



## MUTUAL 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 each party disclosing confidential information to the other party for the purpose of evaluating technology licensing opportunities relating to MIT Case No. \_\_\_\_\_ (the “Purpose”).

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

For Co.: 1. \_\_\_\_\_ Email: \_\_\_\_\_ Department: \_\_\_\_\_  
 2. \_\_\_\_\_ Email: \_\_\_\_\_ Department: \_\_\_\_\_  
 For MIT: 1. \_\_\_\_\_ Email: \_\_\_\_\_ Department: \_\_\_\_\_  
 2. \_\_\_\_\_ Email: \_\_\_\_\_ Department: \_\_\_\_\_

In consideration of each party making confidential information available to the other party, 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 one party (“Disclosing Party”) to the other (“Receiving Party”) that (i) prior to disclosure, is marked with a legend indicating its confidential status, (ii) is disclosed by MIT and is or relates to unpublished research, invention disclosures, or unpublished patent applications; or (iii) is disclosed orally or visually, if the Disclosing Party identifies such information as confidential at the time of disclosure and, within 30 days of such disclosure, delivers to the Receiving Party’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 the Receiving Party’s possession before receipt from the Disclosing Party; (b) is or becomes a matter of public knowledge through no fault of the Receiving Party; (c) is received by the Receiving Party, without restriction as to further disclosure, from a third party having an apparent bona fide right to disclose the information to the Receiving Party; or (d) is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information. For purposes of this Agreement, MIT students are not third parties vis à vis MIT.

**2. LIMITATIONS ON USE.** The Receiving Party shall use the Disclosing Party’s Confidential Information solely for the Purpose. Disclosure by the Disclosing Party of its Confidential Information does not constitute a grant to the Receiving Party of any right or license to the Disclosing Party’s Confidential Information, except as set forth herein.

**3. CARE OF CONFIDENTIAL INFORMATION.** The Receiving Party shall exert reasonable efforts to maintain the Disclosing Party’s Confidential Information in confidence, except that the Receiving Party may disclose or permit disclosure of any of the Disclosing Party’s Confidential Information to its directors (in the case of MIT, members), officers, employees, consultants, advisors and, in the case of MIT, 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 a Receiving Party from disclosing Confidential Information pursuant to an order of a court or other governmental authority of competent jurisdiction, as long as the Receiving Party promptly notifies the Disclosing Party of its intention to disclose and provides reasonable cooperation to the Disclosing Party in any efforts to contest or limit the scope of such order or subpoena.

**5. NO WARRANTY.** All Confidential Information is provided “as is.” Neither party makes any 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) 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. A Receiving Party’s obligations with respect to use and non-disclosure of the Disclosing Party’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, the Receiving Party shall, at the direction of the Disclosing Party, either destroy or return to the Disclosing Party all documents, materials, and other tangible manifestations of the Disclosing Party's Confidential Information and shall destroy any electronic or digital manifestations of the Disclosing Party's Confidential Information, except that the Receiving Party 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. Each party 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 the other party. In the case of MIT, the written consent must be executed by 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: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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