

MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Mutual Non-Disclosure and Confidentiality Agreement (the "Agreement"), effective as of this ___ day of _____, 20__ (the "Effective Date"), by and between Illinois Institute of Technology ("IIT"), an Illinois not-for-profit corporation, having a principal office at 10 W. 35th Street, Chicago, IL 60616, and _____ (the "Company"), a(n) _____ corporation, having a principal office at _____, is entered into to allow for the evaluation of a possible business relationship between IIT and the Company.

NOW, THEREFORE, in consideration of the mutual promises and undertakings herein, IIT and the Company hereby agree to the following:

1. **Definition.** From time to time, during the term of this Agreement, there may be an exchange or exchanges of certain technical data, business information and/or other information (the "Confidential Information") that the disclosing party deems confidential and/or proprietary and that is related to **[INSERT A SHORT DESCRIPTION OF THE SUBJECT MATTER(S) OF THE DISCUSSIONS]** (the "Stated Purpose"). The parties agree that Confidential Information should be kept confidential and be used only for the Stated Purpose, all in accordance with the terms of this Agreement. Data and information that a party wishes to have deemed Confidential Information shall be treated as such provided (i) if in a tangible format, it is labeled or marked as "confidential" or "proprietary", and (ii) if not in tangible format, such as oral or visual disclosures, it is identified as Confidential Information at the time of the initial disclosure and that identification is confirmed in writing within twenty (20) days after the disclosure. Confidential Information shall exclude information that:

- a. is or becomes public knowledge or part of the public domain, provided that it has not become public knowledge or part of the public domain due to the fault of the receiving party;
- b. is made available to the receiving party by an independent third party that is not obligated to keep the information confidential;
- c. is in the receiving party's possession at the time of receipt from the disclosing party, as evidenced by its written records; or
- d. is or was independently developed by the receiving party without reference to the information, as evidenced by its written records.

2. **Obligations and Restrictions.** IIT and the Company will retain in confidence, for a period of ____ (___) years following the Termination Date (as defined in Section 5 below), all Confidential Information disclosed to it by the other party, and will not, without the prior written consent thereof, use the Confidential Information supplied hereunder for any purpose other than the Stated Purpose. **[THE INSERTED TIME PERIOD SHOULD BE AS SHORT AS POSSIBLE, WITH 2 OR 3 YEARS BEING THE IDEAL AND FIVE (5) YEARS BEING THE MAXIMUM. ANY PERIOD BEYOND FIVE (5) YEARS REQUIRES PRIOR REVIEW OF THE GENERAL COUNSEL'S OFFICE.]** The obligation to keep the Confidential Information in confidence, however, will not apply to any Confidential Information to the extent that the same is required by law, regulation, rule, act or order of any governmental authority or agency to be disclosed; provided, however, that the party required to so disclose shall give the other party sufficient notice, given the

circumstances, to permit the other party, at its sole expense, to seek a protective order or other similar order with respect to such Confidential Information. In addition, each party agrees not to disclose to any third party that it is in discussion with the other in connection with the Stated Purpose or its interest, or lack of interest, in the other party's Confidential Information disclosed hereunder.

3. Employees of the Parties. IIT and the Company shall limit disclosure of any Confidential Information received hereunder to only those of its officers, employees, students and/or agents (and the officers, employees and agents, of any of its parent, subsidiary or affiliated corporations), who need to know the Confidential Information in connection with the Stated Purpose. The non-disclosure and confidentiality obligations and use restrictions set forth in this Agreement shall extend to all such officers, employees and agents of the parties, and it is incumbent on each party, at its sole expense, to ensure that these obligations and restrictions are known and understood by any such recipients of the Confidential Information. In any event, IIT and the Company shall use at least the same degree of diligence to protect the Confidential Information from disclosure as each uses to protect its own proprietary information from disclosure.

4. Duty to Notify. A party that receives any Confidential Information shall promptly notify the party that disclosed such Confidential Information in writing if the receiving party has reason to believe that unauthorized use, possession, acquisition, dissemination or disclosure of the Confidential Information has occurred and shall use all reasonable effort to cooperate with any appropriate action taken by the disclosing party to protect its rights therein, including enforcing the terms of any agreement between the receiving party and the individual(s) responsible for the unauthorized use or disclosure.

5. Term. This Agreement shall terminate _____ (___) year/months from the Effective Date (the "Termination Date"), unless this Agreement is renewed or extended to another date certain by a written agreement signed by the parties. **[THE INSERTED TIME PERIOD SHOULD BE AS SHORT AS POSSIBLE AS THE POINT OF THIS AGREEMENT IS TO ALLOW CONVERSATIONS TO OCCUR TO DETERMINE WHETHER THE PARTIES CAN AND SHOULD DO BUSINESS TOGETHER. ANY PERIOD BEYOND ONE (1) YEAR REQUIRES PRIOR REVIEW BY GENERAL COUNSEL'S OFFICE.]** Notwithstanding such termination, the obligations of non-disclosure and confidentiality and use restrictions set forth in Sections 2, 3 and 4 of this Agreement shall survive such termination for the period of time set forth in Section 2. Upon termination, each party shall, upon request, promptly return or certify the destruction of all documents containing any Confidential Information received from the other party, along with all copies and analyses derived there from; provided, however, that the receiving party may retain, for the period of time set forth in Section 2, one copy of such Confidential Information in a secure location solely for the purpose of identifying and monitoring its obligations under this Agreement.

6. Remedies. Each party acknowledges and expressly agrees that any disclosure of Confidential Information disclosed to it in violation of this Agreement may be detrimental to the other party's business. In the event of any breach of this Agreement by either party, the other party, in addition to any other rights and remedies provided under law or in this Agreement, shall be entitled to seek equitable relief by way of injunction or otherwise without the need to post a bond or any such security.

7. No Rights or Licenses. No license or other right is created or granted nor any obligation is assumed hereby, except the specific right to perform the Stated Purpose and the specific obligations assumed as set forth herein. For the avoidance of doubt, no license, right or obligation other than as set forth herein may be created or granted except by a separate written agreement signed by the parties. Nothing contained in this Agreement shall be construed as (i) an obligation to enter into any further agreement concerning the Stated Purpose or the Confidential Information, or (ii) as a grant of a license to the Confidential Information or to any patent or patent application existing now or in the future. This Agreement does not grant nor assign to the party receiving any Confidential Information pursuant hereto any rights, title, interest or license to the Confidential Information, including any revisions or modifications thereof, all of which are expressly reserved by the party disclosing such Confidential Information.

8. Warranties. Each Party represents and warrants that it has the unqualified right to make the disclosures contemplated by this Agreement. Except for the foregoing, neither party is making nor shall either be deemed to be making any representation or warranty of any kind, express or implied, regarding the accuracy or usefulness of any disclosure made pursuant to this Agreement. Further, the disclosure of Confidential Information shall not constitute any representation, warranty, assurance, guaranty, or inducement by the disclosing party to the receiving party with respect to infringement of patent or other rights of others.

9. Governing Law. This Agreement shall be construed in accordance with Illinois law without regard to the conflict of laws, rules or principles thereof. Any dispute between the parties arising from or related to this Agreement shall be brought in the appropriate federal or state court, as the case may be, located in Cook County, Illinois.

10. Notices. Any and all notices, consents, demands or other communications required or permitted to be given by one party to the other under this Agreement shall be in writing and signed by the authorized representative of such party, either delivered by hand, sent by confirmed facsimile, sent by confirmed electronic mail or delivered by an internationally recognized courier to such other party's address as set forth below:

If to IIT:	If to the Company:
Assistant Vice Provost for Research	
Illinois Institute of Technology	
10 West 35 th Street, Room 7D7-1	
Chicago, IL 60616-3717	
Phone: 312-567-3987	
Fax: 312-567-6980	
Email: pappas@iit.edu	
With copy to:	With copy to:
Illinois Institute of Technology	
Office of General Counsel	
10 W. 35 th Street, Suite 1900-SW	
Chicago, IL 60616	
Attn.: General Counsel	
Telephone: 312-567-3006	
Facsimile: 312-567-3004	

11. Entire Agreement. This Agreement is the complete agreement of the parties concerning the subject matter hereof and supersedes any prior agreements. This Agreement may only be amended by a written instrument signed by both parties hereto. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors, legal representatives and, to the extent permitted hereby, assigns.

12. Export-Controlled Information. The parties acknowledge and agree that in connection with the Stated Purpose and fulfillment of its obligations hereunder neither shall disclose to the other information of a scientific or technical nature, including any improvements, additions or modifications thereto, laboratory prototypes, materials or other commodities that are subject to the export control laws and regulations of the United States, including the Export Administration Regulations and the International Traffic in Arms Regulations, as amended.

13. Miscellaneous. In the event any one or more of the paragraphs or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason or in any respect, the validity, legality and enforceability of the remaining paragraphs and provisions shall not be in any way affected or impaired thereby. This Agreement may not be assigned by either party without the advance written consent of the other party. This Agreement may be executed in any number of counterparts and/or by facsimile. Each such counterpart and/or facsimile copy shall be deemed an original instrument, and all of which, together, shall constitute one and the same executed Agreement. This Agreement shall be deemed to have been drafted by both parties. The headings contained in this Agreement are merely for convenience and shall not be deemed to have any particular meaning or import.

IN WITNESS WHEREOF, this Agreement shall be executed and delivered in duplicate by the parties' duly authorized officers or representatives and be effective as of the Effective Date.

ILLINOIS INSTITUTE OF TECHNOLOGY

[INSERT COMPANY'S NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____