

CONFIDENTIAL DISCLOSURE AGREEMENT

This **CONFIDENTIAL DISCLOSURE AGREEMENT** (referred to as “Agreement”) is effective as of the date of the last signature below (the “Effective Date”) is entered into by and between [**Organization Name**], a [Type of Organization] duly organized under the laws of the state of [State of Incorporation], having its principal place of business at [Address] (hereinafter referred to as “ORGANIZATION”), and the **Board of Trustees of Southern Illinois University**, a body politic and corporate of the State of Illinois, by and on behalf of [SIU Campus], located at [Campus Location] (hereinafter referred to as “SIU”). Hereinafter, the term “Parties” shall mean both SIU and ORGANIZATION, and the term “Party” shall mean either of them.

RECITALS

WHEREAS, SIU is willing to disclose proprietary and confidential information/data with respect to a potential effort in the field of: [SIU field of disclosure];

WHEREAS, ORGANIZATION is willing to disclose proprietary and confidential information/data with respect to a potential effort in the field of: [ORGANIZATION field of disclosure];

WHEREAS, the purpose for such disclosures by the Parties is to evaluate its interest in a potential arrangement for research, development, and/or commercialization and to discuss possible collaborative efforts (the “Purpose”).

TERMS

NOW THEREFORE, in consideration of the mutual promises and conditions contained in this Agreement, the Parties agree as follows:

1.0 Confidential Information.

1.1 “Confidential Information” means all information not available to the general public that is owned or controlled by disclosing Party, including but not limited to all data, materials, programs, plants, processes, products, technology, computer programs, specifications, manuals, business plans, software, markets, marketing plans, financial information, costs, pricing, employees, research, areas of interest, equipment, operations, customers, other confidential or proprietary information (including confidential information of third parties that a Party has received or may receive), and other information disclosed or submitted, to receiving Party by disclosing Party. Confidential Information also includes, without limitation:

1.1.1 All documents, disclosures, and written and oral statements, or any other media disclosed by SIU to ORGANIZATION or by ORGANIZATION to SIU or information observed by either Party during site visits or audits at the other Party’s facilities, in whatever medium or format (including orally and visually); and

1.1.2 Information concerning current, future, or proposed products, inventions, discoveries, know how, techniques, and processes disclosed pursuant to this Agreement.

1.2 Confidential Information does not include:

1.2.1 Information that is or becomes generally available to the public other than as a result of a disclosure by the receiving Party;

1.2.2 Information that was in the possession of the receiving Party prior to the time of disclosure and was not acquired under an obligation of confidence;

1.2.3 Information that is properly obtained by receiving Party from a third party with a valid right to disclose such information;

1.2.4 Confidential Information that receiving Party is required by applicable law or order of a court or governmental authority of competent jurisdiction to disclose; provided however, that receiving Party shall, to the extent permitted by applicable law or the order of a court or governmental authority of competent jurisdiction, promptly notify disclosing Party of any such request;

1.2.5 Confidential Information that is independently developed by the receiving Party without use of or reference to Confidential Information received from the disclosing Party.

2.0 Obligations of the Party to whom Confidential Information is Disclosed.

2.1 The Parties shall not disclose (or cause to be disclosed) to third parties, or make (or cause to be made) commercial use of any Confidential Information revealed to receiving Party without the prior written approval of disclosing Party.

2.2 Receiving Party agrees to make the Confidential Information disclosed to it available only to those persons within the receiving Party's organization (including employees, officers, directors, members, affiliates, agents, and consultants) who are necessary for the Purpose ("Representatives"), and that when such Confidential Information is disclosed or transmitted to a Representative that the receiving Party will inform each Representative who receives such Confidential Information of the confidential nature of such Confidential Information and of these conditions.

3.0 Injunctive Relief. Both Parties acknowledge and agree that injunctive relief may be appropriate for any breach or threatened breach of this Agreement.

4.0 Intellectual Property. No license to the receiving Party under any trademark, patent, or copyright, or application for same (that are now or hereafter may be obtained by the disclosing Party), is either granted or implied by conveying the Confidential Information to the receiving Party.

None of the Confidential Information that is disclosed by the disclosing Party shall constitute any representation, warranty, assurance, or guarantee by the disclosing Party to the receiving Party with respect to infringement of trademarks, patents, copyrights, or any rights of privacy or any rights of any third parties.

5.0 Export Control. Each Party shall comply with all applicable United States laws governing the exports and re-exports of technical data, materials or commodities, including, but not limited to, the U.S. Department of Commerce's Export Administration Regulations, The International Traffic in Arms Regulations (ITAR) as defined in the United States Munitions List (USML), and the regulations administered by the Office of Foreign Assets Control.

6.0 Legal Authority. Each Party warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority and to bind the it to the terms of this Agreement. Each Party warrants the person(s) executing this Agreement on its behalf has the full authorization to execute this Agreement.

7.0 Return of Information. Any and all Confidential Information disclosed to receiving Party, upon request, shall be promptly returned to disclosing Party, except receiving Party may retain one copy of such Confidential Information in the office of its legal counsel, solely for record purposes.

8.0 Publicity. At no time shall receiving Party make any announcement, issue any press release or make any statement to any third party, with respect to discussions under this Agreement or which would indicate that a Party hereto has inspected the Confidential Information of the disclosing Party without the written authorization of the disclosing party.

9.0 Governing Law. This Agreement, and any dispute arising thereunder, shall be governed by and construed under the laws of the State of Illinois, without regard to the conflict of laws provisions thereof. The Parties agree that the jurisdiction and venue for any legal controversy arising hereunder shall lie exclusively in a court of competent jurisdiction sitting within the State of Illinois. All claims against SIU arising from this Agreement are subject to the Illinois Court of Claims Act and the exclusive jurisdiction of the Illinois Court of Claims.

10.0 Waiver. No delay or failure to enforce any provision of this Agreement shall constitute a waiver or limitation of rights enforceable under this Agreement. This Agreement may not be amended or assigned without the prior written consent of both Parties.

11.0 Entire Agreement. This Agreement constitutes the entire agreement of the Parties pertaining to the subject matter hereof, and all prior or contemporaneous understandings or agreements, whether written or oral, between the Parties with respect to such subject matter are hereby superseded in their entirety.

12.0 Term.

12.1 The term of this Agreement shall be for three (3) years from the Effective Date unless sooner terminated or extended by written agreement of the Parties. The Parties shall

amend this Agreement in writing if they wish to extend the time for confidential disclosures. Either Party may terminate this Agreement by giving thirty (30) days written notice to the other Party. Termination of this Agreement shall not relieve a Party from its obligations incurred prior to the effective date of termination.

12.2 The obligations of non-use and non-disclosure under this Agreement shall remain in effect for a period of three (3) years from the date of expiration or termination of this Agreement.

13.0 Counterparts and Electronic Signature. This Agreement may be executed in multiple counterparts by the Parties hereto. All counterparts so executed shall constitute one agreement binding upon all Parties, notwithstanding that all Parties are not signatories to the original or the same counterpart. Each counterpart shall be deemed an original to this Agreement, all of which shall constitute one agreement to be valid as of the date of this Agreement. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

The authorized representatives have executed this Agreement on the dates associated with their signatures below.

[ORGANIZATION Name]
("ORGANIZATION")

BOARD OF TRUSTEES OF SOUTHERN
ILLINOIS UNIVERSITY ("SIU")

By: _____

By: _____

Name: [Signing Official Name]

Name: [Signing Official Name]

Title: [Signing Official Title]

Title: [Signing Official Title]

Date: _____

Date: _____

Reviewed and Acknowledged:

By: _____

Name: [SIU Scientist Name]

Title: [SIU Scientist Title]

Date: _____