

NON-DISCLOSURE AGREEMENT

This Agreement is effective _____, (“Effective Date”), 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, and _____, a _____ corporation having its offices at _____ (“Company”). University may during the period of one year from Effective Date disclose to Company certain Confidential Information (“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” or “Information” means any information embodied in written, graphical, digital, oral, biological or other tangible form, which is identified and designated as confidential at the time of disclosure, and disclosed to Company by or on behalf of University relating to the University owned technology, _____, and including, but 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 by or on behalf of University discussed with Company.
2. “Affiliate” means any entity or natural person which controls, is controlled by, or is under common control with Company 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 Information disclosed by University to Company prior to, on or after Effective Date, Company shall hold the same in confidence and except as is otherwise stated herein, not disclose or make available the Information, by publication or otherwise, to any third party, and shall use the Information only to the extent necessary to achieve the goals of this Agreement as described above.
4. Company shall:
 - a) Take the same degree of care to prevent disclosure of Information obtained 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 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 University, and without delay, return or destroy the Information provided to it and any copies thereof, except that one copy of all Information may be kept by Company 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 Information that:
 - a) as evidenced by Company’s written records, was lawfully known to Company prior to its communication by University and was not communicated to Company subject to any restrictions on disclosure or use; or
 - b) as evidenced by Company’s written records, is independently developed by Company 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 Company; or
 - d) becomes known to Company by the action of a third party not in breach of a duty of confidence.
6. If Company receives a demand to disclose Confidential Information under authority of law, including but not limited to an order of a court of competent jurisdiction or administrative body, or a subpoena, to the

extent legally permissible and as soon as practicable, Company will notify University of the demand and will disclose only such Confidential Information as the demand requires.

7. Company shall be entitled to disclose or make available any Information it receives to Affiliates to whom Company believes it must be communicated to meet its obligations to University hereunder, 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. **Company may not disclose Information to outside parties, such as consultants or technical experts, without first providing to University a copy of the non-disclosure agreement signed by such parties that covers University Confidential Information.**
8. No rights or obligations other than those expressly recited herein are granted to Company or may be implied by this Agreement. Nothing herein constitutes a license or other transfer of rights by University in its Information or in any of its intellectual property rights therein. Company acknowledges and agrees that any inventive contribution that may be provided by its employees, consultants and agents in connection with the disclosure of Information by University shall be assigned to University.
9. 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.
10. The term of this Agreement shall be as described above. The obligations hereunder, including, without limitation, the obligations of clauses 3, 4, and 6, 7 and 10, shall survive expiration of this Agreement and shall expire on the fifth (5th) anniversary of the date Confidential Information was disclosed to Company. If the Information is disclosed in parts on different occasions, then the obligations arising hereunder shall run for 5 years for each separate disclosure, and the Agreement shall be interpreted and construed accordingly.
11. This document represents the entire agreement between the parties in relation to the 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 entered into between 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.
12. Due to the proprietary and valuable nature of the subject matter, the parties agree that any breach of this Agreement would cause irreparable harm to University which may not be adequately compensated for by monetary damages alone and that University's 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.
13. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, excluding its choice of law provisions.
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. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and together shall constitute one document. The Parties agree that duplicated (for example, by pdf email attachment) or facsimile signatures shall be deemed original for all purposes.
17. 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.

Company has caused this Agreement to be executed by its duly authorized representatives as set forth below.

COMPANY

By: _____

Name: _____

Title: _____

Date: _____

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