THIS NONDISCLOSURE AND INTELLECTUAL PROPERTY AGREEMENT ("Agreement") is dated and effective as of the effective date listed below ("Effective Date"), and is by and between California Polytechnic State University ("Cal Poly"), with a mailing address of 1 Grand Avenue, San Luis Obispo, CA 93407, and the other party listed in the signature party area below ("Sponsor").

1. PURPOSE: The Sponsor has agreed to participate in activities which support curricular projects, such as senior projects/class projects ("Class Projects") at Cal Poly. The Sponsor may elect to provide certain Confidential Information (as described below) in order to support research and analysis in the Class Projects ("Purpose"), which is conditioned upon the following:
   (A) Acceptance and acknowledgement of confidentiality obligations by Cal Poly, including all faculty, staff, and students who will utilize the Confidential Information (described below) for the Purpose; and
   (B) Assignment (by all of the persons described in 1(A), above) of all Intellectual Property (described below) which is derived from or based upon the Confidential Information (described below), subject to the research and publication rights set forth in this Agreement.

Faculty, staff, and students who agree to be bound by this Agreement (via a separate acceptance and acknowledgement, in substantially the form of Exhibit A attached hereto) shall have the obligations set forth herein. The Sponsor is not obligated to participate in Class Projects by virtue of this Agreement, and Cal Poly is not obligated to utilize Sponsor for Class Projects. In lieu of requiring faculty, staff, and students to sign Exhibit A, Cal Poly may assume these confidentiality obligations and notify affected individuals of their duties, and may impose the intellectual property obligations through the published Cal Poly Intellectual Property policy.

2. CONFIDENTIAL INFORMATION: "Confidential Information" means any information of Sponsor which is not in the public domain and is deemed confidential and proprietary to the Sponsor if it: (A) is clearly and conspicuously marked as "confidential" or "proprietary" at the time of initial disclosure; (B) is transmitted via electronic or hard copy cover letter or memorandum indicating that the contents are "confidential" or "proprietary:" (C) is orally identified as confidential at the time of disclosure and then subsequently summarized in written form in a clearly and conspicuously marked document and submitted to Cal Poly within twenty (20) days of the initial disclosure; or (D) relates in any way to Sponsor's business and should reasonably be considered confidential due to the content and the circumstances of disclosure. Confidential Information includes, but is not limited to methods, processes, designs, design strategies, diagrams, models, samples, specifications, business operations, business plans, practices and policies, financial information, methods of operation, sales and marketing programs, advertising strategies, customer, vendor, and supplier names, lists and contact information, cost information, marketing materials, ideas, know-how, techniques, trade secrets, documentation, formulas, systems, presentations, compilations, concepts, techniques, computer programs, finances, plans, contracts, business concepts, supplier information, business procedures and operations, apparatus, equipment, algorithms, software programs, software source documents, research plans and results, experimental work, development, design details and specifications and other technical information relating to current, future, and proposed products and services.

3. NONDISCLOSURE: A receiving party must protect Confidential Information by using the same degree of care, but no less than reasonable care, to prevent the unauthorized access, use, dissemination, or publication of Confidential Information as the receiving party uses to protect its own confidential information of like nature.

4. INFORMATION NOT COVERED: A receiving party has no obligation with respect to any information which: (A) was lawfully known by the receiving party before receipt of it from the Sponsor; (B) is or becomes generally known to the public through no wrongful act or omission of the receiving party; (C) is rightfully provided to the receiving party by a third party, without restriction on disclosure or use; (D) is independently developed by personnel of the receiving party, without breach of the obligations of confidentiality set forth in this Agreement; (E) is explicitly approved for release by written authorization of the Sponsor, but only to the extent of and subject to such conditions as may be imposed in such written authorization; or (F) is made available by the Sponsor to a third party, without restriction concerning use or disclosure and not in violation of any confidentiality agreement.

5. OWNERSHIP AND USE: All Confidential Information remains the property of the Sponsor. Receiving party must return or destroy all copies of Confidential Information to the Sponsor within twenty (20) days of request or, at the direction of, the Sponsor. Confidential Information may only be used by a receiving party for the Purpose set forth in this Agreement.

6. PERMITTED DISCLOSURE: No party will be liable for disclosure of Confidential Information to the extent made: (a) to comply with a valid Public Records Act request (as applicable to public entities); or (b) in response to a valid order of court or authorized government agency, provided that notice must first be given to the party owning the Confidential
Information, so a protective order, if appropriate, may be sought by the owner. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Agreement.

7. NO OTHER RIGHTS: A receiving party does not receive any right or license, express or implied, under any patents, copyrights, trade secrets, or other intellectual property rights of the Sponsor under this Agreement except the limited right to use the Confidential Information to carry out the stated Purpose during the term of this Agreement.

8. INTELLECTUAL PROPERTY RIGHTS. "Intellectual Property" means all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, trademarks, trade names, service marks, domain names, copyrightable works, know-how, trade secrets, computer software programs, and other intangible proprietary information.

(A) INTELLECTUAL PROPERTY WHICH CONTAINS CONFIDENTIAL INFORMATION. If any new Intellectual Property is created through the Purpose which contains Confidential Information ("Derivative Intellectual Property"), such Derivative Intellectual Property shall belong exclusively to, and is hereby assigned to, Sponsor; provided, however, that if the Confidential Information is extracted and eliminated therefrom, such new Intellectual Property shall be governed by subsection 8(B), below, and not deemed to constitute Derivative Intellectual Property. All persons involved with the development of such Derivative Intellectual Property shall execute any necessary and reasonably requested documents required under applicable law to evidence such assignment of Derivative Intellectual Property, at Sponsor's sole expense for the preparation and filing of such documents.

(B) INTELLECTUAL PROPERTY WHICH DOES NOT CONTAIN OR EMBODY CONFIDENTIAL INFORMATION. If any new Intellectual Property is created through the Purpose which does not contain Confidential Information ("Non-Derivative Intellectual Property"), such Non-Derivative Intellectual Property shall not be owned by or assigned to Sponsor, but shall instead be governed by Cal Poly's published intellectual property policy, with ownership by Cal Poly and/or the inventors/creators as governed by and implemented through such policy.

(C) RESEARCH RIGHTS. Notwithstanding the terms in Section 8(A), above, Sponsor hereby grants to Cal Poly a royalty free, worldwide, perpetual, irrevocable, non-exclusive license (without the right to sublicense) to utilize such Derivative Intellectual Property for research purposes.

(D) PUBLICATION RIGHTS. Sponsor acknowledges that copyrightable expressions arising from the Purpose and related to the use of the Confidential Information shall be the sole property of the author(s), and that Sponsor has no copyright interest in such expressions, provided that such expressions do not contain the Confidential Information. Sponsor acknowledges that this means that the copyright owners have a right to publish information and findings, including public dissemination. Notwithstanding the foregoing, and in order to protect Sponsor's Confidential Information, any author of a copyrightable expression shall, prior to publication or dissemination, provide Sponsor with a draft of such manuscript (or other form/format of copyrightable expression) and Sponsor shall have thirty (30) days in which to identify and object to Confidential Information which is embedded therein. If Sponsor does not respond within such time period, Sponsor shall be deemed to have consented to the contents of such manuscript. Students shall not be required to obtain consent of Sponsor for non-public project reports and papers to be handed in to faculty for academic evaluation and grading, provided that the faculty members receiving such materials have agreed to the terms of this Agreement.

9. TERM AND TERMINATION: This Agreement is effective as of the Effective Date and will continue for five (5) years from the Effective Date ("Term"), unless otherwise terminated earlier in accordance with the terms of this Agreement. Each party's respective obligations of nondisclosure and restricted use shall be in accordance with this Agreement, and will continue in effect for five (5) years following the last date of disclosure of any Confidential Information which occurs during the Term. The expiration of this time period shall not convey any ownership or other rights related to Confidential Information to the receiving party. The obligations in this Agreement which arose during its Term will survive the termination or expiration of the Term of this Agreement. Any party may terminate this Agreement upon thirty (30) days prior written notice to the other parties, or immediately, by written notice to the other parties for material breach of the terms of this Agreement.

10. WARRANTY DISCLAIMER: CONFIDENTIAL INFORMATION IS PROVIDED “AS IS.” THE SPONSOR MAKES NO WARRANTIES WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SUFFICIENCY, ACCURACY OR COMPLETENESS OF THE INFORMATION DISCLOSED FOR ANY PURPOSE, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

11. MUTUAL DISCLAIMERS: No other existing agreement between the parties, if any, is modified or terminated by this Agreement. No party has an obligation under this Agreement to purchase any product or service from the other party.
12. **EQUITABLE RELIEF:** Each party acknowledges that its breach of this Agreement may result in immediate and irreparable harm to the Sponsor, for which there may be no adequate remedy at law, and the Sponsor may seek equitable relief (e.g. injunction) to compel the receiving party to cease and desist all unauthorized use and disclosure of the Sponsor's Confidential Information.

13. **GOVERNING LAW/VENUE:** This Agreement is governed by the law of the State of California, United States of America. This Agreement shall be enforceable against the parties in the courts of the United States of America and of the State of California. Each party hereby irrevocably submits to the exclusive jurisdiction (including personal jurisdiction) of such courts located within the State of California, and agrees that all claims in respect of this Agreement may be heard and determined in any such courts.

14. **EXPORT REGULATION:** No party may export any technical Confidential Information acquired under this Agreement to any country to which the United States government forbids export or, at the time of export, requires an export license or approval, without first obtaining the required license or approval. Receiving party will be responsible for obtaining any export license or approval as necessary for the use and disclosure of Confidential Information under this Agreement.

15. **PUBLICITY:** The specific terms of this Agreement, including the Purpose, and the parties’ disclosures and activities in connection with this Agreement, are Confidential Information. A party may however disclose the terms of this Agreement and the activities in connection with this Agreement: (A) to legal counsel of the party; (B) in connection with the enforcement of this Agreement or rights under this Agreement; or (C) under identical confidentiality terms, in connection with an actual or proposed merger, acquisition, or similar transaction solely for use in the due diligence investigation for such transaction.

16. **SEVERABILITY:** If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, that provision will be modified to the minimum extent necessary to make it enforceable, and the legality, validity and enforceability of the remaining provisions will not be affected thereby.

17. **FINAL AGREEMENT:** This Agreement states the entire agreement between the parties relating to the Purpose and supersedes all prior written or verbal agreements relating to this Agreement. This Agreement may only be modified in a writing signed by all parties. The parties agree to be legally bound by this Agreement. Notwithstanding any statute, regulation, or other rule of law, a signature provided by facsimile or other electronic copy will be deemed to be an original signature, and this Agreement may be executed in counterparts, and all counterparts taken together will be regarded as one and the same instrument.

**EFFECTIVE DATE** of this Agreement: ______________________________________

[NOTE: If left blank, the Effective Date as to each party shall be the date of its signature to this Agreement.]

Cal Poly: ____________________________  Sponsor: [INSERT NAME]:___________________________
By: __________________________________ By: ______________________________________________
Printed Name: ________________________ Printed Name: ______________________________
Title: _________________________________ Title: _________________________________
Date: _________________________________ Date: _________________________________
Primary Contact Person Name:___________ Primary Contact Person Name:_________________________
Contact Address and Phone:_____________ Contact Address and Phone:__________________________
EXHIBIT A
CALIFORNIA POLYTECHNIC STATE UNIVERSITY
FACULTY, STAFF, AND STUDENT ACKNOWLEDGEMENT OF CONFIDENTIALITY OBLIGATIONS
AND INTELLECTUAL PROPERTY OWNERSHIP
CURRICULAR PROJECTS (e.g. Senior Projects/Class Projects)

The Sponsor (named below) has agreed to participate in activities which support curricular projects, such as senior projects/class projects ("Class Projects") at Cal Poly, and has entered into an agreement with Cal Poly regarding such participation, a copy of which is attached ("Agreement"). The Sponsor may provide Confidential Information (as described in the Agreement) in order to support research and analysis in the Class Projects ("Purpose").

In order for the faculty, staff, and students to have access to the Confidential Information and involvement for this Purpose, the Sponsor requires such individuals to:

(A) agree to maintain the confidentiality of the Confidential Information, and not disclose, discuss, disseminate, or otherwise utilize the Confidential Information (except for the Purpose);
(B) assign to the Sponsor any intellectual property rights which contain the Confidential Information arising from the Purpose; and
(C) obtain the Sponsor’s approval prior to publishing/disseminating any copyrightable material resulting from my research related to the Purpose.

In consideration of having access to the Confidential Information, the undersigned hereby agrees as follows:

1. CONFIDENTIALITY. I agree to be bound by the terms related to Confidential Information in the attached Agreement.

2. INTELLECTUAL PROPERTY. I agree to be bound to the terms in the Agreement regarding Intellectual Property (as defined in the Agreement).

(A) ASSIGNMENT TO SPONSOR. If I create any new Intellectual Property which contains the Confidential Information ("Derivative Intellectual Property"), such Derivative Intellectual Property shall belong exclusively to, and is hereby assigned to, Sponsor. I hereby assign my entire right, title and interest to the Derivative Intellectual Property to the Sponsor according to the terms of the Agreement.

(B) PUBLICATION RIGHTS. I may publish and discuss my reports and findings arising from the Purpose (and I will own my copyrightable works), but I may not include any Confidential Information of Sponsor in such reports and findings. In order to protect Sponsor's Confidential Information, I agree, prior to publication or dissemination of any copyrightable expression, to provide Sponsor with a completed draft of such manuscript (or other form/format of copyrightable expression) and Sponsor shall have thirty (30) days in which to identify and object to the presence of Confidential Information. Material which contains Confidential Information shall be removed prior to publication or dissemination. If Sponsor does not respond within such time period, Sponsor shall be deemed to have consented to the proposed content.

(C) STUDENT/FACULTY COURSE REPORTS. Students shall not be required to obtain consent of Sponsor for reports and papers to be handed in to faculty for evaluation and grading, provided that the students and faculty members receiving such materials have signed this document.

NOTICE: This acknowledgment does not apply to an invention which qualifies under the provision of Calif. Labor Code Sec. 2870 which provides that (a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer’s equipment, supplies, facilities, or trade secret information except for those inventions that either: (1) Relate at the time of conception or reduction to practice of the invention to the employer’s business, or actual or demonstrably anticipated research or development of the employer; or (2) Result from any work performed by the employee for the employer. (b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable. In any suit or action arising under this law, the burden of proof shall be on the individual claiming the benefits of its provisions.

THIS IS A LEGAL DOCUMENT. DO NOT SIGN UNLESS AND UNTIL YOU AGREE TO ITS TERMS.
ACKNOWLEDGED AND AGREED TO:

PRINTED NAME: ____________________________________________

SIGNATURE: ________________________________________________

DATE: _____________________________________________________

NAME OF SPONSOR: ____________________________
[A COPY OF THE SPONSOR AGREEMENT IS TO BE ATTACHED TO, OR PROVIDED WITH, THIS DOCUMENT]