

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT effective as of the ____ day _____, 20____ (the "Effective Date").

BETWEEN:

- (a) to treat all such Confidential Information as confidential and not to disclose such Confidential Information to any person except as permitted under this Agreement or otherwise in writing by the Discloser;
- (b) to safeguard such Confidential Information in the same manner that the Recipient treats its own confidential information and trade secrets, with not less than a reasonable degree of care;
- (c) to effect and maintain adequate security measures to safeguard such Confidential Information from unauthorized access, use, and misappropriation and to notify the Discloser promptly of any unauthorized use, copying, or disclosure of such Confidential Information and to provide all reasonable assistance to terminate such unauthorized use or disclosure;
- (d) to use such Confidential Information solely for the purpose (the "Purpose") and only during the usage period (the "Usage Period") stated in Schedule "A";
- (e) not to decompile, reverse engineer or chemically analyze any physical samples or other Confidential Information provided under this Agreement where such actions are not necessary for the Purpose;
- (f) not to disclose any such Confidential Information to any third parties except (i) its faculty, staff, students, and employees who have a need to know directly related to the Purpose and (ii) third parties who are directly concerned with the Purpose and who have been expressly authorized in writing by the Discloser to receive the Confidential Information prior to its disclosure to that third party; and
- (g) to ensure that all persons and bodies mentioned in the preceding paragraph (f) are (i) made aware of both the confidentiality provisions of this Agreement governing such Confidential Information, which the relevant party shall ensure are enforced, and the confidential nature of the Confidential Information, and (ii) bound by terms of confidentiality at least as strict as those in this Agreement.

5. The obligations of confidentiality in section 4 above shall not apply to any portion of the Confidential Information where either Party can demonstrate that the Confidential Information concerned is or has been:

- (a) generally available to the public through no breach of this Agreement;
- (b) already in the possession of the Recipient or its employees without restriction and prior to disclosure of that specific Confidential Information hereunder;
- (c) lawfully disclosed to the Recipient by a third party without an obligation of confidentiality upon the Recipient;
- (d) developed independently by the Recipient without access to, or knowledge of, the Confidential Information of the Discloser; or
- (e) ordered disclosed by the Recipient pursuant to order of a court of competent jurisdiction and, where lawfully permitted to do so, the Recipient has informed the Discloser, within a reasonable time after being required to make the disclosure, of the requirement to disclose and the information required to be disclosed.

6. Each Party shall have or enter into agreements as necessary with its faculty, students, and employees sufficient to safeguard the Confidential Information disclosed hereunder in the manner contemplated by this Agreement and, for this purpose, SFU shall be entitled to use the Non-Disclosure Agreement Acknowledgement And Covenant To Be Bound attached as Schedule "B" hereto.

7. Specific Confidential Information shall not be deemed to be within the exceptions of section 5 above merely because such specific Confidential Information may be construed as being within broader, non-confidential information which is either in the public domain or in the possession of the Recipient at the time of its disclosure. Neither shall a combination of features that form confidential information be deemed to be non-confidential merely because the individual features, without being combined, are not confidential.

INCIDENTAL OR CONSEQUENTIAL DAMAGE OR LOSS ARISING FROM ANY USE OF THE INFORMATION BY RECIPIENT EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

14. Each Party hereby assumes any risks of personal injury and property damage attributable to the negligent acts or omissions of that Party and its directors, officers, employees and agents, and where applicable faculty and students.

15. This Agreement is subject to any agreement concerning publication rights as between any of the parties entered into prior to, concurrently with, or following the execution of the Agreement. Otherwise, this Agreement constitutes the entire understanding of the Parties with regard to the subject matter hereof and may not be modified, supplemented or rescinded except by an agreement in writing signed by the Parties hereto.

16. Any Amendments to this Agreement must be in writing and executed by authorized representatives of each Party.

17. Upon termination of this Agreement or at the written request and instruction of a Discloser, all copies of the Confidential Information of the Discloser in the possession of the Recipient shall be destroyed (with confirmation in writing to the Discloser) or returned to the Discloser within a reasonable period of time but, in any event, within ten (10) days.

18. No provision of this Agreement will be deemed waived or any breach excused, unless such waiver or consent excusing the breach is in writing and signed by the Discloser. A waiver of a provision of this Agreement will not be construed to be a waiver of a subsequent breach of the same provision.

19. This Agreement shall not be assignable (by operation of law or otherwise) by either Party without the prior written consent of the other Party.

20. This Agreement shall be governed by the laws of the Province of British Columbia, Canada.

IN WITNESS THEREOF the Parties hereto have executed this Agreement on the dates below written but effective as of Effective Date written above.

SIGNED FOR **SIMON FRASER UNIVERSITY** by:

SIGNED FOR THE **COMPANY** by:

By its authorized signing officer

By its authorized signing officer

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE "B"