

## University of South Carolina Research Foundation Mutual Confidentiality Agreement

This Agreement is by and between the University of South Carolina Research Foundation, having a place of business at 901 Sumter Street, 514 Byrnes Building, Columbia, South Carolina, 29208, (hereinafter referred to as "USCRF") and \_\_\_\_\_, having a primary place of business at \_\_\_\_\_, (hereinafter referred to as "COMPANY").

WITNESSETH THAT:

WHEREAS, USCRF and COMPANY (the "Parties") are owners, respectively, of certain proprietary information, including but not limited to data, know-how, formulae, technical and non-technical specifications, methods, processes, designs, business plans and forecasts, software programs, invention disclosures, and pending patent applications, (hereinafter "INFORMATION"), with all rights, title, and interest vested therein; and

WHEREAS, USCRF has ownership rights in certain technologies described in the following USCRF Invention Disclosure(s), which are, individually and collectively, included in USCRF's INFORMATION:

\_\_\_\_\_

WHEREAS, COMPANY has ownership rights in certain technologies, which are, individually and collectively, included in COMPANY's INFORMATION:

\_\_\_\_\_

WHEREAS, each Party desires to disclose INFORMATION to the other (hereinafter the "Disclosing Party"), and each Party desires to receive INFORMATION from the other (hereinafter the "Receiving Party"), for the purpose of evaluating the commercial prospects of such INFORMATION;

NOW, THEREFORE USCRF and COMPANY agree to the following terms and conditions:

1. INFORMATION subject to this Agreement may be transmitted either in writing, electronically, or orally and must be identified as confidential at the time of disclosure or, if disclosed orally, subsequently summarized in writing within 20 days and confirmed as confidential.
2. Each Party, including its subsidiaries and affiliates, will maintain in confidence the INFORMATION of the other Party with the same degree of care it exercises for its own confidential and proprietary information, but not less than a reasonable degree of care. For purposes of this paragraph "subsidiaries and affiliates" shall mean any corporation, firm, partnership or other entity which directly or indirectly controls, is controlled by, or is under common control with either of the Parties to this Agreement.
3. The Receiving Party will not use the INFORMATION of the Disclosing Party except for its evaluation of the INFORMATION pursuant to this Agreement.
4. The Receiving Party will disclose the INFORMATION of the Disclosing Party only to those officers and employees of the Receiving Party directly concerned with the evaluation of the INFORMATION. The Receiving Party will not disclose INFORMATION received from the Disclosing Party to any third party without the express written consent of the Disclosing Party.
5. In the event that any copies of the Disclosing Party's INFORMATION are furnished to the Receiving Party in connection with the Receiving Party's evaluation hereunder, the Receiving Party agrees to use such copies only for its evaluation, and to keep confidential the results of any such evaluation or other tests that may be conducted on such INFORMATION, except that the Receiving Party shall report the results of any such evaluation or tests to the Disclosing Party and such results shall be deemed to be the property of the Disclosing Party and shall thereafter be included in the Disclosing Party's INFORMATION.
6. The obligations of non-disclosure and the limitation upon the right to use INFORMATION (including test results) imposed upon the Parties to this Agreement shall not apply to the extent that the Receiving Party can demonstrate that the INFORMATION disclosed by the Disclosing Party: (a) was in the possession or control of, or was independently developed by, the Receiving Party prior to the time of disclosure hereunder, as evidenced by the Receiving Party's prior

written records; or (b) at the time of disclosure or thereafter becomes public knowledge through no fault or omission of the Receiving Party; or (c) was lawfully obtained by the Receiving Party from a third party under no obligation of confidentiality to the Disclosing Party; or (d) is disclosed pursuant to an order of law after the Receiving Party has given notice to the Disclosing Party of such order and has cooperated with Disclosing Party's efforts, if any, to obtain a protective order or confidentiality agreement with provisions equivalent to the provisions of this Agreement.

7. All proprietary rights (including but not limited to copyrights, patents, and trade secrets) in and to INFORMATION shall remain the property of the Disclosing Party.
8. Neither Party is obligated to disclose INFORMATION to the other Party under this Agreement.
9. INFORMATION disclosed under this Agreement is done so with the express understanding that neither Party will be obligated to enter into any further agreement with the other Party and that nothing in this Agreement shall be construed as granting any license or right to a Receiving Party to INFORMATION received hereunder.
10. Each Party agrees to complete the evaluation of the INFORMATION received from the other within ninety (90) days after receipt of such INFORMATION. At the end of said ninety (90) day period, the Receiving Party will, upon the request of the Disclosing Party, promptly return all of the INFORMATION and use reasonable efforts to destroy all copies thereof, except that one copy may be retained by the Receiving Party for the sole purpose of determining the Receiving Party's continuing obligations under this Agreement.
11. The obligations of the Parties as to INFORMATION disclosed under this Agreement shall terminate five (5) years from the date of disclosure.
12. This Agreement covers all previous disclosures of INFORMATION, oral and written, between the Parties. Such previous disclosures shall be deemed to have been made on the effective date of this Agreement unless otherwise specified in writing.
13. This Agreement sets forth the entire agreement between the Parties as to the subject matter hereof, and none of the terms of this Agreement shall be amended or modified except in writing signed by the Parties.
14. In all matters relating to the interpretation or enforcement of this Agreement, the substantive laws of the State of South Carolina shall be applied.
15. This Agreement is effective as of the date signed by USCRF and will expire two (2) years after the effective date.

For USCRF:

For COMPANY:

\_\_\_\_\_  
Lisa Rooney, Director

\_\_\_\_\_  
Signature

Name (please print): \_\_\_\_\_

Position: \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Read and acknowledged:

\_\_\_\_\_  
Principal Investigator

\_\_\_\_\_  
Principal Investigator