## Third-Party Non-Disclosure Agreement

Confidential information may not be disclosed to third-parties unless a non-disclosure agreement has been mutually executed by the third-party vendor and Ball State University.

A sample acceptable non-disclosure agreement is provided below, however substantially similar non-disclosure terms may be incorporated into other agreements. Business Affairs must approve all contracts before disclosure or transfer of confidential information.

---

# BALL STATE UNIVERSITY
# MUTUAL NON-DISCLOSURE AGREEMENT

This agreement, made as of the last date set forth on the last page hereof (the "Effective Date"), by and between Ball State University (hereafter "Ball State University") and_____ (hereafter "Vendor"), and sets forth the terms and conditions of the disclosure and receipt of certain confidential information between the parties. The party disclosing Confidential Information, as herein defined, shall be referred to as the "Discloser" and the party receiving such "Confidential Information" shall be referred to as the "Recipient." The term "Confidential Information" shall refer to the confidential information disclosed by any party to this Agreement.

The parties signing this document agree as follows:

1. Confidential Information may include information that is disclosed to Recipient by Discloser in any manner, whether orally, visually or in tangible form (including without limitation, documents, devices and computer readable media) and all copies thereof.

2. Tangible materials that disclose or embody Confidential Information shall be marked by Discloser as "confidential," "proprietary" or the substantial equivalent thereof. Confidential Information disclosed orally or visually shall be identified by Discloser as confidential at the time of disclosure and promptly thereafter identified as confidential in a written document provided to Recipient.

3. Except as expressly permitted herein, for a period of three years from the effective date (Non-Disclosure Period), Recipient shall maintain in confidence and not disclose Confidential Information. Upon termination of this Agreement, Recipient's right to use Confidential Information, shall immediately terminate.

4. Upon termination, or upon demand by Discloser at any time, or upon expiration of this Agreement, Recipient shall return promptly to Discloser or destroy, at Discloser's option, all tangible materials that disclose or embody Confidential Information; provided, however, that Recipient may retain one copy of Discloser's Confidential Information for archival purposes only.

5. Recipient shall have the right to use Confidential Information solely for the purpose(s) specified within this agreement ["Permitted Purpose(s)"].

6. Recipient shall disclose Confidential Information only to those of its employees who have a need to know such information for the Permitted Purpose(s).

7. Confidential Information shall not include any information that recipient can demonstrate:

   i. was in Recipient's possession without confidentiality restriction prior to disclosure by Discloser hereunder;
   ii. was generally known in the trade or business practiced by Discloser at the time of disclosure through no act of Recipient;
   iii. has come into the possession of Recipient without confidentiality restrictions from a third party and such third party is under no obligation to Discloser to maintain the confidentiality of such information; or
   iv. was developed by Recipient independently of and without reference to Confidential Information.
   v. If a particular portion or aspect of Confidential Information becomes subject to any of the foregoing exceptions, all other portions or aspects of such information shall remain subject to all of the provisions of this Agreement.

8. Recipient agrees not to reproduce or copy by any means Confidential Information, except as reasonably required to accomplish the Permitted Purpose(s). The Confidential Information shall not be disclosed or revealed to anyone except employees of Recipient who have a need to know the information for evaluation in connection with the described Permitted Purpose(s) and who are aware of their obligations under this Agreement to maintain the Confidential Information as confidential.

9. Recipient agrees to accept the Confidential Information and to employ all reasonable efforts to maintain the Confidential Information as confidential, such efforts to be no less than the degree of care employed by Recipient to preserve and safeguard its own confidential information; provided however, that such efforts shall not be less than a reasonable degree of care.

10. Recipient shall not remove any proprietary rights legend from, and shall upon Discloser's reasonable request, add proprietary rights legends to, materials disclosing or embodying Confidential Information.

11. Vendor acknowledges and agrees that Ball State University is a state agency subject to the provisions of the Indiana Open Records law, I.C. 5-14-et seq., and that disclosure of some or all of confidential information provided pursuant to this Agreement, and of the Agreement itself, may be compelled pursuant to that law. In the event that Recipient is required by the Indiana Open Records Act, or any other law, to disclose Discloser's Confidential Information, Recipient shall promptly notify Discloser, consult with Discloser regarding whether there are legitimate grounds to narrow or contest such disclosure, and only disclose that information that the University, in the opinion of legal counsel, is legally obligated to disclose.

12. Discloser understands that Recipient develops and acquires technology for its own products and/or internal applications, and that existing or planned technology independently developed or acquired by Recipient may contain ideas and concepts similar or identical to those contained in Discloser's Confidential Information. Discloser agrees that entering this Agreement shall not preclude Recipient from developing or acquiring technology similar to Discloser's without obligations to Discloser, provided Recipient does not use the Confidential Information to develop such technology.

13. Ball State University's Confidential Information will not be introduced in any future products marketed by the other party to this Agreement.

14. Neither party has any obligation under or by virtue of this Agreement to purchase from or furnish to the other party any products or services, or to enter into any other agreement, including but not limited to, a development, consulting, purchasing or technology licensing agreement.

15. Other than as expressly specified herein, Discloser grants no license to Recipient under any copyrights, patents, trademarks, trade secrets or other proprietary rights to use or reproduce Confidential Information.

Neither party shall use or cause to be published in any kind of media or communication the name, logo or other identifying information of any of the parties to this Agreement without the prior expressed written consent of the other party.

16. Notwithstanding any other provisions of this Agreement, Recipient agrees not to export, directly or indirectly, any United States (U.S.) source technical data acquired from Discloser or any products utilizing such data to any countries outside the U.S. if such export would be in violation of the United States Export Control Laws or Regulations then in effect.

17. The interpretation, application, and enforcement of this Agreement shall be governed by the laws of the State of Indiana without reference to choice of law principles. Any claim, suit, or cause of action involving the interpretation, application, or enforcement of this Agreement shall be commenced in Delaware County Circuit Court in Muncie, Indiana.

18. This Agreement expresses the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitment and understandings pertaining to the subject matter hereof. Any modifications of or changes to this Agreement shall be in writing and signed by both parties.

19. Unless earlier terminated in accordance with the provisions hereof, this Agreement shall remain in full force and effect for the duration of the Non-Disclosure Period, whereupon it shall expire. Either party may terminate this Agreement at any time, without cause, effective immediately upon written notice of termination; however, in the event this Agreement is terminated prior to expiration of the Non-Disclosure Period, its provisions shall survive and remain in effect for the remainder of the Non-Disclosure Period, with respect to Confidential Information disclosed prior to the effective date of termination.

# PERMITTED PURPOSES

A. The Permitted Purpose with respect to Confidential Information disclosed to Ball State University shall be a presentation/discussion on:

_____

_____

_____

B. The Permitted Purpose with respect to Confidential Information disclosed to Vendor shall be:

_____

_____

_____

## CONFIDENTIAL INFORMATION

A. Ball State University identifies the following as its Confidential Information to be disclosed hereunder:

_____

_____

_____

B. Vendor identifies the following as its Confidential Information to be disclosed hereunder:

| Vendor | Ball State University |
|---|---|
| By:_____ | By: _____ |
| Title: _____ | Title: _____ |
| Firm: _____ | Dept: _____ |
| Date: _____ | Date: _____ |
| Signature: _____ | Signature: _____ |