**NON DISCLOSURE AGREEMENT**

This Nondisclosure Agreement (this “**Agreement**”), effective \_\_\_\_\_\_\_, 2018 (“**Effective Date**”), is entered into by and among The Water Research Foundation (“Disclosing Party”), a Colorado non-profit corporation whose principal place of business is located at 6666 W. Quincy Ave., Denver, Colorado 80235, Quincy Ave., Denver, Colorado 80235, and \_\_\_\_ a party when receiving Confidential Information shall be referred to herein as the (“Receiving Party”), whose address is \_\_\_\_.

**Purpose**

# The Parties wish to explore a possible transaction of mutual interest (the “**Opportunity**”), and in connection with the Opportunity, the Disclosing Party will disclose to the Receiving Party certain confidential technical and business information that Disclosing Party desires Receiving Party to treat as confidential.

# **Confidential Information**

## *Definition*. “**Confidential Information**” means any information disclosed by Disclosing Party to Receiving Party either directly or indirectly in writing, visually, electronically or orally (including, without limitation, research, product plans, products, services, equipment, customers, markets, software, inventions, processes, designs, drawings, hardware configuration information, marketing and finance documents, prototypes, samples, data sets, and Disclosing Party’s plant and equipment), which is either identified as confidential at the time of disclosure or which a reasonable person would determine is confidential based upon the nature of the information and the circumstances of disclosure. Confidential Information may include information of a third party that is in Disclosing Party’s possession and is disclosed to Receiving Party under this Agreement. Confidential Information also includes the existence of this Agreement and its terms and the fact that Receiving Party is evaluating Disclosing Party’s Confidential Information.

## *Exceptions*. Confidential Information shall not, however, include any information that Receiving Party can establish (i) was publicly known or made generally available without a duty of confidentiality prior to the time of disclosure to Receiving Party by Disclosing Party; (ii) becomes publicly known or made generally available without a duty of confidentiality after disclosure to Receiving Party by Disclosing Party through no action or inaction of Receiving Party; or (iii) is in the rightful possession of Receiving Party without confidentiality obligations at the time of disclosure by Disclosing Party to Receiving Party as shown by Receiving Party’s then-contemporaneous written files and records kept in the ordinary course of business.

## *Compelled Disclosure*. If Receiving Party becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, Receiving Party will provide Disclosing Party prompt written notice of such disclosure and will assist Disclosing Party in seeking a protective order or another appropriate remedy. If Disclosing Party waives Receiving Party’s compliance with this Agreement or fails to obtain a protective order or other appropriate remedy, Receiving Party will furnish only that portion of the Confidential Information that is legally required to be disclosed, provided that any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

# **Nonuse and Nondisclosure**

# Receiving Party shall not use any Confidential Information for any purpose except to evaluate and engage in discussions concerning the Opportunity. Receiving Party shall not disclose any Confidential Information or permit any Confidential Information to be disclosed, either directly or indirectly, to any third party without Disclosing Party’s prior written consent. Receiving Party shall not disclose Confidential Information or permit the disclosure of Confidential Information to its employees, except that, subject to Section 4 below, Receiving Party may disclose Confidential Information to those employees of Receiving Party who are required to have the information in order for Receiving Party to evaluate or engage in discussions concerning the Opportunity, provided that such employee has signed a nonuse and nondisclosure agreement at least as protective as the provisions hereof, prior to any disclosure of Confidential Information to such employee. Without Disclosing Party’s prior express written consent, Receiving Party shall not reverse engineer, disassemble, or decompile any prototypes, software, samples, or other tangible objects that embody the Confidential Information.

# **Maintenance of Confidentiality**

# Receiving Party shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, Receiving Party shall take at least those measures it employs to protect its own most highly confidential information. Receiving Party shall not make any copies of the Confidential Information unless the same are previously approved in writing by Disclosing Party. Receiving Party shall reproduce Disclosing Party’s proprietary rights notices on any such authorized copies, in the same manner in which such notices were set forth in or on the original. Receiving Party shall immediately notify Disclosing Party of any unauthorized use or disclosure, or suspected unauthorized use or disclosure, of Confidential Information.

# **No Obligation**

# Nothing in this Agreement shall obligate either Party to proceed with any transaction between them, and each Party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the Opportunity. Nothing in this Agreement shall be construed to restrict Disclosing Party’s use or disclosure of its own Confidential Information.

# **No Warranty**

# ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS.” DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF ANY CONFIDENTIAL INFORMATION, OR WITH RESPECT TO NON-INFRINGEMENT OR OTHER VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY OR OF RECEIVING PARTY; PROVIDED, HOWEVER, THAT DISCLOSING PARTY WARRANTS THAT IT HAS THE RIGHT TO MAKE THE DISCLOSURES THAT IT MAKES UNDER THIS AGREEMENT.

# **Limitation of Liability**

# DISCLOSING PARTY WILL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS) ARISING FROM THE RECEIVING PARTY’S USE OF THE CONFIDENTIAL INFORMATION.

# **Return of Materials**

# All documents and other tangible objects containing or representing Confidential Information and all copies or extracts thereof or notes derived therefrom that are in the possession or control of Receiving Party shall be and remain the property of Disclosing Party and shall be promptly returned to Disclosing Party or destroyed (with proof of such destruction), each upon Disclosing Party’s request and within ten (10) days of such request.

# **No License**

# Nothing in this Agreement is intended to grant any rights to Receiving Party under any intellectual property right of Disclosing Party, nor shall this Agreement grant Receiving Party any rights in or to the Confidential Information except as expressly set forth in this Agreement.

# **Term**

# This Agreement shall become effective as of the Effective Date and terminate automatically two (2) years thereafter, provided that if the parties formalize the contemplated business relationship in a written agreement (a “**Business Agreement**”), this Agreement shall remain in full force and effect during the term of the Business Agreement. If such Business Agreement provides for confidentiality obligations between the parties, those obligations will govern. The Receiving Party’s obligations with respect to the Disclosing Party’s Confidential Information under this Agreement shall survive for a period of five (5) years after the expiration or termination of this Agreement or the Business Agreement, as applicable.

# **Remedies**

# Receiving Party agrees that any violation or threatened violation of this Agreement will cause irreparable injury to Disclosing Party, entitling Disclosing Party to seek injunctive relief in addition to all legal remedies.

# **Miscellaneous**

# This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns; except that Receiving Party may not assign or otherwise transfer this Agreement, by operation of law or otherwise, without written consent of Disclosing Party. Any assignment or transfer of this Agreement in violation of the foregoing shall be null and void. Receiving Party shall adhere to all applicable laws, regulations and rules relating to the export of technical data, and shall not export or re-export any technical data, any products received from Disclosing Party or the direct product of such technical data to any proscribed country listed in such applicable laws, regulations and rules, unless properly authorized. This Agreement will be interpreted and construed in accordance with the laws of the State of California, without regard to conflict of law principles. Receiving Party hereby represents and warrants that the persons executing this Agreement on its behalf have express authority to do so, and, in so doing, to bind the Party thereto. This Agreement contains the entire agreement between the Parties with respect to the Opportunity and supersedes all prior written and oral agreements between the Parties regarding the Opportunity. If a court or other body of competent jurisdiction finds, or the Parties mutually believe, any provision of this Agreement, or portion thereof, to be invalid or unenforceable, such provision will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. No provision of this Agreement may be waived except by a writing executed by the Party against whom the waiver is to be effective. A Party’s failure to enforce any provision of this Agreement shall neither be construed as a waiver of the provision nor prevent the Party from enforcing any other provision of this Agreement. No provision of this Agreement may be amended or otherwise modified except by a writing signed by the Parties to this Agreement. The Parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same agreement. This Agreement may be delivered by facsimile transmission, and facsimile copies of executed signature pages shall be binding as originals.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement as of the Effective Date.

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| **The Water Research Foundation**  | [insert vendor name] |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |