

## MUTUAL NON-DISCLOSURE AGREEMENT

THIS AGREEMENT, effective \_\_\_\_\_ (the "Effective Date"), is between The Board of Trustees of the University of Illinois, a body corporate and politic of the State of Illinois, 352 Henry Administration Building, 506 S. Wright St., Urbana, Illinois 61801 ("University"), through its Office of Technology Management, 446 College of Medicine West, MC-682, 1853 W Polk St, Chicago, Illinois 60612 and \_\_\_\_\_, a \_\_\_\_\_ corporation having its offices at \_\_\_\_\_ ("Company") (together "the Parties"). The Parties may for one year after effective date disclose to each other certain Confidential Information for the purpose of enabling the parties to determine whether or not to enter into an agreement and/or business relationship.

In consideration of the above, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the parties agree as follows:

1. "Confidential Information" means any information embodied in written, graphical, digital, oral, biological or other tangible form, which is identified and/or designated as "confidential" or "proprietary" at the time of disclosure, and disclosed by or on behalf of one Party to the other, relating to the University owned technology, \_\_\_\_\_, and Company's proprietary \_\_\_\_\_. Confidential Information of the Parties includes, but is not limited to, inventions, invention disclosures, evaluations and assessments of inventions, patent applications and other filings, legal instruments, biological materials, processes, methods, formulae, prototypes, devices, computer software, copyrighted works, experimental data, the potential intellectual property rights therein, and all business and legal arrangements discussed by or on behalf of the Parties, and which, if disclosed, may cause competitive harm to the disclosing Party.
2. "Affiliate" means any entity or natural person, including but not limited to directors, officers, employees and agents of a Party, which controls, is controlled by, or is under common control with a Party during the term of this Agreement; "control" being the direct or indirect ownership of more than 50% of the stock, shares or interests entitled to vote for election of directors or other governing body of the entity or otherwise having the ability to direct the management of such entity.
3. With regard to any Confidential Information disclosed under this Agreement by the Parties to each other prior to, on or after the Effective Date, each Party shall hold the same in confidence and except as is otherwise stated, not disclose or make available the Confidential Information, by publication or otherwise, to any third party, and shall use the Confidential Information disclosed to it pursuant to this Agreement only to the extent necessary to effectuate the purposes contemplated by the Parties.
4. Each Party receiving Confidential Information shall:
  - a) Take the same degree of care to prevent disclosure of Confidential Information obtained by it under this Agreement as it takes to preserve and safeguard its own confidential and proprietary information, but, in any event, no less than a reasonable degree of care; and
  - b) Make copies of the Confidential Information only to the extent that the copies are reasonably necessary to effectuate the purpose of this Agreement; and
  - c) At the request and direction of a disclosing Party, and without delay, return or destroy the Confidential Information provided to it pursuant to this Agreement and any copies thereof, except that one copy of all such Confidential Information may be kept by the Party's legal counsel for archival purposes and for the purpose of defending against any claims arising in connection with this Agreement or a breach thereof.
5. The obligations of clauses 3 and 4 shall not apply to Confidential Information that:
  - a) as evidenced by a receiving Party's written records, was lawfully known to the receiving Party prior to its communication by the disclosing Party and was not communicated to the receiving Party subject to any restrictions on disclosure or use; or
  - b) as evidenced by a Receiving Party's written records, is independently developed by the receiving Party without use or knowledge of the Information; or
  - c) is or becomes a part of the public domain other than by a breach of this Agreement by the receiving Party; or
  - d) becomes known to the receiving Party by the action of a third party not in breach of a duty of confidence.
6. In the event Confidential Information is required to be disclosed by the receiving Party to a third party pursuant to any applicable law, governmental regulation, or decision of any court or tribunal of competent jurisdiction, including, but not limited to a subpoena, or a valid public records request, to the extent legally permissible and as soon as practicable,

receiving Party shall notify the disclosing Party of the demand. Receiving Party will disclose only such Confidential Information as the demand or request requires, and in no event will receiving Party be in breach of this Agreement for its good faith compliance with the law.

7. The Parties acknowledge that University is a public body and subject to the Illinois Freedom of Information Act (5 ILCS § 140/1 *et seq.*).
8. The receiving Party shall be entitled to disclose or make available any Confidential Information it receives pursuant to this Agreement to such of its Affiliates to whom the receiving Party believes it must be communicated to meet its obligations to the disclosing Party under this Agreement, provided that such Affiliates and others are bound by written obligations of confidentiality that are no less restrictive than those set forth in this Agreement. **The receiving Party may not disclose Confidential Information to outside parties, such as consultants or technical experts, without first providing to the disclosing Party a copy of the non-disclosure agreement signed by such parties that covers the disclosing Party's Confidential Information.**
9. The receiving Party will not remove any copyright or other proprietary rights notice attached to or included in any Confidential Information and will reproduce all such notices on any duplicates of the Confidential Information.
10. No rights or obligations other than those expressly recited herein are granted to a receiving Party or may be implied by this Agreement. Nothing herein constitutes a license or other transfer of rights by a disclosing Party in its Confidential Information or in any of its intellectual property rights therein.
11. Confidential Information is furnished "AS IS" and without any warranty, express or implied, concerning its accuracy, completeness, or performance. Disclosing party expressly disclaims all warranties of use, fitness for particular purpose, merchantability, and non-infringement of third party rights.
12. The term of this Agreement shall be as described above. The obligations hereunder, including, without limitation, the obligations of clauses 3, 4, 6, 8, and 9 shall survive expiration of this Agreement and shall expire on the fifth (5<sup>th</sup>) anniversary of the date Confidential Information was disclosed to a receiving Party. If the Confidential Information is disclosed in parts on different occasions, then the obligations arising under this Agreement shall run for a term of five (5) years in regard to each separate disclosure of Confidential Information, and the Agreement shall be interpreted and construed accordingly.
13. This document represents the entire agreement between the Parties in relation to the Confidential Information disclosed hereunder, and supersedes all other agreements and representations, whether oral or written, with respect to such Information. For the avoidance of doubt, this Agreement does not supersede any Non-Disclosure Agreements executed by the Parties prior to the date of this Agreement. This Agreement may only be modified if such modification is in writing and signed by a duly authorized representative of each Party.
14. A Party's failure to enforce any provision of this Agreement shall not operate as that Party's waiver of the particular provision or this Agreement as a whole.
15. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.
16. Due to the proprietary and valuable nature of the subject matter, the Parties agree that any breach of this Agreement by a receiving Party may cause irreparable harm to the disclosing Party, which may not be adequately compensated for by monetary damages alone, and that the Parties' rights and obligations under this Agreement may be enforced by injunctive and/or other preliminary or equitable relief, in addition to any other remedies available at law.
17. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, excluding its choice of law provisions.
18. No Party may assign or delegate, in whole or part, the rights or obligations created by this Agreement without the prior written consent of the other Party.
19. Each Party shall comply with all relevant laws, whether United States or foreign, governing the exports and re-exports of technical data or commodities made under this Agreement. Prior to providing University with any items subject to export control laws, Company will notify University and identify the items at issue and the applicable export control laws. If the items are subject to the Export Administration Regulations ("EAR"), Company will either furnish to

University the applicable Export Control Classification Numbers or indicate that EAR 99 applies. If the items are subject to the International Traffic in Arms Regulations (“ITAR”), Company will notify University of the relevant ITAR categories and subcategories. University may decline to accept any export-controlled items. Company will direct all notices given under this section to University’s contact as follows:

Director of Office of Technology Management  
446 College of Medicine West, MC-682, 1853 W Polk St, Chicago, Illinois 60612  
Phone: 312-996-7018; Fax: 312-996-1995

20. A Party will deliver all notices contemplated under this Agreement to the other Party as prescribed below. All notices must be in writing and delivered by: postage prepaid, certified mail, return-receipt requested; overnight prepaid commercial delivery; fax; or other commercial methods with delivery verification. Notice is effective upon receipt. A Party shall notify the other Party of any change in the contact information.

Company:  
Delivery Address:  
Phone: ; Fax:

UNIVERSITY: Director of Office of Technology Management  
446 College of Medicine West, MC-682, 1853 W Polk St, Chicago, Illinois 60612  
Phone: 312-996-7018; Fax: 312-996-1995

21. This Agreement may be executed in counterparts, all of which together shall constitute one instrument. The Parties agree that duplicated (for example, by pdf email attachment) or facsimile signatures shall be deemed original for all purposes.

The Parties have caused this Agreement to be executed by their duly authorized representatives as set forth below.

**Company**

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

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

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

**The Board of Trustees of the University of Illinois**

\_\_\_\_\_  
By: Avijit Ghosh, Comptroller Date

\_\_\_\_\_  
Attest: Dedra M. Williams, Secretary Date

Approved as to Legal Form: Michael Harte, Office of University Counsel 1.30.12.