NON-DISCLOSURE AGREEMENT

 NON-DISCLOSURE AGREEMENT made on \_\_\_\_\_\_\_\_\_\_\_\_ , 20xx by and betweenInstitute of Science Tokyo, an national university corporation organized under the laws of Japan (hereinafter "ST") and [ ], a legal entity organized under the laws of [ ] (hereinafter "").

 WHEREAS, both parties wish to discuss potential business partnership, including contractual relationship (hereinafter “Purpose”);

 WHEREAS, in connection with the purpose specified above, each party may be given access to certain confidential and propriety information; and

 WHEREAS, both parties wish to evidence by this Agreement the manner and terms upon which said confidential and proprietary information will be treated.

 NOW, THEREFORE, in consideration of each party's being granted access to such information, both parties agree as follows:

**1. Confidentiality**

1.1 Definition.

 (1) "Confidential Information" means any information and/or data disclosed to one party (hereinafter “Receiving party”) by the another party (hereinafter “Disclosing party”) (i) either directly or indirectly in writing (documents or any kind of media) or by inspection of tangible objects (including, without limitation, documents, prototypes, samples, plant and equipment) which is designated as "Confidential," "Proprietary" or some similar designation, or (ii) orally, but identified as confidential at the time of disclosure and confirmed within forty-five (45) days by a written summary sufficient for identification.

 (2) Confidential Information under the previous clause shall not include information that the Receiving party can establish by written documentation:

 (i) was publicly known and available in the public domain prior to the time of disclosure to the Receiving party;

 (ii) becomes publicly known and available in the public domain after disclosure to the Receiving party through no action or inaction of the Receiving party;

 (iii) was in the possession of the Receiving party, without confidentiality restrictions, at the time of disclosure by the Disclosing party;

 (iv) was received by the Receiving party in good faith from the third party lawfully in possession thereof and having no obligation to keep such information confidential;

 (v) was independently developed by the Receiving party without use of or reference to the Disclosing party’s Confidential Information.

 However, information disclosed pursuant to this Agreement shall not fall within the foregoing exceptions merely because it may be embraced by more general information in the public domain or in the Receiving party’s prior possession. In addition, any combination of features shall not fall within the foregoing exceptions merely because individual features are in the public domain or in the Receiving Party’s possession, but only if the combination itself and its principle of operation are in the public domain or in the Receiving party’s possession.

1.2 Non-Disclosure.

(1) Receiving party shall not disclose or divulge Confidential Information to any third party. Notwithstanding anything herein to the contrary, the Receiving party may disclose Confidential Information to the extent it is legally compelled to disclose it, provided, however, that prior to any such compelled disclosure, the Receiving party shall give Disclosing party reasonable advance notice of the disclosure and shall cooperate in protecting against the disclosure and/or obtaining a protective order narrowing the scope of such disclosure of the Confidential Information.

(2) “The existence and the terms and conditions of this Agreement shall be maintained as confidential in accordance with the previous clause.”

1.3 Maintenance of Confidentiality.

 Receiving party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information.  Without limiting the foregoing, the receiving party shall take at least those measures that it takes to protect its own most highly confidential information.

1.4 Non-Use.

 Receiving party agrees that they will not use the Confidential Information furnished for any purpose other than the Purpose stated above. The Receiving party may not make copies of all or any portion of the Confidential Information for any purpose outside the Purpose.

1.5 Samples.

 Receiving party may use samples provided by disclosing party only for the Purpose, and may not perform any analysis, including without limitation, to discover the composition of or methods used to manufacture the sample. The Receiving party may not transfer or entrust the sample to any person other than Employees defined in Article 1.6 who have received a disclosure of the Confidential Information in accordance with Article 1.6.

1.6 Disclosure to Employees.

 Only employees of the Receiving party who need access to the Confidential Information in order to carry out the Purpose (“Employees”) may have access to the Confidential Information. Before the Receiving party discloses the Confidential Information to its Employees, it shall cause them to bear obligations of confidentiality and non-use no less restrictive than those the Receiving party owes under this Agreement. If an Employee breaches its obligation of confidentiality, then the Receiving party shall be liable for the breach.

1.7 Return of Document.

 If Disclosing party should so demand, Receiving party shall return to the Disclosing party by registered airmail all documents, written material, and samples (including any copies of any of the foregoing), and shall immediately cease all use of the Confidential Information. Notwithstanding the foregoing, the Receiving party may keep one archival copy of the documents and written material.

**2. Scope of Agreement.**

2.1 No License.

 Both parties hereby understand and agree that this Agreement is for the purposes of protecting confidential, trade secret, and/or proprietary information only. This Agreement is not an employment contract, a joint venture or other such business arrangement; and any agreement between the parties as to employment and/or joint business activities must be set forth in written agreements signed by the parties to be charged. Both parties grant no license, by implication or otherwise, under any of its patents or patent rights, as a result of disclosing the confidential, trade secret, and/or proprietary information outlined in this Agreement.

2.2 No Obligation.

 Nothing herein shall oblige each party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.

2.3 No Warranty.

 The Confidential Information disclosed by ST HEREUNDER IS PROVIDED “AS IS” AND ST EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES OR WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICES, IN ALL CASES WITH RESPECT THERETO.

**3. Ownership.**

3.1 Ownership.

 All Confidential Information shall remain the sole property of Disclosing party.  Unless agreed otherwise by the parties hereto in writing, all right, title and interest in and to inventions and all intellectual property rights therein (whether or not patentable) which incorporate, are based upon or are otherwise developed using Confidential Information shall be determined by mutual agreement of each party.

**4. Remedies.**

4.1 Remedies.

 It is acknowledged by receiving party that all Confidential Information to be furnished by Disclosing party to the Receiving party, other than information which is in the public domain through other means, is, in all respects, confidential in nature and that any disclosure or use of same by the Receiving party, except as provided in this Agreement, may cause serious harm or damage to the Disclosing party, and its owners, officers and employees. Accordingly, Receiving party agrees that specific performance or injunctive relief may be appropriate remedies available in the event of a breach or threatened breach hereof.

**5. Term.**

5.1 This Agreement shall enter into force on the date of signature indicated on the last page thereof, and shall remain in force thereafter for a period of three (3) years.

**6. Miscellaneous**

6.1 Severability.

 Any provision in this Agreement found by a court to be invalid, illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect.

6.2 No Waiver.

 Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof.

6.3 Entire Agreement.

 This Agreement contains the entire agreement between the parties with respect to the subject matter hereof.  This Agreement may not be amended, nor any obligation waived, except by writing signed by both parties hereto.

6.4 Choice of Law.

 The laws of Japan (without giving effect to its conflicts of law principles) govern all matters arising out of or related to this Agreement including, without limitation, its validity, interpretation, construction, performance and enforcement..

6.5 Dispute Resolution

 In the event of any controversy, claim, or dispute arising out of or relating to this agreement (hereinafter referred to “Dispute”), the parties will first try to settle their differences amicably through good faith negotiation. Any unresolved Dispute will be finally resolved by binding arbitration, the place of which shall be in the country of the party to whom the demand for arbitration is addressed.

 This Agreement may be signed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

 IN WITNESS THEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

 , 20xx

**Institute of Science Tokyo** XYZ

By: By:

Name: 　　　Name:

Title: 　　　　　　　　　Title:

Date: Date: