

Collaborator: [_____]
OSP # [_____]

NONDISCLOSURE AGREEMENT

This Agreement is entered into as of _____ (“Effective Date”), between Cornell University, a non-profit, educational institution with corporate powers under the laws of the State of New York, having an office at 373 Pine Tree Road, Ithaca, NY 14853 (hereinafter called “Cornell”), and _____, having an office at _____, (hereinafter called “_____”).

WHEREAS, Cornell and _____ (hereinafter referred to as the party and/or the parties), wish to have discussions on and explore possibilities for cooperation in the field of research and development of _____, and consequently will exchange certain proprietary information relating to their respective know-how, products and businesses for the purpose of evaluating a possible collaboration;

NOW, THEREFORE, in consideration of the promises recited herein, each party hereto agrees to disclose and to receive information as applicable in a manner consistent with the following provisions:

1. “Confidential Information” shall mean any and all confidential or proprietary information, know-how and data, technical or non-technical, disclosed or provided by one party to the other, whether in oral, written, graphic, photographic, electronic or any other form and that is marked or identified as confidential in accordance with paragraph 2. below. Confidential Information does not include subject matter and information:

- a. that is or becomes generally known or available to the public without breach of this Agreement;
- b. that is known to the receiving party at the time of disclosure as evidenced by written records of the receiving party;
- c. that is known or independently developed by the receiving party without reliance upon the disclosing party’s Confidential Information and can be proven as such through written records of the receiving party; or
- d. that is disclosed to the receiving party in good faith by a third party who has an independent right to such subject matter and information.

2. All information disclosed in tangible form under this Agreement shall be conspicuously marked in writing as “Confidential Information”. All information disclosed in oral or other intangible form shall be identified as confidential at the time of disclosure and confirmed in written summary form marked “Confidential Information” and transmitted to the receiving party within 30 days of its disclosure. Each party retains the right to refuse receipt of written material which it does not consider to be essential to the completion of the project or which it believes to be improperly designated as Confidential Information, or for any other reason.

3. The parties agree to hold in confidence and withhold from third parties any and all Confidential Information disclosed by one party to the other, on or after the Effective Date of this Agreement, and to use Confidential Information only for the purposes set forth in this Agreement, unless the originating party agrees in writing to a change of purpose. Notwithstanding the foregoing, receiving party may disclose the applicable portion of Confidential Information that is required to be disclosed pursuant to a valid order of a court or other governmental body, provided that to the extent that it may lawfully do so, receiving party shall first have given notice to disclosing party and a reasonable opportunity to object or obtain a protective order.

4. Each receiving party agrees to take reasonable and appropriate measures to safeguard any Confidential Information received from the disclosing party from unauthorized use, publication or disclosure to others, and to limit access to Confidential Information to those employees or agents within the receiving party’s organization who reasonably require such access in order to accomplish the purposes stated above and that are bound by obligations of confidentiality similar to those of the present Agreement. The above obligations relating to use and disclosure shall be satisfied by the receiving party affording the Confidential Information the degree of care normally used by the receiving party in the protection of its own Confidential Information of like quality, but in any event, no less than reasonable care.

5. Unless otherwise specified in writing, all Confidential Information remains the disclosing party’s property. Immediately upon request of the disclosing party or within thirty (30) days from the date of termination or expiration of this Agreement, the receiving party agrees to cease using the Confidential Information and to return or destroy all Confidential

Information received from the disclosing party. Each party shall be permitted to retain one copy of the other party's written Confidential Information, which the receiving party may keep solely to monitor its obligation under this Agreement.

6. The term of this Agreement shall be for one (1) year from the Effective Date ("Expiration"). The receiving party shall hold all Confidential Information as confidential for two (2) years from the date of Expiration.

7. Nothing contained in this Agreement shall be construed as an obligation to enter into any further agreement concerning the Confidential Information. No license, right or options under any patent, copyright, trademark, mask works, or equivalent rights are granted by this Agreement.

8. Neither party shall make use of this Agreement, or use the other's name or that of any member of the other's staff for publicity, advertising or other commercial purposes without prior written approval of the other party.

9. Each party acknowledges that certain information or technology provided by the other party under this Agreement may be subject to United States export control laws and regulations (collectively, "Export Control Laws") which include, without limitation, the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR) and regulations and orders administered by the Office of Foreign Assets Control (OFAC). Each party agrees to comply with all Export Control Laws. The disclosing party shall provide the receiving party with written notice containing the nature of any such export controlled information, including Export Control Classification Number (ECCN) or United States Munitions List (USML) category, prior to any exchange of such export controlled Confidential Information. The disclosing party shall not disclose any information subject to Export Control Laws unless and until the disclosing party has been notified by the receiving party in writing that a plan for the transfer and control of the information has been created by the receiving party.

10. Should any court of competent jurisdiction later consider any provisions of this Agreement to be invalid, illegal, or unenforceable, such provisions shall be considered severed from this Agreement. All other provisions, rights, and obligations shall continue without regard to the severed provision, provided that the remaining provisions of this Agreement are in accordance with the intentions of the parties.

11. The validity, interpretation and performance of this Agreement and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of New York, USA.

12. This Agreement contains the entire understanding between the parties with respect to the Confidential Information described herein and supersedes all prior understandings whether written or oral. Any modification, amendment or waiver of the terms of this Agreement shall require the written approval of authorized representatives of each party.

13. Both parties warrant and represent that they have the right to enter into this Agreement. The parties further warrant and represent that the terms of this Agreement are not inconsistent with other contractual obligations to which they are bound. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF ANY CONFIDENTIAL INFORMATION PROVIDED TO THE OTHER PARTY UNDER THIS AGREEMENT.

14. Paragraph 1, that portion of paragraph 3 hereof dealing with disclosure pursuant to a court or governmental order, that portion of paragraph 6 hereof dealing with the duration of the obligation of confidentiality, paragraph 9 and paragraph 11 shall survive the termination or expiration of this Agreement.

The foregoing has been agreed to and accepted by authorized representatives of each party whose signatures appear below.

AGREED:

CORNELL UNIVERSITY
Office of Sponsored Programs

COLLABORATOR NAME

Name/Title

Name/Title

Date

Date