

CONFIDENTIAL DISCLOSURE AGREEMENT (One Way)

THIS CONFIDENTIALITY AGREEMENT is made as of the ___ day of _____, 20_____, by and between _____, a _____ having its principal offices located at _____ (“**Company**”), and **MONCLAIR STATE UNIVERSITY**, 1 Normal Ave, Montclair, NJ 07043 (collectively referred to as “Institution” or “**MSU**”).

WHEREAS, MSU wishes to provide Company with certain confidential and proprietary information for the purpose of research activities by MSU employee, _____, (the “**Project**”) on terms and conditions to be separately agreed upon; and

WHEREAS, the parties hereto wish to clarify their respective obligations with respect to the exchange of such confidential and proprietary information.

NOW, THEREFORE, in consideration of the premises and mutual promises made herein, the parties, intending to be legally bound, hereby agree as follows:

1. (a) As used herein, “**Confidential Information**” means all data, reports, interpretations, forecasts, records, research samples of any nature, including without limitation, proprietary software, technology, and any other information (written or oral) provided by MSU or any of its directors, officers, employees, agents or representatives which is not available to the general public.

(b) Confidential Information shall not include information that (i) has become generally available to the public other than as a result of a disclosure by Company or any of its Representatives, (ii) was available to Company on a non-confidential basis prior to its disclosure to Company by MSU, (iii) was independently developed by Company, or (iv) has become available to Company on a non-confidential basis from a source other than MSU provided that such source is not known by Company after due inquiry of such source to be bound by a confidentiality agreement with MSU or otherwise prohibited from transmitting the information to Company by a contractual, legal or fiduciary obligation.

2. Company agrees that Confidential Information shall not be used for any purpose other than as provided herein. Company shall use the same degree of care as it uses with respect to its confidential information (but in no event less than a reasonable degree of care) to hold Confidential Information in confidence and shall not disclose the same to others, or use the same except for purposes of this Agreement, without the written consent of MSU. However, Company may disclose Confidential Information to its subcontractors or affiliates who have a need to know the same for purposes of this Agreement. Company shall inform its subcontractors and affiliates of the confidential and proprietary nature of such Confidential Information and shall be directed to treat the same confidentially and shall agree in writing to abide by the provisions herein. In any event, Company shall be responsible for any breach of this Agreement by any third party to whom Company discloses Confidential Information.

3. In the event that Company is required by lawful order of a court, arbitrator, governmental agency or otherwise by applicable law to disclose any Confidential Information, which disclosure is not otherwise permitted hereunder, it is agreed that Company will provide MSU with prompt notice of any such request or requirement so that MSU may seek an appropriate protective order or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder, Company is compelled to disclose Confidential Information pursuant to such request or else stand liable for contempt or suffer other penalty, Company may disclose that portion of the Confidential Information that Company is compelled to disclosed as aforesaid. In any event, Company will not oppose action by, and will cooperate with, MSU to obtain an appropriate protective order. All references to Company in this paragraph shall be deemed to include any third party to whom Company disclosed the Confidential Information.

4. MSU may, at its sole discretion, make Confidential Information available to Company on the following conditions:

(a) Company shall not disassemble, including without limitation, reverse engineer or decompile any proprietary software or related intellectual property;

(b) Company shall not analyze, or have others analyze, Confidential Information or any portions thereof furnished by MSU to determine the chemical composition or microscopic structure;

(c) Company shall use Confidential Information provided by MSU without modification thereto unless otherwise expressly authorized in writing by MSU;

(d) the type and quantity of Confidential Information to be furnished by MSU to Company shall be at the sole discretion of MSU. Company recognizes that Confidential Information is of a developmental nature and that MSU makes no representation, express or implied, that MSU has furnished any Confidential Information to Company for commercial distribution;

(e) MSU shall not be liable or responsible in any way for Company's handling or use of Confidential Information;

(f) Company agrees that all Confidential Information provided hereunder shall remain solely within its control and shall not make it or any portions thereof available to third parties (other than as permitted by this Agreement), without the prior written consent of MSU; and

(g) Company agrees to return all Confidential Information to MSU upon the request of MSU or termination of this Agreement, whichever occurs first.

Company agrees to indemnify MSU and hold it harmless from and against all loss, liability, damage and expense (including reasonable attorneys' fees) arising from any and all claims, demands, actions or suits resulting directly or indirectly from the negligent misuse of any Confidential Information by Company or any violation by Company of the terms of this Agreement.

5. Company understands that, except as may otherwise be expressly agreed in writing, MSU does not make any representation or warranty as to the accuracy or completeness of the Confidential Information.

6. No right or license is granted hereby to Company, expressly or by implication, with respect to the Confidential Information, or any patent, patent application or other proprietary right of MSU, notwithstanding the termination of the confidentiality obligations of this Agreement.

7. Company will, promptly upon the request of MSU, deliver to MSU any and all documents and materials comprising Confidential Information or any part thereof and will destroy any copies, notes or extracts thereof, without retaining any copy thereof, or destroy such documents and materials upon MSU's request (such destruction to be confirmed in writing).

8. Company agrees that money damages would not be a sufficient remedy for any breach of this Agreement by Company and that MSU shall be entitled to specific performance and injunctive or other equitable relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies but shall be in addition to all other remedies available at law or in equity to MSU.

9. Company hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of the State of New Jersey located in New Jersey for any actions, suits or proceedings arising out of or relating to this Agreement. Company hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this agreement or the transactions contemplated hereby in the courts of the State of New Jersey and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action suit or proceeding brought in any such court has been brought in an inconvenient forum.

10. If any of the provisions of this Agreement are not enforceable in whole or in part, the remaining provisions of this Agreement shall not be affected thereby. No failure or delay in exercising any other right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. Neither party may assign this Agreement without the prior written consent of the other party hereto. No amendment or modification to this Agreement shall be effective unless made in writing and signed by both parties. This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey, without giving effect to its conflict of laws principles or rules.

IN WITNESS WHEREOF, the parties have caused the Agreement to be signed by their duly authorized representatives as of the date first written above.

[Signatures to follow on next page]

[COMPANY NAME]

MONTCLAIR STATE UNIVERSITY

By: _____
Name:
Title:
Date:

Name:
Title:
Date:

MSU: PI/Engaged Representative:

