

**CONFIDENTIAL DISCLOSURE AGREEMENT – (Mutual)**

**THIS CONFIDENTIALITY AGREEMENT** is made as of the \_\_ day of \_\_\_\_\_, 201 , by and between \_\_\_\_\_, a \_\_\_\_\_ having its principal offices located at \_\_\_\_\_, and **MONTCLAIR STATE UNIVERSITY**, 1 Normal Ave, Montclair, NJ 07043 (collectively referred to as “Institution” or “MSU”).

**WHEREAS**, the parties wish to exchange confidential and proprietary information for the purpose of evaluating the possibility of a future business or non-profit research relationship between the parties relating to \_\_\_\_\_ (the “**Project**”) on terms and conditions to be separately agreed upon; and

**WHEREAS**, the parties hereto wish to clarify their respective obligations with respect to the exchange of such confidential and proprietary information.

**NOW, THEREFORE**, in consideration of the premises and mutual promises made herein, the parties, intending to be legally bound, hereby agree as follows:

1. “**Discloser**” and “**Recipient**” mean the parties hereto who may be disclosing or receiving the Confidential Information, as applicable.

2. (a) As used herein, “**Confidential Information**” means all data, reports, interpretations, forecasts, records, research samples of any nature, including without limitation , proprietary software and related intellectual property (the “**Samples**”), proprietary technology, and any other information (written or oral) regarding the Discloser or any of its affiliates which is not available to the general public and which the Discloser or any of its directors, officers, employees, agents or representatives (collectively, “**Representatives**”) provides to the Recipient or any of its Representatives.

(b) Confidential Information shall not include information that (i) has become generally available to the public other than as a result of a disclosure by the Recipient or any of its Representatives, (ii) was available to the Recipient on a non-confidential basis prior to its disclosure to the Recipient by the Discloser or its Representatives, (iii) was independently developed by the Recipient or its Representatives, or (iv) has become available to the Recipient on a non-confidential basis from a source other than the Discloser or its Representatives provided that such source is not known by the Recipient or its Representatives after due inquiry of such source to be bound by a confidentiality agreement with the Discloser or its Representatives or otherwise prohibited from transmitting the information to the Recipient by a contractual, legal or fiduciary obligation.

3. Each party agrees that Confidential Information shall not be used for any purpose other than as provided herein. The Recipient shall use the same degree of care as it uses with respect to its confidential information (but in no event less than a reasonable degree of care) to hold Confidential Information in confidence and shall not disclose the same to others, or use the same except for purposes of this Agreement, without the written consent of the Discloser for a

period of three (3) years from the date of disclosure. However, the Recipient may disclose Confidential Information to its Representatives who have a need to know the same for purposes of this Agreement. Each such Representative shall be informed by the Recipient of the confidential and proprietary nature of such Confidential Information and shall be directed to treat the same confidentially and shall agree to abide by the provisions herein. In any event, each party shall be responsible for any breach of this Agreement by any third party (including such party's Representatives) to whom that party discloses Confidential Information.

4. In the event that the Recipient is required by lawful order of a court, arbitrator, governmental agency or otherwise by applicable law to disclose any Confidential Information, which disclosure is not otherwise permitted hereunder, it is agreed that the Recipient will provide the Discloser with prompt notice of any such request or requirement so that the Discloser may seek an appropriate protective order or waive compliance with the provisions of this Agreement. If, failing the entry of a protective order or the receipt of a waiver hereunder, the Recipient is compelled to disclose Confidential Information pursuant to such request or else stand liable for contempt or suffer other penalty, the Recipient may disclose that portion of the Confidential Information that the Recipient is compelled to disclose as aforesaid. In any event, the Recipient will not oppose action by, and will cooperate with, the Discloser to obtain an appropriate protective order. All references to the Recipient in this paragraph shall be deemed to include the Recipient's Representatives.

5. The Discloser may, at its sole discretion, make Samples available to the Recipient on the following conditions:

(a) the Recipient shall not disassemble Samples, including without limitation reverse engineer or decompile any proprietary software or related intellectual property Samples;

(b) the Recipient agrees not to analyze, or have others analyze, Samples or any portions thereof furnished by the Discloser to determine the chemical composition or microscopic structure;

(c) the Recipient shall use Samples provided by the Discloser without modification thereto unless otherwise expressly authorized in writing by the Discloser;

(d) the type and quantity of Samples to be furnished by the Discloser to the Recipient shall be at the sole discretion of the Discloser. The Recipient recognizes that Samples are of a developmental nature and that the Discloser makes no representation, express or implied, that the Discloser would furnish any Samples to the Recipient on a commercial basis;

(e) the Discloser shall not be liable or responsible in any way for the Recipient's handling or use of Samples;

(f) the Recipient agrees that all Samples provided hereunder shall remain solely within its control and shall not make Samples or any portions thereof available to third parties (other than the Recipient's Representatives who have a need to view the Samples), without the prior written consent of the Discloser; and

(g) the Recipient agrees to return all Samples to the Discloser upon the request of the Discloser.

The Recipient agrees to hold harmless the Discloser from and against all loss, liability, damage and expense arising from any and all claims, demands, actions or suits resulting directly or indirectly from the negligent misuse of any Sample by the Recipient or the Recipient's Representatives or any violation by the Recipient or the Recipient's Representatives of the terms of this Section 5.

6. Each party understands that, except as may otherwise be expressly agreed in writing, the Discloser does not make any representation or warranty as to the accuracy or completeness of the Confidential Information.

7. No right or license is granted hereby to the Recipient, expressly or by implication, with respect to the Confidential Information, including without limitation, any Samples, or any patent, patent application or other proprietary right of the Discloser, notwithstanding the termination of the confidentiality obligations of this Agreement.

8. Each party will, promptly upon the request of the other party, deliver to that other Party any and all documents and materials comprising such other party's Confidential Information or any part thereof and will destroy any copies, notes or extracts thereof, without retaining any copy thereof, or destroy such documents and materials upon the other party's request (such destruction to be confirmed in writing).

9. Each party agrees that money damages would not be a sufficient remedy for any breach of this Agreement by it or any of its Representatives and that the other party shall be entitled to specific performance and injunctive or other equitable relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies but shall be in addition to all other remedies available at law or in equity to each party.

10. Each party hereby irrevocably and unconditionally consents to the exclusive jurisdiction of the courts of the State of New Jersey located in New Jersey for any actions, suits or proceedings arising out of or relating to this Agreement. Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this agreement or the transactions contemplated hereby in the courts of the State of New Jersey or the United States of America located in New Jersey and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action suit or proceeding brought in any such court has been brought in an inconvenient forum.

11. If any of the provisions of this Agreement are not enforceable in whole or in part, the remaining provisions of this Agreement shall not be affected thereby. No failure or delay in exercising any other right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. Neither party may assign this Agreement without the prior written consent of the other party hereto. No amendment or modification to this Agreement shall be effective unless made in writing and signed by both

parties. This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey, without giving effect to its conflict of laws principles or rules.

12. This Agreement does not constitute any export license, and each party remains responsible for its own compliance with any restrictions or other requirements imposed by any and all export control statutes, regulations, and other controlling instructions.

**IN WITNESS WHEREOF**, the parties have caused the Agreement to be signed by their duly authorized representatives as of the date first above written.

COMPANY NAME:

**MONTCLAIR STATE UNIVERSITY**

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

Date:

By: \_\_\_\_\_

Name:

Title:

Date:

MSU: PI/Engaged Representative

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