



INBOUND NON-DISCLOSURE AGREEMENT

This Agreement is made effective as of _____, 2008 (the “Effective Date”) between _____ with a principal place of business at _____ (“Company”), and the Massachusetts Institute of Technology, with a principal place of business at 77 Massachusetts Avenue, Cambridge, Massachusetts 02139-4307 (“MIT”), in anticipation of Company disclosing confidential information to MIT for the purpose of evaluating technology licensing opportunities regarding MIT Case No: _____ (the “Purpose”).

The primary contact(s) for disclosing confidential information for Company or receiving confidential information for MIT are as follows:

For Co.:	1. _____	Email: _____	Department: _____
	2. _____	Email: _____	Department: _____
For MIT:	1. _____	Email: _____	Department: _____
	2. _____	Email: _____	Department: _____

In consideration of Company making confidential information available to MIT, the parties hereby agree as follows:

- 1. CONFIDENTIAL INFORMATION.** When used in this Agreement, the term “Confidential Information” means confidential and proprietary information disclosed by the Company to MIT that (i) prior to disclosure, is marked with a legend indicating its confidential status or (ii) is disclosed orally or visually, if the Company identifies such information as confidential at the time of disclosure and, within 30 days of such disclosure, delivers to MIT’s primary contact for receipt of Confidential Information a notice summarizing the confidential information disclosed. Notwithstanding the foregoing, in no event is information Confidential Information if it (a) was in MIT’s possession before receipt from the Company; (b) is or becomes a matter of public knowledge through no fault of MIT; (c) is received by MIT, without restriction as to further disclosure, from a third party having an apparent bona fide right to disclose the information; or (d) is independently developed by MIT without use of the Company’s Confidential Information. For purposes of this Agreement, MIT students are not third parties vis à vis MIT.
- 2. LIMITATIONS ON USE.** MIT shall use the Company’s Confidential Information solely for the Purpose. Disclosure by the Company of its Confidential Information does not constitute a grant to MIT of any right or license to the Company’s Confidential Information, except as set forth herein.
- 3. CARE OF CONFIDENTIAL INFORMATION.** MIT shall exert reasonable efforts to maintain the Company’s Confidential Information in confidence, except that MIT may disclose or permit disclosure of any of the Company’s Confidential Information to its members, officers, employees, consultants, advisors and students who need to know such Confidential Information to fulfill the Purpose and who have been advised of and have agreed to maintain the confidential nature of the Confidential Information.
- 4. REQUIRED DISCLOSURES.** Nothing in this Agreement shall be construed to prevent MIT from disclosing Confidential Information pursuant to an order of a court or other governmental authority of competent jurisdiction, as long as MIT promptly notifies the Company of its intention to disclose and provides reasonable cooperation to the Company in any efforts to contest or limit the scope of such order or subpoena.
- 5. NO WARRANTY.** All Confidential Information is provided “as is.” The Company makes no warranties, expressed or implied, regarding its Confidential Information’s accuracy, completeness, suitability or performance.
- 6. TERM OF AGREEMENT.** The term of this Agreement shall commence on the Effective Date and terminate on the earliest of (a) the conclusion of the Purpose, (b) three years from the date of this Agreement, or (c) the date on which a party provides notice of termination of this Agreement to the other. MIT’s obligations with respect to use and non-disclosure of the Company’s Confidential Information shall survive for a period of three years following receipt of the information.

7. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION. Following termination of this Agreement, MIT shall, at the direction of the Company, either destroy or return to the Company all documents, materials, and other tangible manifestations of the Company's Confidential Information and shall destroy any electronic or digital manifestations of the Company's Confidential Information, except that MIT may retain one copy of the Confidential Information solely for the purpose of monitoring its obligations under this Agreement.

8. NOTICES. Any notices to be given under this Agreement, other than those contemplated by Section 1, shall be in writing and addressed to the parties as shown below. Notices shall be delivered by certified or registered first class mail (air mail if not domestic) or by commercial courier service and shall be deemed to have been given or made as of the date received.

FOR MIT:

Technology Licensing Office, Rm NE25-230
Five Cambridge Center, Kendall Square
Cambridge, MA 02142-1493

FOR COMPANY:

9. MISCELLANEOUS PROVISIONS

- 9.1 Export Control. COMPANY covenants and warrants that it will not disclose to the other any information that contains information, technology or data identified on any U.S. export control list, including the Commerce Control List at 15 CFR 774 and the U.S. Munitions List at 22 CFR 121, unless and until it obtains the written consent of MIT's Export Control Officer.
- 9.2 CREATE Act. For the purposes of the Cooperative Research and Technology Enhancement Act of 2004, the parties agree that this Agreement is not considered a joint research agreement.
- 9.3 No Agency or Future Commitment. The parties do not intend that any agency, partnership, joint venture, or exclusive relationship is created between the parties by this Agreement, and each party is free to pursue relationships and opportunities with others similar to those contemplated by this Agreement. Nothing in this Agreement shall be construed as obligating the parties to enter into any subsequent agreement or relationship.
- 9.4 Entire Agreement/Amendment. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof. This Agreement may be amended or modified only by a written instrument signed by an authorized representative of each party.
- 9.5 Assignment. This Agreement may not be assigned by either party without the other party's prior written consent.
- 9.6 Severability. The provisions of this Agreement are severable. In the event any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions hereof and the provision shall be reformed to be enforceable and reflect as closely as possible the intent of the original provision.
- 9.7 Waiver. Any waiver of compliance with the terms of this Agreement must be in writing, and any waiver in one instance shall not be deemed a waiver in any future instance.
- 9.8 Governing Law. The interpretation and validity of this Agreement and the rights of the parties shall be governed by the laws of the Commonwealth of Massachusetts.
- 9.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed to be an original, but all of which together constitute one and the same instrument.

Executed as of the Effective Date:

COMPANY

MASSACHUSETTS INSTITUTE OF TECHNOLOGY

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Return to: MIT Technology Licensing Office
Room NE25-230, Five Cambridge Center, Kendall Square,
Cambridge, MA 02142-1493
Phone: (617) 253-6966
Facsimile: (617) 258-6790