
MEMORANDUM OF UNDERSTANDING

This **Memorandum of Understanding** ("MOU") is made as of July 3, 2013, by and between Silevo, Inc., a Delaware corporation with its office located at 45655 Northport Loop East, Fremont, California 94538 ("COMPANY") and the Research Foundation for the State University of New York, a New York nonprofit educational corporation ("FOUNDATION") on behalf of the College of Nanoscale Science and Engineering ("CNSE"), State University of New York with an office located at 257 Fuller Road, Albany, NY, 12203. COMPANY and FOUNDATION are each referred to as a "Party" and together the "Parties".

I. OVERVIEW

I.1. New York State ("NYS") under the leadership of Governor Andrew Cuomo and the New York State Assembly under the leadership of Speaker Sheldon Silver have led the U.S. in multi-billion dollar strategic investments in high technology programs that cover the entire spectrum of clean energy, medical, smart grid and nanotechnology industry needs, from long-term innovative research and development, to workforce development and education, to product prototyping and supporting the transition to scale-up manufacturing and commercialization.

I.2. New York State's comprehensive job creation and economic growth agenda for New York provides strategic investments for job creation in emerging high-tech industries across New York State and fosters critical partnerships between State government, the private sector and New York's top-flight universities and research institutions. This agenda is embodied by the commitment and growth of CNSE, CNSE's Smart Systems Technology Commercialization Center ("STC") located in Canandaigua, New York, CNSE's partnership with the State University of New York Institute of Technology ("SUNYIT") in Utica, New York and other public-private partnerships CNSE operates throughout the State together with their public and private university and industry partners.

I.3. New York State Governor Andrew Cuomo has identified economic growth in New York State as a leading focus for New York State government seeking to invest significant levels of financial support for public-private partnerships throughout the Erie-Mohawk Corridor with an emphasis on the Western New York region by constructing, renovating, retrofitting, or rehabilitating state-of-the art facilities with cleanrooms, clean production space and laboratories supporting manufacturing scale-up operations that would also leverage CNSE's capabilities, partners, suppliers, and customers. Under a cross-regional partnership, CNSE will seek to develop and integrate physical and

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intellectual capabilities to support the transition of technologies into manufacturing scale-up by: 1) leveraging and expanding on unmatched nanoelectronics and photovoltaic research, development, pilot-prototype and manufacturing capabilities located at CNSE, STC SUNYIT and across Upstate New York; and 2) constructing or renovating a facility located in Western New York that would be operated by COMPANY in support of industrial use and expansion.

I.4. COMPANY is a leading photovoltaic ("PV") cell & module technology company that has developed an innovative hybrid solar technology that combines the best elements of traditional crystalline silicon (cSi), thin film PV and semiconductors to achieve cost-effective high performance solar modules, called Triex™. Founded by two executive innovators from Applied Materials, COMPANY currently maintains its headquarters in California and operates a 32 megawatt scale manufacturing facility located in China.

I.5. COMPANY is seeking to locate a significant expansion of its operations in New York State to establish a manufacturing facility to produce 200 Megawatts ("MW") worth of their Triex module technology with the potential of a Phase 2 adding an additional 1,000 MW of capacity. COMPANY desires collaboration with CNSE combining COMPANY's expertise in the new hybrid PV technology with CNSE's world-class nanoelectronics and PV research, development and deployment ("RD&D") infrastructure, know-how and industry partnerships to make the expansion successful and sustainable in the U.S.

I.6. COMPANY acknowledges that CNSE is a critical enabling component in maintaining and bolstering the State of New York's position as a leader in nanoelectronics, and clean energy technology and recognize the mutual benefit that can be attained by: (i) collaborating with CNSE to bring to the State of New York new research, development, education, and business investments from the various sectors of the nanoelectronics and PV industry; (ii) fostering critical partnerships among the Parties and the public and private sectors; (iii) transitioning emerging technologies critical for clean energy and economic competitiveness; and (iv) commercializing emerging clean energy and other nanotechnologies in commercial and consumer applications.

I.7. COMPANY acknowledges that CNSE has leveraged the experience obtained from its success in nanoelectronics and has expanded further into the areas of clean energy as evidenced by the establishment of and involvement with CNSE's Energy and Environmental Technology Applications Center ("E2TAC"), the Department of Energy funded U.S. Photovoltaic Manufacturing Consortium, Inc. ("PVMC") headquartered at CNSE, Incubators for Collaborating & Leveraging Energy And Nanotechnology ("iCLEAN"), NREL Clean Energy Alliance, New Energy NY, Nanotechnology Innovations for Clean Energy – Innovative Partnerships" ("NICE-IP"), and Collaboration for Leveraging Energy And Nanotechnology ("CLEAN"), among others.

I.8. CNSE recognizes COMPANY as a technically competitive, leading research, development and manufacturer of hybrid PV modules with the potential to be the

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leading seller of PV products in the United States with innovative technology solutions for advanced energy generation systems used in commercial and consumer applications.

I.9. CNSE recognizes COMPANY's Triex PV module technology is of critical importance to the United States economic competitiveness and energy independence, among other public policy objectives by providing dramatic improvement in cost and performance. The new Triex PV modules have significantly higher efficiency than traditional PV available in the market today with the potential to substantially increase efficiency further in the near term. COMPANY's new Triex PV technology is competitive with other technologies based on the innovative combination of traditional cSi, thin film PV and semiconductor layers resulting in a higher efficiency cost effective product. COMPANY has already demonstrated the manufacturability of the Triex product at their Chinese facility and want to ramp up production in the U.S.

I.10. The Parties recognize CNSE and its innovative technology transitioning, business development and economic outreach model supporting the entire R&D – Manufacturing eco-system of companies and research partners as of critical importance to the State and nation's security and economic competitiveness.

I.11. The Parties recognize that New York State Governor Andrew Cuomo has challenged the citizens of Western New York to over a five (5) year period establish an infrastructure in Western New York that will include developing a comprehensive job creation and economic growth agenda for New York to provide strategic investments for job creation in emerging high-tech industries across New York State and foster critical partnerships between State government, the private sector and New York's top-flight universities and research institutions establishing specialized facilities to establish and operate cross-regional, state-of-the-art, R&D, pilot-prototyping, manufacturing scale-up, commercialization and workforce training nexus in Upstate New York.

I.12. The Parties recognize the Western and Upstate New York region's premier business leadership and economic development organization and acknowledges as an imperative for successful transition of the region to a knowledge-based economy the establishment of research centers and product development centers supported by New York's colleges and universities that will assist in the development of a stream of innovative products and services by enabling the fabrication and test of prototypes for the region's existing and emerging clusters.

In view of the foregoing premises, the Parties set forth an expression of interest to engage in good faith negotiations in contemplation of a closer collaboration to establish the objectives set forth below. As the Parties embark upon negotiations, they wish to express their preliminary understanding of key issues within this MOU. No Party will be bound by the provisions in Sections I through IV until such time as the critical issues therein are fully negotiated and documented in a final definitive contract executed by FOUNDATION ("Final Contract"). The provisions in Articles V through XVIII below are intended by the Parties to be binding terms affecting the administration of this MOU and

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the conduct of negotiations between the Parties. Only the provisions in Articles V through XVII will be binding on the Parties upon full execution of this MOU.

II. OBJECTIVES

II.1 Manufacturing, Business Outreach, and Economic Development Discussion

The Parties will undergo confidential discussions with the purpose of entering into an agreement for constructing, renovating, retrofitting, or rehabilitating a building to establish COMPANY's Phase I 200 MW manufacturing plant ("Plant I") to be located in Western New York currently contemplated to be at 100 Forrest Avenue, Buffalo, NY (the Former Bristol Myers Scribb Campus), or at another mutually agreed upon location which may include research and development (R&D) operations in Albany, Halfmoon and Rochester New York as more fully set forth below.

II.2 Desirable Goals of the Collaboration

Establish a mutually beneficial partnership focused on the U.S. based manufacturing expansion and commercialization of COMPANY's innovative hybrid solar module technology, Triex and the research and development necessary to achieve COMPANY's next generation technology improving on the Triex product. The outcome of the above purpose will be the Parties establishment of a Phase I manufacturing expansion in New York State to establish a 200 MW scale manufacturing facility with potential future Phase II expansion of a 1,000 MW scale manufacturing facility.

III. COMPANY OBLIGATIONS

III.1 Investment Targets

COMPANY targets a total spend of \$668 million over five years in combined capital and operational expenses at its next generation manufacturing, business and related operations in Western New York, at a location to be mutually agreed by the PARTIES and currently contemplated to be at the facility described in Section II.1 above. Such five year period shall begin after the new facility is fully equipped and able to provide full production capabilities.

III.2 Employment Targets

COMPANY commits to the creation of a minimum of 436 high tech jobs (scientists, researchers, engineers, technicians, operators, business and technical managers, and executives in manufacturing and services) inside the state of New York associated with its next generation manufacturing operations over the initial two (2) years of the collaboration. COMPANY also commits to use commercially reasonable efforts to work with the FOUNDATION, on behalf of CNSE, to attract and locate high tech jobs from companies that provide

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contracting, supplies, support, services, machinery, equipment, materials, provisions, construction and maintenance and any other activity, service or good related to the business provided and generated by the COMPANY. COMPANY commits to the retention of these jobs for a period of no less than five years.

<u>Positions</u>	<u>Months 0 – 12</u>	<u>Months 13 - 24</u>
Operators	9	232
Maintenance	4	50
Facilities	2	20
Manufacturing Engineers	14	114
Procurement	7	8
Administration	4	12
Totals:	40	436

COMPANY intends to develop manufacturing capacity beyond Phase I into Phase II. The expansion from 200 MW to a total of 1,200 MW will create approximately 1,226 additional direct jobs bringing the total estimated COMPANY jobs in Phases I and II to 1,662. As sources of capital are not yet identified for this expansion, whether from collaboration with FOUNDATION, the State, and/or via COMPANY's own fundraising efforts, COMPANY will identify and commit to further job creation as and when appropriate.

III.3 Operations

COMPANY commits to work with FOUNDATION to enter into a collaborative agreement as a Joint Development Program ("JDP") to undertake the requisite facility development to support COMPANY's Phase I manufacturing requirements at Plant I. The JDP may also describe CNSE's support for COMPANY's next generation PV module development at CNSE's Albany NanoTech Complex, CNSE's PVMC facilities, and any other CNSE affiliated facility as the Parties may agree.

COMPANY will be solely responsible for its manufacturing operations within Plant I including maintenance and operation of: 1) on-going clean production space and laboratory mechanical, electrical and specialty material handling infrastructure; 2) Triex PV module fabrication equipment and material requirements planning systems; 3) ESH compliance and physical and security operations; and, all other necessary business and operational requirements necessary to support Phase I operations.

III.4 Commitment to Local Content

COMPANY acknowledges the State's desire to retain as much locally manufactured content as is practical in support of the project and to establish an eco-system connection to NY manufacturing as a fundamental objective of the

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project. COMPANY will make reasonable efforts and provide first consideration to New York based suppliers of equipment, materials and other items required for the establishment and growth of Plant I in order to retain as much manufactured content as is practical within the State.

III.5 Programmatic Commitments

COMPANY will use its commercially reasonable efforts to assist, guide and execute the activities outlined below:

- Work with FOUNDATION to develop next generation PV module technology educational curriculum and workforce training content; deliver joint educational programs, seminars, and conferences.
- Offer internships that will enable SUNY students to participate in the development and manufacture of next generation PV modules and related devices.
- Participate, as and when appropriate, in the energy related centers CNSE has established or participate in programs such as E2TAC, PVMC, iCLEAN, NREL Clean Energy Alliance, New Energy NY, NICE-IP, and CLEAN.
- Provide leadership assistance, pertinent resources, and undertake collaborative R,D&D activities for the establishment and growth of next generation PV module commercialization in association with PVMC.
- Work with FOUNDATION to develop joint economic outreach proposals targeting federal and State funding programs and implement joint business development strategies.

III.6 Phase II Strategy

COMPANY commits to have an open dialog with FOUNDATION regarding the expansion of an additional 1,000 MW manufacturing capacity under a Phase II expansion.

The Parties will discuss developing a strategy for COMPANY's Phase II including the constructing, renovating, retrofitting, or rehabilitating of Plant II which may be either one single or multiple closely located buildings totaling One Million Sixty Thousand (1,060,000) square feet state-of-the-art manufacturing infrastructure, to be owned by FOUNDATION, assigned to the exclusive use of, and operated by COMPANY and located at a location mutually agreeable to the Parties in Western New York in support of Phase II of COMPANY's manufacturing operations. Plant II will support production of 1,000MW of COMPANY's innovative Triex PV modules and create an additional 1,226 manufacturing and support jobs at Plant II.

IV. FOUNDATION OBLIGATIONS

IV.1. FOUNDATION Capital Funding

FOUNDATION will use best efforts to generate funding from the State of New York, with such funding to be administered through FOUNDATION, for the construction, renovation, retrofitting, or rehabilitation of Plant I to allow for the establishment of the state-of-the-art PV module manufacturing facility to be located at the Buffalo, NY site referred to above or a site mutually determined by the Parties in Western New York State, providing initially two hundred twelve thousand (212,000) square feet for manufacturing and 20,000 square feet for administration and business offices (currently contemplated to be in buildings 1, 6 and 9 of the Buffalo site) in the first six (6) months of this partnership. The size of Plant I is intended to accommodate up to 200MW of annual productive capacity of COMPANY's Triex PV modules and will have parking to accommodate up to 400 employees and sufficient clearances to allow for logistical flow of incoming and outbound material. Plant I will be owned by FOUNDATION and assigned to the exclusive use of Company for a minimum of ten (10) years. Under no circumstances will the costs associated with Plant I exceed \$25 million.

FOUNDATION will further use best efforts to generate funding from the State of New York, to be administered through Foundation, to equip the Plant I with manufacturing equipment, as specified by COMPANY and as agreed to by FOUNDATION, that is necessary for COMPANY's state-of-the-art PV module manufacturing facility. FOUNDATION will purchase, install and qualify PV module processing and metrology equipment at Plant I. The equipment will be owned by FOUNDATION and assigned to the exclusive use of Company for a minimum of ten (10) years. Under no circumstance will the aggregate cost of the equipment provided by FOUNDATION and the retrofit costs referred to in the preceding paragraph paid by FOUNDATION exceed \$75 million.

The manufacturing equipment that is to be provided by FOUNDATION will be in accordance with COMPANY's specifications. The Parties will work together to maximize the proportion of the total dollars spent by the FOUNDATION on the equipment inside facility (as opposed to the facility itself) given that employment numbers are directly related to the equipment spend.

Under no circumstances will the investment of New York State for the benefit of COMPANY's Phase I operations (manufacturing facility and manufacturing equipment) exceed \$75 million.

FOUNDATION will lease Plant I and manufacturing equipment for Plant I to COMPANY for the consideration of \$1.00 per year for a minimum of ten (10) years.

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After the completion of the first ten (10) year period, FOUNDATION and COMPANY will mutually agree on extension of terms of the facility and equipment under one of the two options. OPTION 1) Allow COMPANY to purchase equipment at fair market value and lease or purchase the facility at fair market value rates. OPTION 2) With continued COMPANY expansion into the State of New York, FOUNDATION will extend the \$1.00 per year lease terms for an additional five (5) years.

IV.2. Workforce Education and Training

FOUNDATION commits to work with COMPANY to help recruit, relocate and train the workforce in Western New York necessary to staff COMPANY's manufacturing facility.

IV.3. FOUNDATION R&D Funding Targets

FOUNDATION commits to work with COMPANY to identify sources of funding to develop PV technologies. Such funding is projected to be generated from public and private funding sources.

IV.4. Programmatic and Operational Commitments

FOUNDATION shall use best efforts to provide programmatic, logistical, financial support and provide on-going economic outreach support leading to the submission of joint proposals for federal and State economic, technology and business development and other grant opportunities to assist COMPANY in the development and execution of the activities outlined in Section II.2., as mutually agreed upon between FOUNDATION and COMPANY.

FOUNDATION will use best efforts to make available to COMPANY relationships with already established clean energy centers and incubators such as E2TAC, PVMC (Halfmoon and Rochester locations), iCLEAN, NREL Clean Energy Alliance, New Energy NY, NICE-IP, and CLEAN to benefit COMPANY's business endeavors in New York State and across the country.

FOUNDATION will use best efforts to provide an outlet for COMPANY's Triex PV modules produced at Plant I through various pathways including New York State Energy Research and Development Authority ("NYSERDA"), which acts as the central procurement administrator for the New York State Public Service Commission's New York State Renewable Portfolio Standard ("RPS") targeting thirty percent (30%) of the State's electrical consumption by 2015 to be generated from renewable sources, such as PV solar.

V. START-UP NEW YORK PROGRAM

In the event the COMPANY location in Western New York is designated by New York State as a Start-up New York zone, COMPANY and FOUNDATION commit to working together to identify additional COMPANY commitments in jobs and investments at its location in Western New York.

VI. FUNDS

Each Party shall be responsible for funding its own activities under this MOU. The scope of the activities under this MOU shall be determined by the funds available at both institutions for the types of collaboration undertaken and by financial assistance as may be obtained by either institution from external sources. No funds of either Party are in any way committed or obligated for any purpose whatsoever by virtue of entering into this MOU. This MOU does not identify or require the transfer of funds between the Parties. This MOU shall not be construed to authorize or guarantee funding for any proposals submitted in response to any solicitation, nor shall it be construed as a guarantee of future funding nor shall this MOU be construed as an endorsement of any proposal submitted by any Party or non-Party.

VII. FUNDRAISING

The Parties agree to seek joint funding from mutually acceptable public and/or private entities, including federal and state governments and quasi-government agencies and organizations, foundations and private philanthropy and commercial interests, to support and finance the joint activities as outlined in this MOU. The Parties will consult with each other, in advance, prior to undertaking fundraising activities with third parties pursuant to their joint activities under this MOU.

VIII. INTELLECTUAL PROPERTY

Rights in intellectual property shall be defined under a separate agreement resulting from this MOU and shall be determined in accordance with the terms of the separate agreement. No rights in any intellectual property are conveyed or granted by or under this MOU.

IX. FINAL CONTRACT(S)

The Parties agree and acknowledge that the precise terms and conditions associated with each collaborative research and/or education program, and the corresponding use

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of facilities will be governed by one or more Final Contracts that will be separately executed written agreements entered into by Company and Foundation on behalf of affiliated entities that will detail the precise terms and conditions of such research and/or programs, including without limitation the mutually agreed upon rights and obligations of the Parties in regards to technology transfer and intellectual property. The Parties acknowledge that entry into a Final Contract(s) may be subject to a multitude of material conditions precedent, including, but not limited to, each Party's review and approval; successful negotiation of an agreed set of terms and conditions and agreement on the details of the scope of work for joint projects; and successful negotiation of related agreements, if any.

X. TERM AND TERMINATION

This MOU shall be effective for an initial term of ninety (90) days following the Effective Date (the "Term"), unless earlier terminated in accordance with this MOU. Any extension of this MOU will be mutually agreed upon as to terms and executed in writing. Either Company or Foundation may terminate this MOU by giving at least thirty (30) days prior written notice.

XI. PUBLICATION AND PUBLICITY

Press releases and any publicity or other communication or disclosure by any Party to a non-party regarding this MOU, the relationship among the Parties, or the negotiation of the proposed Final Contract must be approved by all Parties in writing prior to any such press release, public announcement or other disclosure, excluding any communication to another Party to this MOU, internally within any Party (including with such Party's financial, legal and other advisors) or by the COMPANY pursuant to confidential discussions with investors or potential investors in the COMPANY.

XII. CONFIDENTIAL INFORMATION

The Parties agree that confidentiality terms set forth in Schedule A shall govern confidentiality during the Term of this MOU.

XIII. USE OF NAME

Nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of either Party (including any contraction, abbreviation or simulation of any of the foregoing).

XIV. NOTICE

All communications, notices and disclosures required or permitted by this Agreement shall be in writing, shall be provided to the other Party and shall be deemed to have been given at the earlier of the date when actually delivered to the other Party or when deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, by hand delivery, by overnight courier service with signed receipt or by facsimile transmission (with written confirmation of receipt thereof), and addressed as follows, unless and until either Party notifies the other Party of a change of address:

To Foundation: Dean A. Fuleihan
 Operations Manager
 College of Nanoscale Science and Engineering
 257 Fuller Road
 Albany, New York 12203
 USA

To Company:

 Jeff Osorio
 Chief Financial Officer
 Silevo, inc.
 45655 Northport Loop East
 Fremont, CA 94538

XV. NO LIABILITY

XIV.1 No Party shall make a claim against, or be liable to, any other Party or its affiliates or agents for any damages, including (without limitation) incidental, consequential, special, direct or indirect, punitive, damages or lost profits or injury to business reputation, resulting from the continuation or abandonment of negotiations. A Party's undertaking to develop information or technology and/or acquire personnel or capital assets or other detrimental reliance in expectation of execution of a Final Contract shall be at its own risk and such Party shall not make a claim against any other Party for any such reliance damages.

XIV.2 Any detrimental reliance or performance based on the binding portions of this MOU is undertaken in exchange for the consideration due under the MOU and the associated risks are entirely assumed by the relying or performing Party.

XVI. GOVERNING LAW AND JURISDICTION

This MOU will be governed by and interpreted exclusively under the laws of the State of New York, without regard to its choice of law rules. The Parties will comply with all applicable federal, state and local laws and regulations with respect to this MOU. In case of any dispute concerning or arising out of this MOU that cannot be resolved by the Parties in good faith, such dispute shall be finally settled and venue shall be exclusively held in any appropriate state or federal court in the County of Albany, State of New York. Each Party consents to exclusive jurisdiction and venue of such courts.

XVII. EXPORT CONTROL

No Party will export or re-export the technology, commodities, or software (or the direct product thereof), directly or indirectly, to any countries to which such export is now or hereafter becomes illegal under U.S. export regulations if such Party is in the US or governed by US law or by the laws of any other governing administration.

XVIII. MISCELLANEOUS

XVII.1 No amendment or modification of this MOU shall be valid or binding upon the Parties unless in a writing executed by both of the Parties.

XVII.2 This MOU may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute the same MOU. Any signed copy of this MOU made by photocopy, facsimile or Adobe PDF format shall be considered an original.

XVII.3 All agreements drafts, "term sheets", memoranda, if any, and other communications respecting the agreements or activities related thereto prepared or exchanged in the course of negotiations, even if signed by one or all Parties, shall be considered only preliminary and shall not be legally binding unless subsequently incorporated into an amended MOU or Final Contract.

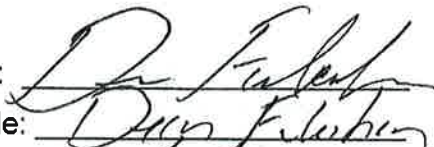
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IN WITNESS WHEREOF, each Party has caused this MOU to be signed by its duly authorized representative as follows:

SILEVO, INC.

**THE RESEARCH FOUNDATION FOR THE
STATE UNIVERSITY OF NEW YORK, ON
BEHALF OF THE COLLEGE OF
NANOSCALE SCIENCE AND ENGINEERING**

By:  Jeff Osorio
Title: Chief Financial Officer
Silevo, Inc.
Date: 7-3-13

By: 
Title: Dan Fubini
Date: 7/3/13

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Schedule A CONFIDENTIALITY

Purpose

Each of the Parties may disclose and receive Confidential Information (defined below) from the other Party, for the limited purpose of evaluating the suitability of entering into one or more separate agreements as identified in the MOU (hereinafter referred to as "Purpose").

Disclosure of Confidential Information

"Confidential Information" shall mean all information that is maintained in confidence by a Party ("Owning Party") and is disclosed to or obtained by the other Party in connection with and during the Term of this MOU, including, but not limited to, information that relates to such Owning Party's past, present or future research, development, manufacturing, or business activities. Either Party ("Disclosing Party") may disclose its confidential information to the other Party ("Receiving Party") orally, in writing or by other media or transfer of materials including graphic, photographic, recorded, prototype, sample, or other tangible or permanent form clearly and obviously marked "confidential" or "proprietary". Electronic information will be adequately marked if the container is marked and if a proprietary legend displays when the information runs on a computer system and when the information is printed from its data file.

When disclosed orally, Disclosing Party shall identify the information as confidential at the time of such disclosure, with subsequent written confirmation to Receiving Party within thirty (30) days of such disclosure indicating the date and type of information disclosed. All restrictions provided herein regarding use and/or disclosure shall apply during such thirty-day period.

Protecting confidential information

Receiving Party will retain Disclosing Party's Confidential Information in confidence for three (3) years from the date of disclosure. Receiving Party will not disclose, disseminate, or publish any of Disclosing Party's Confidential Information to any person except employees or agents of Receiving Party on a need to know basis. Receiving Party shall ensure that such employees or agents shall be bound by terms at least as protective as the terms of this Schedule A. Each Party warrants that employees or agents shall comply with the terms of this Schedule A. Upon the termination or expiration of this MOU, the Parties shall confer regarding the status of Confidential Information disclosed and/or created under this MOU.

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All right, title and interest in patents, copyrights, trademarks, data, designs, drawings, blueprints, tracings, plans, layouts, specifications, formulae and any and all other Confidential Information which are furnished to the Receiving Party shall be and remain the exclusive property of the Disclosing Party. The Parties recognize and agree that nothing contained in MOU shall be construed as granting any property rights, by implication, license or otherwise, to any Confidential Information of the other Party disclosed pursuant to the MOU, or to any invention or any patent, copyright, trademark, or other intellectual property.

Each Party agrees to not make, use, sell, offer for sale, or have made, any product or service based upon the Confidential Information provided to it without executing an agreement authorizing such use. Each Party further agrees not to reproduce in any form (except as required to accomplish the Purpose set forth in this Schedule A), analyze, modify, reverse engineer, decompile, create other works from, or disassemble the Confidential Information disclosed to it or any samples of tangible materials included therein.

The Party receiving Confidential Information under this MOU shall be held to the same standard of care in protecting such information as the Receiving Party normally employs to preserve and safeguard its own Confidential Information of similar kind.

Exclusions; Required Disclosure

Receiving Party's obligations regarding Disclosing Party's Confidential Information shall not apply to information (a) that was already known to Receiving Party prior to the disclosure of such information to Receiving Party by Disclosing Party, (b) that is or becomes publicly available through no act or fault of Receiving Party, (c) that is rightfully received by Receiving Party from a third-party having no obligation of confidentiality to Disclosing Party, or (d) that is independently developed by Receiving Party.

In the event the Receiving Party is required by law, regulation, or court order to disclose any of the Disclosing Party's Confidential Information, the Receiving Party will notify the Disclosing Party in writing prior to making such disclosure in order to facilitate the Disclosing Party seeking a protective order or other appropriate remedy from the appropriate legal body. The Receiving Party further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from reviewing the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.