

MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

This agreement (the "Agreement") is made as of _____, 20__ ("Effective Date"), by and between (1) _____ (hereinafter referred to as "**COMPANY**"), a corporation duly organized under the laws of the State of _____, and having its principal place of business at _____, and (2) **THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK** (hereinafter referred to as "**FOUNDATION**"), a private, nonprofit educational corporation having an office and place of business at the University at Albany, State University of New York, Office for Innovation Development and Commercialization, ES 244, 1400 Washington Avenue, Albany, New York 12222, acting in regard to the University at Albany, State University of New York, individually called "Party," or "Disclosing Party," or "Receiving Party," and collectively called "Parties."

A. The Parties to this Agreement have developed or acquired technical and other proprietary information relating to _____ (hereinafter referred to as "**Confidential Information**") and the Parties wish to ensure that the information which may be disclosed to each other is treated in strictest confidence.

B. Each Party desires to receive such Confidential Information from the other for the limited purpose of evaluating the suitability of entering into a business relationship or sponsorship of research (hereinafter referred to as "**Purpose**").

C. Each Party recognizes the importance of safeguarding such Confidential Information against unauthorized use or disclosure and desires to define herein the rights and obligations with respect to the handling and disclosure of such Confidential Information.

NOW, THEREFORE, in consideration of the disclosures made hereunder, and covenants entered into herewith, **COMPANY** and **FOUNDATION** agree as follows.

COMPANY and **FOUNDATION** are willing to disclose such Confidential Information to each other under the following conditions:

1. Each Party's Confidential Information shall be supplied to the other Party in written, graphic, photographic, recorded, prototype, sample, or other tangible or permanent form and shall be clearly and obviously marked "Confidential" or "Proprietary." Confidential Information in electronic form that is not human readable (e.g., computer programs) or that is stored on disk, tape or other storage media constitutes information in permanent form. Such electronic information will be considered 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. Any Confidential Information which is disclosed in oral form shall be identified as such at the time of disclosure and confirmed in written summary form within thirty

(30) days after its disclosure to the Receiving Party. All restrictions provided herein regarding use and/or disclosure shall apply during such thirty-day period.

2. As used in this Agreement, "Confidential Information" shall mean, by way of example but not by way of limitation: all data, samples, diagrams, processes and methodologies, tools, technological developments of any kind and nature, whether or not patentable or susceptible to any other form of legal protection, technical and economic information, commercialization, clinical and research strategies, and know-how disclosed or provided by one Party to the other in accordance with Paragraph 1. Notwithstanding the foregoing, "Confidential Information" shall not include information which:

- (a) can be demonstrated by documentation to have already been rightfully in the Receiving Party's possession prior to disclosure to it by the Disclosing Party and was not acquired, directly or indirectly, from a third party under a continuing obligation of confidentiality; or
- (b) at the time of disclosure hereunder is, or thereafter, becomes, through no fault or action of the Receiving Party, part of the public domain; or
- (c) is furnished to the Receiving Party by a third party after the time of disclosure hereunder as a matter of right and without restriction on its disclosure; or
- (d) can be demonstrated, in writing, to have been independently developed by employees or agents of the Receiving Party who have not had access, direct or indirect, to the Confidential Information received from the Disclosing Party; or
- (e) is furnished to others by the Disclosing Party without restriction on disclosure; or
- (f) is disclosed to a third party with the written approval of the Disclosing Party.

3. In order for either Party's Confidential Information to be protected as described herein, it must be exchanged in the form set forth in Paragraph 1. The Parties provide the primary contacts for exchange of Confidential Information, identified below:

For **COMPANY**:

Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

For **FOUNDATION**:

Name: _____

Title: _____

Address: _____

Telephone: _____

Fax: _____

E-mail: _____

4. Each Party agrees that at all times as set forth in Section 11, and notwithstanding any prior termination or expiration of this Agreement, it will hold in strict confidence and not disclose to any third party Confidential Information of the other Party, except as set forth in this Agreement, and agrees to limit its use of any Confidential Information received from the other Party for the Purpose, and for no other purpose unless the Parties shall otherwise agree in writing.

5. 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 this Agreement shall be construed as granting any property rights, by implication, license or otherwise, to any Confidential Information of the other Party disclosed pursuant to this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property.

6. 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 of this Agreement), 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.

7. Each Party agrees to maintain in confidence and not to disclose any Confidential Information received from the other Party other than to employees or agents who have a need to know the Confidential Information for the Purpose, and who have been informed of the restrictions on its use and disclosure. Each Party warrants that employees or agents shall comply with the terms of this Agreement.

8. All materials containing any of the Confidential Information disclosed to the Receiving Party by the Disclosing Party shall belong exclusively to the Disclosing Party. Each Party agrees not to make any copies in whole or in part of Confidential Information for any purposes other than the Purpose set forth herein. Any permitted reproductions of Confidential Information shall contain all confidential or proprietary legends which appear on the original.

The Receiving Party agrees to return to the Disclosing Party all materials furnished hereunder and any notes or memoranda of conversations relating thereto, including any copies thereof, upon request or upon termination of this Agreement.

9. The Party receiving Confidential Information under this Agreement 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.

10. 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.

11. This Agreement shall commence on the Effective Date and shall continue for a period of one (1) year unless terminated sooner by either Party on ten (10) days' written notice. The confidentiality obligation of the Parties under this Agreement shall survive for three (3) years after termination of this Agreement.

12. Neither Party shall export, directly or indirectly, any technical data acquired from the other Party pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license of approval.

13. Nothing in this Agreement shall be construed as creating an agency, joint venture, partnership or other formal business relationship or association between the Parties or an obligation by either Party to enter into a contract, subcontract, or other business relationship with the other Party.

14. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors, assigns, heirs, personal representatives, and administrators. Neither Party may assign or otherwise transfer this Agreement or any of its rights and obligations hereunder to any third party (except to a legally recognized successor in interest to all or substantially all of the Party's assets) without the prior written consent of the other Party.

15. In the event that any provisions of this Agreement shall be held by a court of competent jurisdiction to be unenforceable, that portion shall be severed and a new enforceable provision shall be negotiated by the Parties and substituted therefor to accomplish the intent of the severed provision as nearly as practicable. The remaining provisions of the Agreement shall remain in full force and effect.

16. No waiver by either Party of any right or of a breach of any provision of this Agreement shall constitute a waiver of any other right or breach of any other provision, nor shall it be deemed to be a general waiver of such right or provision or to sanction any subsequent breach thereof.

17. This Agreement constitutes the entire understanding and agreement between the Parties pertaining to the subject matter hereof. This Agreement may not be changed or modified or released, discharged, abandoned, or otherwise terminated in whole or in part, except by an instrument in writing signed by a duly authorized officer of each of **COMPANY** and **FOUNDATION**.

18. This Agreement shall be construed exclusively under the laws of the State of New York, without regard to the conflict of laws principles thereof. In case of any dispute concerning or arising out of this Agreement that cannot be resolved between Parties in good faith, such dispute shall be finally settled and venue shall be held exclusively in any appropriate state or federal court in the County of Albany, State of New York. Each Party hereby consents to exclusive jurisdiction and venue of such courts.

19. Each Party acknowledges and agrees that a Party shall be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

20. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, by a recognized national overnight delivery service, by facsimile transmission or by first class mail, and shall be deemed given upon personal delivery, three (3) days after deposit with the United States post office or authorized receptacle for United States mail, the same business day if by facsimile during normal business hours, or the next business day if by facsimile after normal business hours or if by overnight delivery. Notices shall be sent to the addresses set forth at the beginning of this Agreement or such other address as either Party may specify in writing. In addition, an additional copy of any and all notices given under this Agreement shall also be given to the individual designated by the **FOUNDATION** in section 3 above.

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

[Signatures are on the next page.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, effective on the day and year first above written.

COMPANY

By:_____

Date: _____

Name:_____

Title:_____

[Read and Understood by COMPANY Primary Contact:]

By:_____

Date: _____

Name:_____

Title:_____

THE RESEARCH FOUNDATION FOR THE STATE UNIVERSITY OF NEW YORK

By:_____

Date: _____

Name:_Theresa A. Walker

Title:_Asst. Vice President for Research and Director of Innovation Development and
Commercialization
University at Albany, SUNY

[Read and Understood by FOUNDATION Primary Contact:]

By:_____

Date: _____

Name:_____

Title:_____