NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (Agreement) is entered into on the \_\_\_\_\_ of \_\_\_\_\_\_\_\_\_, 2009 between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**Company Name**) and the Board of Regents of the University of Wisconsin System, 21 North Park Street, Suite 6401, Madison, WI 53715 on behalf of the University of Wisconsin – Madison (University).

WHEREAS, **Company Name** and the University desire to discuss and/or exchange information regarding **(insert description)** (Project);

WHEREAS, the parties wish to enter into discussions for the purpose **[insert description of purpose, such as: of initiating a collaboration and developing research projects of mutual interest]** (Purpose);

WHEREAS, each party may have proprietary interests such as patentable subject matter not yet covered by a patent application, other intellectual property, or other interests which require that the information be maintained in confidence;

WHEREAS, in connection with the Project, each party may disclose to the other certain proprietary technical, procedural, or business information which the disclosing party desires the receiving party to treat as confidential as it relates to the Project;

NOW THEREFORE the parties agree as follows:

1. All information disclosed by one party to the other that is designated in writing as “Confidential” at the time of disclosure or if disclosed orally is designated in writing as “Confidential” within fifteen (15) days of disclosure is “Confidential Information.” Confidential Information does not include information which:
2. was known by the receiving party prior to receipt from the disclosing party;
3. is generally available in the public domain or thereafter becomes available to the public through no act of the receiving party;
4. is independently discovered by an employee, agent, or representative of the receiving party who had no knowledge of the Confidential Information disclosed; or
5. is made available to the receiving party as a matter of lawful right by a third party.
6. The receiving party agrees to disclose Confidential Information only to their respective employees, agents, or representatives who have been determined to have a need to know and have been advised of their obligation to comply with the terms of this Agreement.
7. The receiving party shall take such steps as may be reasonably necessary to prevent disclosure of the Confidential Information to third parties, but at least the same level of security as is afforded to the receiving party’s own confidential information.
8. The receiving party will return or destroy Confidential Information provided by the disclosing party when the period for disclosing Confidential Information ends.
9. Confidential Information shall not be provided in any form by the receiving party to any third party without the prior permission of the disclosing party, unless otherwise required by law. In the event that the receiving party is required by law to produce Confidential Information, the receiving party may disclose such Confidential Information without liability hereunder; provided, however, before producing any Confidential Information the receiving party shall promptly notify the disclosing party of the enforcement of any such requirement in order to provide the disclosing party with a reasonable amount of time so that the disclosing party may seek an appropriate protective order or other appropriate remedy. In the event that such a protective order or other remedy is not obtained, or the disclosing party waives their right to obtain such an order or remedy, the receiving party may furnish that portion of the Confidential Information required to be produced and will reasonably cooperate, at the disclosing party’s expense, to obtain confidential treatment of the Confidential Information so furnished.
10. Confidential Information will be used only for the purposes of this Agreement. Neither party shall be obligated to engage in the commercialization of the concepts, projects, or information exchanged hereunder.
11. The receiving party expressly acknowledges that the disclosing party owns the Confidential Information they disclose, and that the transmission by the disclosing party of their Confidential Information (or any third party’s Confidential Information entrusted to the disclosing party) shall not be construed to grant the receiving party any patent, know-how, copyright, trade secret, trademark, or other intellectual property rights in, or arising from, the Confidential Information disclosed. If any such rights are to be granted to the receiving party, such grant shall be expressly set forth in a separate written instrument.
12. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.
13. The parties represent and warrant that no technical data furnished under this Agreement shall be disclosed to any foreign nation, firm, or country, including foreign nationals employed by or associated with the receiving party, nor shall technical data be exported from the United States, without first complying with all requirements of the International Traffic in Arms Regulations, the Export Administration Regulations, the National Industrial Security Program Operating Manual, and any other U.S. Government regulation applicable to the export/import, re-export, or disclosure of technical data (or the products thereof), including the requirement for obtaining any export license if applicable.
14. The period for disclosing Confidential Information under this Agreement shall begin on the date of this Agreement and expire one (1) year after the last date of the execution of this Agreement, unless terminated earlier by a party with 10 days written notice. The obligations and restrictions of the receiving party under this Agreement shall continue for a period of one (1) year from the date of the last disclosure of Confidential Information made under this Agreement.
15. This Agreement shall supersede and prevail over any other prior arrangements, either oral or written, as to the Confidential Information received under this Agreement. This Agreement constitutes the entire agreement between the parties relative to this subject matter and shall not be amended, except in a writing signed by the parties.

IN WITNESS WHEREOF, the authorized representatives of the parties have duly executed this Agreement as of the date listed below.

The Board of Regents of the University of Wisconsin System on Behalf of the University of Wisconsin - Madison

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

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Date

[COMPANY]

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

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 Date

Exhibit A – Additional Signatories

The undersigned parties agree to the terms of the Non-Disclosure Agreement:

[COMPANY]

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

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 Date

[COMPANY]

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

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 Date