

# National Institute of Standards and Technology

## RECEIPT OF PROPRIETARY INFORMATION BY NIST

**THIS NONDISCLOSURE AGREEMENT** is entered into as of \_\_\_\_\_ by the \_\_\_\_\_ which is the party disclosing proprietary information (“DISCLOSER”), and the National Institute of Standards and Technology, which is the party receiving proprietary information (“NIST”), in order to protect the proprietary information which is disclosed to NIST. The information to be disclosed is described as follows: (provide a brief non-proprietary description)

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### The Parties to this Agreement hereby agree as follows:

1. NIST’s representatives for receiving proprietary information are: \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_; NIST shall not disclose the proprietary information to any of its employees other than those who have a need to review it and which employees are legally obligated to honor the confidentiality provisions herein.
2. NIST shall keep the information confidential and shall use the proprietary information only for private experimental purposes or evaluation of the proprietary information. NIST shall not make any copies of the proprietary information except as necessary for its employees who are entitled to review it under Section 1 above. Any copies which are made shall be identified as belonging to Discloser and marked “confidential”.
3. To the extent permitted by law, NIST shall protect the disclosed proprietary information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the proprietary information as NIST uses to protect its own confidential information of a like nature.
4. *NIST shall only have a duty to protect proprietary information which is disclosed to it in writing and identified as “confidential” by Discloser, or, if disclosed orally or in any other manner, if Discloser provides NIST with a written memorandum summarizing and designating such information as “confidential” within thirty (30) days of the disclosure.*
5. This agreement controls only information which is disclosed to NIST between the effective date and \_\_\_\_\_.
6. NIST’s duties under Paragraphs 2 and 3 of the Agreement shall expire three (3) years after the information is received.

7. This Agreement imposes no obligation upon NIST with respect to information which (a) was in NIST's possession before receipt from Discloser; (b) is or becomes a matter of public knowledge through no fault of NIST; (c) is received by NIST from a third party without a duty of confidentiality; (d) is disclosed by Discloser to a third party without a duty of confidentiality on the third party; (e) is disclosed by NIST with Discloser's prior written approval or (f) is developed by NIST without reference to information disclosed hereunder.

8. These restrictions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 13526; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 *et seq.*) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive Order and listed statutes are incorporated into this Agreement and are controlling.

9. Nothing in this Agreement bars disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law

10. Discloser warrants that it has the right to make the disclosures under this Agreement.

11. Neither party acquires any intellectual property rights under this Agreement.

12. Neither party has an obligation under this Agreement to purchase, sell or license any service or item from the other party.

13. The parties do not intend that any agency or partnership relationship be created between them by this Agreement.

14. All additions or modifications to this Agreement must be in writing and signed by both parties.

15. This Agreement is made under and shall be governed by the laws of the United States as interpreted by the United States Court of Federal Claims in the District of Columbia.

16. This Agreement may be terminated immediately by either party upon delivery of written notice of termination to the other party. Such termination shall not affect NIST's duties with respect to proprietary information disclosed prior to termination.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first above written.

NIST Recipients' Signatures \_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

**National Institute of Standards  
and Technology**

\_\_\_\_\_  
(Please Specify Company)

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Laboratory Director

Title: \_\_\_\_\_

Address: NIST  
Building \_\_\_\_\_, Room \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: Division Chief

Address: NIST  
Building \_\_\_\_\_, Room \_\_\_\_\_

**ATTENTION TO ALL NIST PERSONNEL: This Nondisclosure Agreement Should be Executed in Duplicate. Please forward a Copy of the Executed Nondisclosure Agreement to the Office of the NIST Counsel, Administration Building, Stop 1052, Gaithersburg, MD 20899.**

