

## **MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT**

This Agreement is made between \_\_\_\_\_, a \_\_\_\_\_ company with corporate offices at \_\_\_\_\_ (hereinafter “Company”) and The Research Foundation for The State University of New York, a private, non-profit educational corporation organized and existing under the laws of the State of New York, with a principal office located at 35 State Street, Albany, NY 12207 (hereinafter the “Foundation”), on behalf of The State University of New York – Binghamton University, enabling the parties to explore a business relationship involving collaborative or sponsored research projects, analytical services or technology transfer activities related to

\_\_\_\_\_ (hereinafter “Purpose”).

This may entail the disclosure by Company and Foundation of proprietary commercial, business and/or technical information relating to either party’s products and procedures, for example, in the form of patent filings, know-how, inventions, technical data, research results or specifications, testing methods, structural information, pre-clinical and/or clinical data, protocols and results, proprietary compounds or agents, research and development activities, marketing plans, and customer and supplier information (hereinafter “Proprietary Information”). For purposes of this Agreement, the term Proprietary Information excludes Company trade secrets and export-controlled data or technology. Both parties desire to maintain the confidentiality of such Proprietary Information and to disclose same to each other pursuant to the terms and conditions of this Agreement. For purposes hereof, the party disclosing Proprietary Information is referred to herein as the “Disclosing Party” and the party receiving Proprietary Information is referred to herein as the “Receiving Party.”

It is therefore agreed as follows:

1. Proprietary Information, whether disclosed in written, machine-readable, oral, visual, or tangible form, disclosed to the Receiving Party shall be subject to the provisions of the Agreement when:
  - a. the information is disclosed in written form which is marked “Confidential” or “Proprietary” or with an equivalent legend; or
  - b. the information is disclosed orally or visually (such as through visits to facilities of the Disclosing Party) and is identified at the time of disclosure as being confidential, and within thirty (30) days thereafter, a written summary of such oral or visual disclosures marked “Confidential” or “Proprietary” or with an equivalent legend is provided to the Receiving Party; or
  - c. disclosed in tangible form (such as product samples), it is identified at the time of disclosure as being confidential; while there is no requirement for marking such samples themselves, a transmittal sheet shall accompany the samples identifying them as Proprietary Information.
2. Proprietary Information shall be disclosed by the Receiving Party only to those of its employees, students, interns, consultants or agents and the employees of its affiliated companies who need to know such Proprietary Information for the Purpose, who have been informed of the confidential nature of such information and who agree to be bound to keep such information in confidence. For purposes of this Agreement, an “Affiliated Company” shall mean any legal entity (such as a corporation, joint venture, partnership, or limited liability company) that is controlled by, controls, or is under common control with one of the parties. The term “control” means (a) beneficial ownership of more than fifty percent (50%) of the voting securities of a corporation or other business

organization with voting securities or (b) an interest of greater than fifty percent (50%) in the net assets or profits of a partnership or other business organization without voting securities.

3. The Receiving Party agrees that in regards to all Proprietary Information subject to the provisions of this Agreement, it will:
  - a. hold in confidence all such Proprietary Information;
  - b. treat the Proprietary Information with the same degree and standard of care as that party treats its own confidential or proprietary information and take all reasonable precautions to prevent the disclosure of such Proprietary Information to any third party without the prior written consent of the Disclosing Party;
  - c. not use such Proprietary Information, directly or indirectly, for any purposes other than for the Purpose specifically set forth in the Agreement; and,
  - d. not reverse engineer or disassemble the technology that embody the Disclosing Party's Proprietary Information.
4. The confidentiality and limited use obligations set forth herein shall not apply to information which:
  - a. the Receiving Party can show by suitable written (including machine-readable) documentation was already in its possession prior to receipt of the same from the Disclosing Party; or
  - b. is in the public domain at the date of the disclosure or thereafter enters the public domain without the breach of any provision in this Agreement by the Receiving Party; or
  - c. is independently developed by employees, students or agents of the Receiving Party who have not had access, direct or indirect, to the Proprietary Information received from the Disclosing Party, as evidenced by written records; or
  - d. is furnished to others by the Disclosing Party without restriction on disclosure; or
  - e. the Receiving Party can show was or hereafter is received by it without restriction from a third party who was lawfully in possession of such information and such third party was not in breach of any agreement or any confidential relationship with the Disclosing Party; or
  - f. must be disclosed pursuant to applicable law, court order or regulations of any applicable governmental authority; however, Receiving Party shall notify Disclosing Party to provide Disclosing Party with an opportunity to object or otherwise act to protect its interests.
5. Except for the purpose of fulfilling obligations under this Agreement, nothing in this Agreement shall be deemed by implication or otherwise to convey to the Receiving Party any grant of right or license with respect to any patent, patent application, or other proprietary rights or Proprietary Information of the Disclosing Party. No right is granted by this Agreement to use any registered or unregistered trademark, service mark or trade name of the other Party.
6. Nothing in this Agreement shall be deemed to provide any commitment of any kind by either party to enter into any further agreement with the other party. ANY INFORMATION EXCHANGED IS PROVIDED "AS IS."
7. All Proprietary Information disclosed under this Agreement shall be and remain the property of the Disclosing Party. Upon written request of the Disclosing Party, Receiving Party shall make

reasonable efforts to destroy all Proprietary Information disclosed or generated pursuant to this Agreement. Receiving Party may, however, retain an archival copy solely for the purpose of monitoring compliance with its obligations under this Agreement, marking such copies "Confidential" or "Proprietary" or with an equivalent legend.

8. Any notice required by this Agreement shall be given in writing to the individuals named below, either via hand delivery, USPS (with return receipt) or by express courier.

If to Company:                      Name:  
   Title:  
   Phone:

If to Foundation:                      Assistant Vice President  
   Office of Entrepreneurship & Innovation Partnerships  
   Binghamton University  
   P.O. Box 6000  
   Binghamton, NY 13902-6000

Note: express courier service can be delivered to Foundation at:

85 Murray Hill Road  
ITC/BI, Suite 2100  
Vestal, NY 13850  
(607) 777-5871

9. The term of this Agreement shall be one (1) year from the Effective Date, unless earlier terminated upon fifteen (15) days written notice by a terminating party to the other party. The obligations of confidentiality and nonuse of Proprietary Information as set forth herein shall continue during the term of this Agreement and for a period of two (2) years after expiration or termination, whichever comes first.
10. This Agreement, and any interpretation, dispute or controversy arising out of this Agreement, shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflicts of laws principles thereof. Any litigation shall be brought to a court of competent jurisdiction within the state of New York.
11. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understanding between the parties (whether written or oral) relating thereto. No modification shall be effective unless made in writing and signed by a duly authorized representative of each party.
12. This Agreement may be signed in one or more counterparts and transmitted electronically or by facsimile; each counterpart shall constitute an original document and such counterparts taken together shall constitute one and the same instrument.

REST OF PAGE BLANK – SIGNATURES FOLLOW ON NEXT PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date set forth below (the “Effective Date”).

**AGREED ON BEHALF OF:  
COMPANY**

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

(Signature)

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

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

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

**AGREED ON BEHALF OF:  
THE RESEARCH FOUNDATION FOR THE  
STATE UNIVERSITY OF NEW YORK**

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

(Signature)

Name: Scott Hancock

Title: Director, IP Management and Licensing  
Office of Entrepreneurship and Innovation Partnerships  
Binghamton University

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