MUTUAL CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made on the day of 200

BETWEEN

THE UNIVERSITY OF MELBOURNE (ABN 84 002 705 224) a body politic and corporate established pursuant to the University of Melbourne Act 1958 of Grattan Street, Parkville, Vic, 3010 (the “University”) AND

THE SECOND PARTY

RECITALS

A. The Parties to this Agreement have agreed to share information, including Confidential Information, for the Purpose on the terms and conditions set out in this Agreement.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

“Agreement” means this agreement together with any schedules or annexures and any amendments made in accordance with this agreement;

"Confidential Information" means all unpatented inventions, ideas, know-how, concepts, trade secrets, processes, techniques, software, products and all other intellectual property, financial and business information and all other commercially valuable information of the Disclosing Party which the Disclosing Party regards as confidential to it and all copies, notes and records and all related information generated by the Receiving Party based on or arising out of any such disclosure. Confidential Information excludes, or as the case requires, ceases to include information which is, or becomes:

(a) available to the public at the date of its disclosure to the Receiving Party;
(b) at the date of its disclosure to the Receiving Party, already properly in the possession of the Receiving Party in written form otherwise than by prior confidential disclosure from the Disclosing Party;
(c) after the date of its disclosure to the Receiving Party, available to the public from sources other than the Receiving Party;
(d) after the date of its disclosure to the Receiving Party, properly available to the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;
(e) demonstrated by the Receiving Party to be independently developed by an employee or agent of the Receiving Party having no knowledge of such information the subject of the disclosure;

"Disclosing Party" means the Party which is disclosing Confidential Information;

"Parties" means the parties to this Agreement and their respective successors and permitted assigns, and Party means any one of them.

"Purpose" means the purpose described in the Schedule;

"Receiving Party" means the Party which is receiving Confidential Information;
Confidentiality Agreement

"The Second Party" means the Second Party described in the Schedule.

2. DISCLOSURE OF INFORMATION

2.1 The Disclosing Party may disclose to the Receiving Party so much of its information, including Confidential Information, as the Disclosing Party, in its sole discretion, considers is necessary for the Purpose.

3. CONFIDENTIALITY OBLIGATIONS

3.1 The Receiving Party must:

(a) keep all Confidential Information of the Disclosing Party confidential unless strictly required otherwise by law;

(b) limit access to those of its employees or agents reasonably requiring the Confidential Information on a strictly need to know basis for the Purpose;

(c) not use Confidential Information in any way which would be harmful to the best interests of the Disclosing Party;

(d) immediately notify the Disclosing Party of any disclosure required by law;

(e) not use any Confidential Information in any way other than for the Purpose or as otherwise contemplated by this Agreement without the prior written permission of the Disclosing Party;

(f) not copy, in whole or in part, any Confidential Information without the prior written permission of the Disclosing Party; and

(g) ensure that all employees, students or agents to whom Confidential Information is disclosed are legally bound under the terms and conditions of their employment agreements or otherwise to keep the Confidential Information confidential and not to use the Confidential Information except for the Purpose.

4. RETURN OF INFORMATION

4.1 At any time upon the written request of the Disclosing Party, the Receiving Party must return to the Disclosing Party any documents originating from the Disclosing Party which embody Confidential Information and must not keep any copies in any form.

5. GENERAL

5.1 Proprietary Rights. The Receiving Party obtains no proprietary rights of any kind to any Confidential Information as a result of a disclosure to it under this Agreement.

5.2 Method of Disclosure. The obligations in this Agreement apply irrespective of the method of disclosure whether in writing, in computer software, orally, by demonstration, description, inspection or otherwise.

5.3 Waiver. A Party's failure to exercise or delay in exercising a right or power does not operate as a waiver of that right or power and does not preclude the future exercise of that right or power.

5.4 Dispute. If a dispute arises between the Parties (the "Dispute"), the Parties agree to negotiate in good faith to resolve the Dispute and will refer resolution of the Dispute to their respective chief executive officers or their nominees. If the Dispute has not been resolved by negotiation within a reasonable time then either Party may refer the Dispute to mediation and will do so before initiating proceedings in a court to resolve the Dispute. A Dispute which is referred to mediation will be referred to the Australian Commercial Dispute Centre Limited ("ACDC") and be conducted in accordance with, in the case where the Second Party is an Australian organisation or person, the Conciliation Rules of ACDC, or, in the case where the Second Party is ordinarily resident outside Australia, the UNCITRAL Conciliation Rules (and in either case will be heard by one conciliator appointed under the relevant rules in Victoria with the proceedings being in English). If the Dispute has not been resolved within sixty (60) days of referral to ACDC either Party is free to initiate proceedings in a court. Nothing in this clause will prevent a Party from seeking interlocutory relief through courts of appropriate jurisdiction.
5.5 **Governing Law.** This Agreement is governed by the laws of the State of Victoria, Australia and each Party submits to the jurisdiction of the courts of that State and courts of appeal therefrom.

5.6 **Entire agreement.** This Agreement contains the whole of the agreement between the Parties regarding their mutual obligations of confidentiality.

5.7 **Amendment.** This Agreement may only be amended in writing.

5.8 **Assignment.** A Party will not assign or transfer all or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

5.9 **Severance.** Any illegal or invalid provision of this Agreement will be severable and all other provisions will remain in full force and effect.

5.10 **Burden of Proof.** The burden of showing that any Confidential Information is not subject to the obligations of confidentiality in this Agreement will rest on the Receiving Party.

**EXECUTED** as an Agreement this ……………………. day of …………………………………….200

**SIGNED** for and on behalf of THE )
**UNIVERSITY OF MELBOURNE** ) .................................
in the presence of: ) .................................

Signature of Witness .................................
Name of Witness .................................
(block letters)

Signature of authorised person .................................
Name of authorised person .................................
(block letters)

**SIGNED** for and on behalf of THE )
**SECOND PARTY** ) .................................
in the presence of: ) .................................

Signature of Witness .................................
Name of Witness .................................
(block letters)

Signature of authorised person .................................
Name of authorised person .................................
(block letters)
SCHEDULE

The University  Legal Name:  The University of Melbourne

Address:  Attention: Deputy Vice-Chancellor (Research)
The University of Melbourne
Vic 3010

Fax No:  +61 3 8344 6293

ABN:  84 002 705 224

The Second Party  Legal Name:

Address:

Phone:

Fax No:

ABN:

Purpose