

# NON-DISCLOSURE AGREEMENT

Effective Date: \_\_\_\_\_  
(See Section 13)

This Agreement ("Agreement") is made by and between \_\_\_\_\_ ("Company"), a \_\_\_\_\_ corporation with its principal place of business at \_\_\_\_\_ and \_\_\_\_\_ Clarkson University \_\_\_\_\_ ("University") having its principal place of business at \_\_\_\_\_ Potsdam, NY \_\_\_\_\_, acting for and on behalf of the **Center for Identification Technology Research ("CITeR")**.

1. Definition of Confidential Information. "Confidential Information" as used in this Agreement shall mean any and all technical and non-technical information including, but not limited to, patent, copyright, trade secret, and proprietary information, concepts, ideas, techniques, sketches, drawings, models, inventions, know-how, processes, apparatus, equipment, algorithms, software programs, software source documents, and formulae disclosed to a receiving party, directly or indirectly, at any time on after the Effective Date related to the current, future and proposed products and services of each of the parties, and includes, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans and information. "Confidential Information" also includes proprietary or confidential information of any third party who may disclose such information to either party in the course of the other party's business.

2. Nondisclosure and Nonuse Obligation. Each of the parties agrees that it will not make use of, disseminate, or in any way disclose any Confidential Information of the other party to any person, firm, business, or other entity or agency, except to the extent necessary for negotiations, discussions, and consultations with personnel or authorized representatives of the other party, and any purpose the other party may hereafter authorize in writing. Furthermore, the existence of any business negotiations, discussions, consultations or agreements in progress between the parties shall not be released to any form of public media without written approval of both parties. Each of the parties agrees that it shall treat all Confidential Information of the other party with the same degree of care as it accords to its own Confidential Information, and each of the parties represents that it exercises reasonable care to protect its own Confidential Information. If either party is not an individual, such party agrees that it shall disclose Confidential Information of the other party only to those of its officers or employees who need to know such information and certifies that such officers or employees have previously agreed, either as a condition to employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those of this Agreement. The receiving party will immediately give notice to the disclosing party of any unauthorized use or disclosure of the Confidential Information of which it becomes aware or suspects. The receiving party agrees to assist the disclosing party in remedying any such unauthorized use or disclosure of the Confidential Information.

3. Exclusions from Nondisclosure and Nonuse Obligations. Each party's obligations under Section 2 of this Agreement with respect to any portion of the other party's Confidential Information shall terminate when the party seeking to avoid its obligation under such Section can document that: (i) the applicable information was in the public domain at or subsequent to the time it was communicated to receiving party by the disclosing party through no fault of the receiving party; (ii) it was rightfully in receiving party's possession free of any obligation of confidence at or subsequent to the time it was communicated to receiving party by disclosing party; (iii) it was developed by employees or agents of receiving party independently of and without reference to any information communicated to receiving party by disclosing party; (iv) it was communicated by the disclosing party to an unaffiliated third party free of any obligation of confidence; or (v) the communication was in response to a valid order by a court or other governmental body, was otherwise required by law, or was necessary to establish the rights of either party under this Agreement; provided, however, that prior to any communication under Section 3(v) hereof, the communicating party will have given written notice to the other party of its intended disclosure. The Receiving party agrees to identify and furnish reasonable proof of the facts supporting any of the exclusions set forth in this Section 3 to the satisfaction of the disclosing party prior to disclosing the other party's Confidential Information outside of the permitted uses under Section 2 hereof.

4. Ownership of Confidential Information and Other Materials. All Confidential Information and any Derivatives thereof whether created by disclosing party or receiving party, remain the property of disclosing party and no license or other rights to Confidential Information or Derivatives is granted or implied hereby, the parties understanding and agreeing that any Derivates developed by a receiving party shall be the property of the disclosing party owning the Confidential Information to which said Derivatives relate. For purposes of this Agreement, "Derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret. All materials (including without limitation, documents, drawings, models, apparatus, sketches, designs and lists) furnished to a receiving party by a disclosing party, and which are designated in writing to be the property of such party, shall remain the property of such party and shall be returned to it promptly at its request, together with any copies thereof.

5. Right to Refusal. Receiving party has the right to refuse trade secret and any proprietary information deemed unnecessary for research related to scope of work.

6. Warranty of Right to Disclose. Each party warrants that it has the right to disclose the information disclosed under this Agreement to the other party. Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.

7. No Warranty of Accuracy of Disclosure. All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding its accuracy, completeness, or performance.

8. No Export. Neither party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval. The parties shall fully comply with all applicable United States Government Security Requirements.

9. Termination Without Cause. This Agreement may be terminated by either Company or University at any time and for any reason upon thirty (30) days written notice by registered mail to the other party at the address given below or as such other address as may designated in writing by the parties hereto.

If to University: Michelle Crimi  
Sponsored Research Services  
Clarkson University  
Potsdam, NY 13699

If to Company: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

It is mutually understood that the termination of this Agreement does not relieve either party of its duty of confidentiality hereunder.

10. Termination With Cause. In the event of any unauthorized disclosures by either party of Confidential Information or any copies, photographs, or reproductions thereof howsoever made by others, or any neglect by either party to take proper precautions to prevent unauthorized disclosures, the other party shall have the right to immediately terminate this Agreement by giving notice of termination in writing by registered mail.

11. No Assignment. The rights or obligations created under this Agreement may not be assigned or transferred in whole or in part without the prior written consent of the other party. In the event such consent is provided, the terms and provisions of this Agreement shall be binding on and inure to the benefit of the parties' respective successors and assigns. Either party may transfer its rights and obligations under this Agreement to its

parent company and/or its commonly owned subsidiaries or affiliated companies; provided, however, that it provides written notice to the other party of such assignment.

12. No Advertising. Trade names or Trademarks owned by the other party or any of its related entities may not be released to any form of public media, or used in any publicity, advertising, or otherwise without prior written consent of the other party.

13. Return of Proprietary Information. All Confidential Information furnished to the receiving party shall remain the property of and shall be returned to the disclosing party along with any copies, photographs, or reproductions thereof.

14. Effective Date. The effective date of this Agreement shall be the date of the last signature hereto. This Agreement shall terminate five (5) years after the effective date unless extended by mutual agreement of the parties or otherwise terminated in accordance with Section 3.

15. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally; (ii) by overnight courier upon written verification of receipt; (iii) by telecopy or facsimile transmission upon acknowledgement of receipt of electronic transmission; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or such other address as either party may specify in writing.

16. Severability. Should any provisions of this Agreement be held by a court of law to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

17. Waiver. The waiver by disclosing party of a breach of any provision of this Agreement by receiving party shall not operate or be construed as a waiver of any other or subsequent breach by receiving party.

18. Remedies. A breach or threatened breach of any of the promises or agreements contained herein for which there is no adequate remedy at law shall entitle the injured party to injunctive relief in whole or in part and/or a decree for specific performance, and any such other relief as may be proper (including monetary damages if appropriate) or available in equity or in law.

19. No Rights Granted Other Than Those Provided For. Other than the specific rights granted or provided for under this Agreement, nothing contained herein shall be interpreted or construed as granting any other rights or any license under any patents, patent applications, know-how or Confidential Information of a party hereto

20. No Obligation to Proceed with any Other Transaction. Neither party has an obligation under this Agreement to purchase or license any product or service from the other party

21. Entire Agreement. This Agreement constitutes the entire agreement with respect to the Confidential Information and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information.

22. Amendments. This Agreement may only be changed by mutual agreement of authorized representatives of the parties in writing.

23. Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of New York and both parties consent to personal jurisdiction within the state of New York for any legal action necessary to enforce any provision of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

\_\_\_\_\_  
Company  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Clarkson University  
University  
Signature: \_\_\_\_\_  
Name: Michelle Crimi  
Title: Interim VP for Research and Tech Transfer  
Date: \_\_\_\_\_