INDIVIDUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement (the “Agreement”) is entered into by and between \_\_\_\_\_, a business with a principal place of business in \_\_\_\_ (hereinafter referred to as “Company”) and Dr. \_\_\_\_\_, with an office in Newark, Delaware (hereinafter referred to as “Professor”). Company and Professor may be collectively referred to as the “Parties” or individually as a “Party.” This Agreement shall be effective as of the date of the last-executed signature below (the “Effective Date”).

WHEREAS, the Parties mutually desire to enter frank and open discussions with respect to a potential and mutually beneficial business relationship;

WHEREAS, each Party may exchange through correspondence and during discussions Confidential Information and materials;

WHEREAS, the Parties, for their mutual benefit and in contemplation of the foregoing, may exchange Confidential Information (as defined below) during the term of their relationship; and

WHEREAS, the Parties wish to define their respective rights and obligations with respect to such Confidential Information.

**NOW, THEREFORE**, in consideration of the mutual covenants herein, intending to be legally bound, the Parties agree as follows:

(1) This Agreement is between Company and Professor, as an individual, AND NOT WITH THE UNIVERSITY OF DELAWARE. THE UNIVERSITY OF DELAWARE INCURS NO LIABILITY ASSOCIATED WITH THIS AGREEMENT.

(2) The term “Confidential Information” means information which is of a non-public, proprietary or confidential nature to the disclosing Party, its subsidiaries or affiliates, or to any third parties to whom the disclosing Party owes a duty of confidentiality, including, but not limited to, all reports and analyses, technical and economic data, studies, forecasts, trade secrets, research or business strategies, inventions, financial or contractual information, or other written or oral information regarding the disclosing Party and its affiliates. Confidential Information may be in any form whatsoever, including, but not limited to, writings, computer programs, logic diagrams, component specifications, drawings or other media. All such information disclosed by either Party to the other, whether orally, in writing, by inspection or otherwise, shall be deemed to be Confidential Information of the disclosing Party unless otherwise expressly agreed in writing by the Party disclosing such information, provided that such information is marked as “confidential” or bears a similar legend or is information that the receiving Party knows, or reasonably should have known, is the Confidential Information of the disclosing Party. If Confidential Information is conveyed orally, the disclosing Party shall identify that it is Confidential Information at the time of disclosure and shall confirm the same in writing no later than thirty (30) days after the information has been conveyed. In the event Confidential Information is inadvertently disclosed without the appropriate legend, the disclosing Party shall so notify the receiving Party immediately upon discovery of the disclosure and shall further re-supply the disclosed information marked with the appropriate legend, upon which the receiving Party shall return all copies thereof that were supplied without the legend. The Parties shall cooperate to protect the confidentiality of Confidential Information originally disclosed without a legend to the extent possible. “Confidential Information” shall also include the fact that the Parties are discussing the Purpose and the status of any negotiations related to such Purpose.

(3) This Agreement shall govern all communications of Confidential Information between the Parties that are made for purposes of \_\_\_\_\_\_ (“Purpose”).

(4) “Confidential Information” shall not include any information which:

1. becomes public information or is generally available to the public other than by an unauthorized act or omission of the receiving Party;
2. is received by the receiving Party from third parties who are in rightful possession of such information and have the legal right to make such a disclosure;
3. the receiving Party and affiliates of the receiving Party can show by written records was in its/their possession prior to the time of the disclosure hereunder and that such information was acquired legally and not directly or indirectly from the other Party; or
4. is independently discovered or developed by the receiving Party without the use of the other Party’s Confidential Information, as can be documented by written records.

The burden of proving the applicability of any of these exceptions to Confidential Information resides with the receiving Party. Confidential Information shall not be deemed to fall within the exceptions of subparts (a) to (d) above merely because it is included in a document which also includes information that does fall within such exceptions. Notwithstanding the above, the receiving Party may disclose the disclosing Party’s Confidential Information, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, provided that the receiving Party gives the disclosing Party reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist the disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

(5) Confidential Information will be exchanged between the Parties hereunder solely for the Purpose, and Confidential Information shall remain the property of the original owner. Nothing contained in this Agreement shall be construed as an obligation to enter into any further agreement concerning the Confidential Information, or as a grant of license to the receiving Party to use the Confidential Information other than for the Purpose.

(6) The receiving Party shall not reverse engineer or attempt to reverse engineer (either by itself or through a third party) any of the disclosing Party’s Confidential Information.

(7) The disclosing Party makes no representation or warranty of any sort, express or implied, with respect to the accuracy, completeness, condition, suitability, or performance of the Confidential Information and the disclosing Party shall have no liability whatsoever to the receiving Party resulting from the use of the Confidential Information.

(8) This Agreement will terminate three (3) years from the Effective Date, or may be terminated by either Party upon thirty (30) days' written notice. Such termination or any other termination of this Agreement for any reason by either Party shall not relieve the Parties of any obligation with respect to information disclosed hereunder prior to termination.

(9) The obligations contained in this Agreement shall survive termination of this Agreement and continue in full force and effect with respect to any particular item of Confidential Information for a period of five (5) years from the date of disclosure of such Confidential Information.

(10) The receiving Party, including its owners, directors, managers, Affiliates (as defined herein), employees, agents and independent contractors (collectively, “Representatives”), shall (a) use commercially reasonable efforts to retain the Confidential Information of the disclosing Party in the strictest confidence; (b) not modify, disseminate, or in any way disclose to any third party such Confidential Information, except as provided herein or with the express written consent of the disclosing Party; and (c) not use such Confidential Information for any purpose other than in connection with the Purpose. For purposes of this Agreement, “Affiliate” or “Affiliates” means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, that directly or indirectly, that controls, is controlled by, or is under common control with a Party to this Agreement. The receiving Party shall make the Confidential Information of the disclosing Party available only to those of its Representatives who have a need to know in connection with the Project and who have been informed of the requirements and obligations of this Agreement. The Parties hereby acknowledge that each Party or its Representatives may receive material, non-public information hereunder and that United States securities laws impose restrictions on trading in securities when in possession of such information or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell securities.

(11) Each Party shall return or destroy any Confidential Information provided by the other Party under this Agreement, upon written request of the disclosing Party within thirty (30) days. Notwithstanding the foregoing, the receiving Party shall be entitled to retain copies of such Confidential Information to the extent such retention is consistent with the receiving Party’s policies and provided that all such retained Confidential Information shall remain subject to the terms of this Agreement.

(12) This Agreement shall be binding upon each Party’s respective successors and permitted assigns. Neither Party may assign or transfer any of its rights or obligations, or delegate any of its duties, under this Agreement without the prior written consent of the other Party. Any purported assignment not consented to shall be void and of no force and effect.

(13) Failure or delay by either Party to require the other Party’s performance of any of the terms of this Agreement, or a waiver or partial waiver by either Party of any breach of this Agreement by the other Party shall not prevent subsequent enforcement of such term or be deemed a waiver of any subsequent breach thereof.

(14) The name of either Party to the Agreement will not be used by the other in any advertising, publicity or news media related to the Project without the prior written consent of the other Party.

(15) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware as though made and to be fully performed in said State.

(16) In performing their respective obligations under this Agreement, the Parties will comply with United States export control and asset control laws, regulations, and orders, as they may be amended from time to time, applicable to the export or re-export of goods or services, including software, processes, or technical data.

(17) This Agreement constitutes the entire understanding between the Parties relating to the subject matter hereof, and no amendment or modification to this Agreement shall be valid or binding upon the Parties unless made in writing and signed by each Party.

(18) If any provision of this Agreement is held to be invalid, illegal or unenforceable, then such provision will be modified to reflect the Parties' intention. All remaining provisions of this Agreement shall remain in full force and effect.

(19) All notices, consents and approvals under this Agreement must be delivered in writing by courier, by electronic facsimile (fax), or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth in the introduction hereto, and will be effective upon receipt or if delivery is refused three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party.

(20) The ordering and numbering of paragraphs in this Agreement are for the convenience of the Parties only, and shall not be used to interpret or construe any provision of this Agreement. No rule of construction shall be employed whereby this Agreement or any provision hereof is construed against the drafter of the Agreement or that provision.

(21) The Parties may execute this Agreement in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one Agreement. Delivery of an executed signature page by facsimile or electronic scan (e.g., pdf, .tif) is as effective as executing and delivering this Agreement in the presence of the other Party to this Agreement.

(22) The signatories hereto warrant and represent that they have the competent authority to enter into the obligations of this Agreement.

Accepted and Agreed to,

COMPANY PROFESSOR

By By

Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title \_\_\_\_\_\_\_\_ Title \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Date