for proposals (RFP) or quotations (RFQ) offered by industrial sponsors may contain provisions that are inconsistent with the policies of the Institution or those of the State of Michigan.

It is essential, therefore, that any proposed agreement be reviewed prior to acceptance or initiation of work thereunder. Documents that contractually bind the Institution can be signed only by a Institution official authorized to do so.

Faculty members are not authorized to negotiate general terms and conditions of agreements with industry sponsors, but should refer such contract negotiations to the appropriate administrative office. Negotiations regarding the technical statement of work will be carried out by the faculty member, subject to general policies and procedures of the Institution.

GENERAL OPERATING POLICIES

Several general policies regarding institution-industry agreements are outlined below. Any situation that appears to deviate from these policies should be brought to the attention of the appropriate administrative office prior to any agreement to or implementation of the deviation.

1. *Proposal*: A *proposal* is any oral or written presentation to a potential industrial or commercial sponsor that provides cost estimates. All proposals require review and coordination through appropriate Institution administrative offices prior to presentation to the sponsor.
2. *Funding*: Industrial sponsors are expected to pay the appropriate direct costs associated with their sponsored efforts. Employee benefits will be charged at estimated or actual cost. Unless otherwise authorized by the appropriate Institution official, full indirect costs must be recovered at the rate established by the Institution for industry-sponsored grants and contracts.
3. *Expenditure of Funds*: Funds from an industrial sponsor are under the control of the Project Director identified by the sponsor and must be expended for their intended purpose, as delineated in the award document or proposal. A sponsored project account will be established in the Institution accounting system for this purpose.
4. Any written agreement committing the Institution to the performance of a sponsored project forms a *contractual relationship*. All agreements (grants, contracts, subcontracts, cooperative agreements, letters of commitment) require review by the appropriate Institution offices and must be signed by a Institution official who has been delegated signatory authority.
5. *Reporting*: The Project Director is responsible for providing progress reports to the sponsor in accordance with terms of the agreement or, if reporting requirements are not explicitly stipulated, on a reasonable basis.
6. *Institution Name*: All agreements will require that the sponsor obtain written permission from the Institution prior to using the Institution name or trademarks in any advertising or public statement.
7. *Publication or Other Disclosure*: The Institution will not accept any sponsored program which denies the Institution the right to divulge the source of support or to publish or disclose in some other manner the results of the research. However, the Institution may agree to a) exclude sponsor-provided privileged information from such publication or such other disclosure; b) submit the proposed publication or the proposed other such disclosure to the sponsor for review prior to publication; c) delay publication or other such disclosure for a reasonable period of time (e.g., 60 days) to permit the preparation and filing of patent applications.

8. Products of a sponsor may be used in a test program if requested by the sponsor.
9. *Confidentiality:* Privileged information, specifically identified as such by the sponsor, may be received under promise of confidentiality for a prescribed period of time. Each Institution employee undertakes this responsibility as a part of the employment agreement. The safeguarding of such information is primarily the responsibility of the Project Director. However, agreements for exchange of confidential information (nondisclosure or secrecy agreements) which involve Institution personnel, acting within the scope of their employment, must be signed by an authorized Institution official.
10. *Title/Patents:* Provisions regarding access to and ownership of any intellectual property that may result from the research may be included in the agreement entered into by the Institution and the sponsor. As a general rule, title to all technology developed through a sponsored effort will remain with the Institution. The sponsor may be granted certain rights to pursue the further development and commercialization of any intellectual property that may arise during the performance of the sponsored project under agreement. Alternatively, the sponsor may be granted a nonexclusive license for the use of such intellectual property. In the event the sponsor obtains a profit from permitting use of the technology outside of the sponsor's organization, the Institution expects to receive a reasonable royalty. The Institution will negotiate specific license terms and conditions with the sponsor upon disclosure of any intellectual property to the sponsor. Provisions regarding the intellectual property rights of the sponsor generally will not be included in grant agreements.

In the event the sponsor obtains a profit from commercial use of the technology, the Institution expects to receive a reasonable royalty. The Institution will negotiate specific license terms and conditions with the sponsor upon disclosure of any intellectual property to the sponsor. Provisions regarding licensing terms for the intellectual property rights of the sponsor generally will not be included in grant agreements.

Special care must be exercised in the negotiation and acceptance of research agreements with industry. There are relatively few "standard" provisions for such agreements; the approach of each sponsor to conducting business with the Institution is often different (even among units of the same corporation). The motivation to sponsor research often is to attain commercial benefits, and therefore, the sponsor may want to exert more control over the way the research effort is conducted and the manner in which the results are utilized. The motivation to sponsor research often is to attain commercial benefits, and therefore, the sponsor may seek to exert more control over the way the research effort is conducted and the manner in which the results are utilized.

RESEARCH
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INDUSTRIAL AFFILIATES

Programs for industrial affiliates can be established to gain support from business and industry for broadly defined research or other programs of interest to the member organizations. In addition to research affiliations, members may also be involved in an advisory capacity and interact with senior faculty and leadership of the unit.

The development of industrial affiliate or partnership programs, sustained, in part, by corporate membership fees, is a potential area of support that remains largely untapped by some units. Membership offers the opportunity to view in some various aspects of a designated area of research and may include access to reports and technical papers; contact with faculty, technical staff, and graduate students who have relevant research experience; and exposure to a broader area of research than would be possible with individual funding. These programs can provide a strong base for an industrial partnership which may lead to gifts, grants, or more specific contracts for sponsored projects, expanding upon particular aspects of the program which are of interest to individual members.

While these affiliate programs are beneficial to the Institution, it should be recognized that special care must be exercised in the formulation, negotiation, and approval of affiliate/partnership agreements. A number of factors must be considered up front in this process, including the motivation of industry partners, services to members, potential commercial benefits, the fee structure, control of the research effort, proprietary interests, and the manner in which the results are disseminated or utilized.

It is essential, therefore, that any proposed industrial affiliates or partnership program be reviewed prior to its initiation. Any substantive changes in the scope of the program should be discussed with representatives of the appropriate Institution office. Subsequent research projects of a more proprietary nature on behalf of an individual member of the affiliate program should be undertaken as a separate research agreement.

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RESEARCH CENTERS

The term “center” generally refers to a multi-disciplinary program of research that has specific, well-defined research objectives. It can also be defined by a particular sponsoring agency as in the case of the National Science Foundation Engineering Research Centers or the various centers funded by the National Institutes of Health. Funding for center activities may be provided by multiple sponsors, including a combination of public and private sponsors. Often the research objectives of the center meet broad pre-competitive needs of a variety of sponsors such as new methodologies for manufacturing or research into ergonomics. Sponsor contributions may include cash as well as in-kind contribution such as technical assistance, materials, equipment, and facilities. Operation of and decision making for the center may be governed by a set of bylaws that also describes the rights and obligations the center members. Negotiation of the terms of individual membership agreements is generally not necessary or appropriate.

The major disadvantage of centers is the effort required to put all of the pieces together. Depending on the contributions of the sponsors and the type of research being conducted, the definition of intellectual property rights could require significant effort. Provisions by sponsors of technical assistance, proprietary information, and materials may require license negotiations before the research efforts begin and may frustrate the “club” nature of a research center. The sharing of interests and the composite value of having various sponsors makes it necessary to provide a mechanism for sponsors and researchers to share thoughts and results, as well as to resolve potential disagreements about the research. Since the sponsoring organizations have different commercial interests and may not have interacted in business before, this approach may require them to establish new business relationships in order to maximize the benefits of the research involvement.

RESEARCH
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ROUTINE/COMMERCIAL TESTING

Research units/laboratories may receive requests from time to time from industry or other external groups to carry out certain testing activities (including serving as beta test sites) which often involve repetitive, quantitative measurements, the results of which are of primary interest to the sponsor or client and, in some cases, are only interpretable by the sponsor. Such routine tests or investigations for individuals, firms, corporations, or other organizations may be undertaken at the Institution under certain conditions.

Any agreement to provide such routine or commercial testing services, including purchase orders, constitutes a contract between the Institution and the recipient of the services. Such an agreement should be submitted for review and approval through the appropriate Institution channels to ensure that such activities are undertaken in compliance with Institution policy and procedures. In most instances, industry will expect to own all IP and control publications or disclosures regarding the activities.

PRINCIPLES OF LICENSING

When licensing technology to a third party, a number of general principles provide the framework for universities in their negotiation process. Many of these principles also apply to non-university research institutions:

1. *Universities are Non-Profit and Serve the Public*

Universities have three basic missions: education, research, and serving the public. It is important to recognize that the foremost objective for an institution in a licensing negotiation is to ensure that the university's technology reaches the marketplace in a timely manner for the benefit of the public. Achieving a fair return on the university's (and taxpayers) investment also is an important objective.

2. *Universities Own Their Technology*

The Bayh-Dole Act of 1980 provided universities the right to maintain ownership of inventions made by their employees using federal funds. The vast majority of universities also have policies providing for ownership of *all* inventions made by their employees except for a historical exclusion of works of authorship such as text books, music, and art. Generally universities will maintain ownership of technology (vs. assigning rights) and provide license rights (exclusive or non-exclusive) while controlling the protection and maintenance of patents or copyrights. This strategy ensures that the university maintains ownership of the technology should the license be terminated.

3. *Reimbursement of Patent Costs*

While universities often are willing to take the upfront financial risk to obtain patent or copyright protection for their technology, once a third party elects to commercialize the technology, especially under an exclusive license, it will be required take over the financial risk from the university. Typically the licensee reimburses the university for all its costs associated with the preparation, filing, prosecution and maintenance of the licensed patents.

4. *Obligations to the Government*

Government funding carries a number of obligations that must be met by the university. First, the university must report to the government all inventions, patent applications, and licenses of federally funded technologies. Patent applications and subsequent issued patents must recognize the government funding in writing. In addition, the university must give the federal government a royalty-free non-exclusive license to federally funded technologies for government purposes. This government license will be referred to in the company license.

5. *Diligence*

Because the university has as its overriding objective the commercialization of its technology, the license will provide for certain diligence milestones to be met by the licensee to ensure that the technology is being diligently developed and commercialized. For pharmaceuticals, these often are clinical trials milestones, for other products, diligence terms might include first prototype, first sale, etc. Sometimes diligence terms or milestone terms include financing milestones (typically with start-up companies) or issuance of first patent, etc.

6. *Fair Return*

A license agreement should provide for a fair return to the university if the product is successful in the marketplace. When the technology is licensed to a start-up company, most universities are willing to participate in the early risk by taking equity in lieu of cash payments. However, once the licensee is obtaining revenues on the product, the university will expect a portion of these revenues. Typically revenues back to the university are provided as royalties on sales. The negotiated percentage is generally based on a number of factors including: the relative profit margin for the particular product, investment required to commercialize the product, competing technologies, strength of patent and copyright protection, and type of license rights (non-exclusive vs. exclusive). Licenses may also provide for the university to receive other payments such as license fees, annual maintenance fees, and minimum royalties.

7. *Product Liability, Insurance, Indemnification, Warranties*

The licensee will indemnify the university, its employees, regents, trustees, etc. against all claims, proceedings, demands, and liabilities of any kind whatsoever. Universities may also require that the licensee obtain certain amounts of product liability insurance prior to commercial sale of a product. The university will not make any warranties as to the fitness, merchantability, validity of patent rights, etc. The licensee assumes all risk associated with the licensed technology.

8. *Other Terms*

A more detailed listing of general articles and terms in a license agreement can be found in the following section titled *General Terms in a License Agreement*.

GENERAL TERMS IN A LICENSE AGREEMENT

Licenses with Institutions generally will include the following sections:

1. *Definitions*

Of particular importance will be the definition of the technology being licensed and licensed products or processes. Additional definitions can include the field of use, territory, net sales, etc.

2. *Grant of License*

Exclusive vs. Non exclusive

Field of use (e.g., therapeutic only, veterinary only, etc.)

Territory (worldwide vs. US only, etc.)

Sublicense rights (e.g., can the licensee sublicense the technology)

Reservation to the Institution that it can use the technology for research and academic purposes

If relevant, reservation of rights to the government

3. *Consideration*

License fee

Reimbursement of past patent expenses

Royalty on sales by licensee and its sublicensee (most common, but some times a set royalty amount per product sold, etc.)

Percentage of non-royalty sublicense income (such as sublicense fees)

Minimum royalties or annual maintenance fees

Milestone/diligence payments

4. *Patent Prosecution and Payment*

Typically the Institution will control patent prosecution and provide the licensee the opportunity to make comments, decisions about the prosecution strategy, which countries to file in, etc. Likewise, usually the licensee reimburses the Institution for all its costs associated with preparing, filing, prosecuting, and maintaining licensed patents.

5. *Reporting*

Typically the Institution requires quarterly or annual reporting, such reports to include: royalties due, sublicense agreements and payments, other revenues, etc.

6. *Diligence or Milestone Terms*

The license will provide for certain diligence milestones to be met by the licensee to ensure that the technology is being diligently developed and commercialized. For pharmaceuticals, these often are clinical trials milestones; for other products diligence terms might include first prototype, first sale, etc. Sometimes diligence terms or milestone terms include financing milestones (typically with startup companies) or issuance of first patent, etc.

7. *Sublicense Provisions*

Licenses that provide for exclusive rights typically also provide for the licensee to sublicense the licensed technology to third parties. The Institution will require that all sublicense agreements contain some of the same language as the original license such as: use of the Institution name, disclaimer of warranties, maintenance of Institution rights, indemnification, product liability, confidentiality, and termination.

8. *Infringement*

Generally an exclusive licensee has the first right to enforce the licensed patents. The Institution can join the suit usually upon reimbursement of its expenses by the licensee. If the licensee elects not to pursue enforcement, the Institution may elect to. This section will also provide for distribution of any awarded damages between the licensee and the Institution, usually after expenses are paid.

9. *No Warranties; Limitation of Liability*

The Institution will not make any warranties as to the fitness, merchantability, validity of patent rights, etc. or that use of licensed technology will not infringe third party intellectual property rights. The licensee assumes all risk associated with the licensed technology.

10. *Indemnification*

The licensee will indemnify the Institution, its employees, regents, trustees, etc. against all claims, proceedings, demands, and liabilities of any kind whatsoever. Universities may also require that the licensee obtain certain amounts of product liability insurance prior to commercial sale of a product.

11. *Term and Termination*

This section provides for the term of the agreement (typically the life of the licensed patents or for other technologies a defined period of time) and for both parties to terminate the agreement. Generally the licensee can terminate the license by providing the Institution some period of advance notice, while the Institution can terminate for breach (e.g., non-payment of royalties, milestone payments or not meeting diligence requirements). Upon termination, typically sublicenses also terminate although sublicensees usually can obtain a direct license then with the Institution under substantially the same terms.

12. *Notices*

Includes a listing of contact information for both parties and form of communication (overnight mail, fax, etc.).

13. *Miscellaneous Provisions*

Other typical provisions in license agreements include:

- Provisions for Michigan law governing the agreement
- Agreement to mark products sold in the United States with all applicable United States patent numbers. For sales in other countries, an agreement to comply with the patent laws and practice of the country of manufacture or sale
- Prohibitions on using the university's name in any publicity or advertising without its written consent
- Agreement that the licensee will comply with all applicable laws and regulations including, for example, US law relating to the transfer and export of certain commodities and technical data
- Provision that the license may not be assigned without the written consent of the University
- Integration clause specifying that the written agreement supercedes all other agreements
- Clause providing that certain provisions of the agreement are severable if invalid or unenforceable without affecting the validity or enforceability of the remaining provisions
- Force majeure (acts or events beyond the reasonable control of either party, such as acts of god, acts of civil or military authority, civil disturbance, war, strikes, fires, power failures, natural catastrophes)
- No agency relationship

**CONSULTING AGREEMENTS BETWEEN FACULTY AND
COMPANIES: GUIDELINES AND PRINCIPLES**

Consulting by institution faculty can provide significant benefits to the faculty, the institution, and industry provided the activity is undertaken with care and attention to the consultant's existing commitments to the institution and his or her obligation to follow institution policies and procedures. Here are some suggested guidelines.

1. Companies that enter into private consulting agreements with institution faculty should be aware of the policies and procedures which govern such arrangements.
2. Consulting is a private matter so the consultant should seek independent legal advice, not rely on institution attorneys or administrators to guide him or her in deciding whether to enter into a consulting relationship.
3. Consultant is responsible for making sure the activity does not conflict with conflict of interest, conflict of commitment, and other relevant policies of the institution.
4. There should be no use of institution resources, other than those generally and freely available to the public, in the performance of the consulting responsibilities including use of funds, personnel, equipment, or facilities
5. Consulting arrangements must not be used to conduct what is essentially sponsored research
6. Consulting activities must not result in the transfer of institution intellectual property assets into the client company, i.e., the default is that inventions are the institution's and the consulting agreement should clearly distinguish instances where inventions are owned by the company.
7. In certain circumstances, in order to manage potential conflicts of interest, inventions made by the consultant should be owned by the institution and made available to the client company via an existing licensing agreement.

An example, from the point of view of a institution administrator, of an ideal consulting arrangement is this: the consultant is a tenured professor who retains an independent attorney to review the proposed consulting agreement which clearly identifies the subject matter of the project; the consultant spends no more than one day per week working for the company; the consultant performs the work at the company, using only his or her expertise; the consulting field is narrowly defined and the consulting services are clearly distinguishable from his or her academic research and duties and the consultant, therefore, can separate the work he/she is doing for each organization; and the consultant follows all applicable institution

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CONSULTING AGREEMENTS CONTINUED

policies and procedures relating to the outside activity, including submitting any required report to the appropriate university officials. Ideally, the client company retains no rights to inventions but in practice, this is difficult to negotiate. The consulting relationship does not restrict the consultant's future research at the university.

PRINCIPLES OF INTER-INSTITUTIONAL AGREEMENTS (IIA'S)

Purpose of an Inter-Institutional Agreement (IIA) is to avoid confusion and duplication of effort and to clarify interests of parties and specify how expenses and revenue will be distributed. IIA's help minimize future, inappropriate constraints on the research activities of the parties, address potential problems in advance, and ensure cooperation and minimize conflicts. IIA's also reduce risks for potential licensees by assuring that licensors (i.e., the co-owners of technology or patents) are not in conflict, help manage inventor relationships, help meet the requirements of certain research sponsors, and facilitate adherence to international patent law. Some principles of IIA's include the following.

- Define "Technology". IIA's are often done *after* an invention has been made (if done before, the IIA is basically a collaboration agreement).
- Inventions always jointly owned if jointly invented (i.e., ownership follows inventorship and inventorship is determined by patent law not negotiation).
- Agree on "Lead Institution" which will arrange for patenting and handle promotion, licensing negotiation, and agreement management. Both parties must agree on terms and sign license agreement. Identify patent counsel if known. Lead also distributes net revenue. Outline responsibilities of each party with respect to communication, consultation, and cooperation.
- Agree on sharing ratio, i.e., how and when will out-of-pocket legal and licensing expenses be allocated and reimbursed and the manner in which revenues will be shared. Usually same sharing ratio is applied to both expenses and revenues unless parties agree on an administrative fee for lead institution. Address how inventors and departments will be paid their share of royalties.
- Agree on opt-out options for both the agreement and expenses to be incurred. Provide for substitution of lead institution in some circumstances; provide for termination if warranted. Describe representations and warranties as appropriate.
- Delineate areas where parties can engage in independent research, e.g., whether or not improvements will be part of the agreement. Address limits of authority or agency representation of Lead Institution.

PRINCIPLES OF MATERIAL TRANSFER AGREEMENTS (MTA'S)

Purpose of a Material Transfer Agreement (MTA) is to protect the rights of the owner of patented or proprietary material when it is transferred to another party for an agreed-upon use; to outline the terms of understanding between the Provider and Recipient; and to remove unreasonable or undesirable risks for the Provider. Generally, the type of MTA should fit the situation and not impose unnecessary or excessive burdens on the Recipient, e.g., if the material has little commercial or strategic value or if there is low risk in its handling, the MTA can be simple and very short. MTA's involving materials developed with federal funding or to be used in research that is federally funded should be consistent with the NIH research tools guidelines which were published on December 23, 1999. Whenever possible, parties should use the Uniform Biological Materials Transfer Agreement or the Simple Letter Agreement. Basic principles are include the following.

- Define “Provider” and “Recipient”, the “Material” and amounts to be transferred; determine whether Material includes derivatives, unmodified derivatives, progeny, etc.
- Define the “Permitted Purpose”, i.e., what the Recipient can do with the material such as use in research, evaluation before licensing, etc.
- Describe the confidentiality, non-distribution, and use limitation obligations of the Recipient and any disclaimers by the Provider. Obligations placed on Recipients should be consistent with NIH guidelines.
- Outline the obligations and rights of the Recipient with respect to inventions, publication acknowledgments, use of derivative materials, sharing of results with other parties, indemnification of Provider, disposal or return of material.
- Define the time period of the agreement and how breaches will be handled and other standard legal terms.

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TEMPLATE: MULTI-PARTY CONFIDENTIAL DISCLOSURE AGREEMENT

1. The undersigned parties (herein “Party” or “Parties” as appropriate under the context) agree to the following conditions for the mutual disclosure and exchange of valuable confidential or proprietary materials and information (herein “Confidential Information”) relating to: _____ . The Confidential Information may include but is not limited to products, processes, techniques, know-how, trade secrets, scientific knowledge, materials, sequences, inventions, machines, data, formulas, samples, models, systems, networks, business plans, customer requirements, software, designs, drawings, schematics, sketches, photographs, digital outputs, specifications, documentation, reports, and/or studies of the originating Party.
2. In consideration for such disclosure, each receiving Party agrees neither to use the Confidential Information for any purpose other than evaluation nor to provide the Confidential Information to any third-party other than a signatory to this Agreement for a period of five (5) years from the date of receipt of the Confidential Information. Nothing herein shall grant or imply a license or right to use any Confidential Information, or any patents, copyrights, trademarks, and trade secrets of the disclosing Party, except to the extent necessary for the evaluation contemplated herein.
3. All Confidential Information provided in a tangible form will be marked as “Confidential.” A Party disclosing Confidential Information in verbal or other non-tangible form shall provide the other Parties written notice within thirty (30) days after each such communication identifying the confidential aspects of the disclosure.
4. Each receiving Party agrees to limit access to the other Parties’ Confidential Information only to its employees, students, research assistants, postdoctoral fellows, agents, vendors and consultants for whom such access is necessary, and only to the extent that such individuals have an obligation of confidentiality to said receiving Party. The Parties shall exercise reasonable care to prevent disclosure of the Confidential Information to any third party that is not bound by this Agreement.
5. Each receiving Party agrees to make its evaluation as promptly as possible and, upon request by the providing Party at any time, agrees to return any or all Confidential Information together with any and all copies thereof, with the exception of one copy of Confidential Information which may be held for archival purposes only.

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TEMPLATE CONTINUED

6. The secrecy and non-disclosure obligations of this Agreement do not apply to information that:
 - a) at the time of the disclosure was generally available to the public or thereafter has become generally available to the public through no breach of the Agreement by the receiving Party.
 - b) the receiving Party can show by written records was in its possession free of any existing obligation of confidentiality prior to the time of disclosure and was not acquired, directly or indirectly, from the disclosing Party.
 - c) the receiving Party can show by written records was discovered or developed independently, without use or knowledge of the Confidential Information.
 - d) The receiving Party can prove by written records was obtained from a third-party provided the third-party was under no obligation of confidentiality or secrecy to the originating Party.
7. Modifications, extensions, or amendments to this Agreement shall be made in writing and executed by all Parties to this Agreement. The Parties agree that any photocopied or electronically produced copy of this fully executed original Agreement shall have the same legal force and effect as a copy of the Agreement that has the original signatures.
8. This Agreement shall be executed by all Parties and shall be effective as of the date of last signing.

**Signature, Name, Title, Institution or Company, Address, and Date
Lines for Each Party**

Signature Lines for Each Party