

## NON-DISCLOSURE AGREEMENT

**THIS NON-DISCLOSURE AGREEMENT** (the "Agreement") effective as of the last date of signature below (the "Effective Date") by and between The Regents of the University of California, through the Lawrence Berkeley National Laboratory, One Cyclotron Road, Berkeley, California 94720 ("Berkeley Lab") and the entity listed below ("Recipient"), individually a "party" and collectively the "parties":

Company/University/Institution Name: _____	
Name of responsible Recipient employee: _____	
Title or position: _____	
Address: _____	
Tel: _____	E-mail: _____

**"Confidential Information"** means confidential information disclosed by Berkeley Lab to Recipient relating to \_\_\_\_\_. Berkeley Lab Confidential Information is developed under Berkeley Lab's management and operation contract with the U.S. Department of Energy.

**"Purpose of Disclosure"** means the use and evaluation of Confidential Information in connection with a potential collaborative research and development or licensing transaction with Berkeley Lab [OR whatever the Purpose is].

**"Term"** means \_\_\_\_ ( ) years from the Effective Date of this Agreement.

With regard to Confidential Information, Recipient hereby agrees:

(1) not to use Confidential Information except to the extent required to accomplish the Purpose of Disclosure; and not to disclose Confidential Information to others (except to its employees with a need to know and who are bound by the terms of this Agreement) without the express written permission of Berkeley Lab.

(2) Recipient is not prohibited from using or disclosing Confidential Information:

- (a) that Recipient can demonstrate by written records was known to it prior to receipt from Berkeley Lab;
- (b) that is now, or becomes in the future, public knowledge other than through an act or omission of Recipient;
- (c) that Recipient obtains in good faith from a third party not bound by confidentiality obligations to Berkeley Lab;
- (d) that is disclosed by operation of law; or
- (e) that Recipient develops independently, for which Recipient can demonstrate by written records that independent development occurred without knowledge or use of Confidential Information.

(1) Recipient's obligations under this Agreement remain in effect for the Term, notwithstanding any termination of this Agreement. Recipient's confidentiality and nonuse obligations under this Agreement remain in effect for \_\_ ( ) years after the Term.

(3) The parties agree that the furnishing of Confidential Information to Recipient does not constitute any grant or license to Recipient under any patent or other proprietary rights now or in the future held by Berkeley Lab. *The Recipient agrees that the Confidential Information is provided by Berkeley Lab "as is" without warranty of any kind, express or implied, including but not limited to implied warranties of fitness for a particular purpose and merchantability.*

(4) This Agreement embodies the entire and final understanding of the parties on this subject. It supersedes any previous representations, agreements, or understandings, whether oral or written. No amendment or modification hereof shall be valid or binding upon the parties unless made in writing and signed by an authorized representative on behalf of each party.

(5) The provisions in this Agreement are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an

Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.

(6) This Agreement shall be interpreted and enforced under the laws of California, without giving effect to any choice of law rules that would result in the application of laws of any jurisdiction other than California. Each party shall abide by the applicable U.S. export control laws and sanction regulations.

(7) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and

all of which together shall constitute one and the same instrument. Signatures provided by facsimile transmission or in Adobe™ Portable Document Format (PDF) sent by electronic mail shall be deemed to be original signatures.

RECIPIENT

By: \_\_\_\_\_  
(Authorized Representative)  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

LAWRENCE BERKELEY NATIONAL LABORATORY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_