

MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (the "Agreement") is made as of _____ by and between the Institute of Scientific Simulation, LLC., a California limited liability company having its principal place of business at 475 Washington Street, Suite D, Monterey, CA 93940-3060 (the "Company") and _____

1. **Purpose.** The Company and _____ wish to explore a possible business opportunity of mutual interest regarding a potential transaction with respect to certain intellectual property (the "Transaction") in connection with which each party may disclose its Confidential Information to the other. This Agreement is intended to allow the parties to have open discussions concerning this business opportunity, including, but not limited to, discussions regarding Confidential Information, while still affording complete protection of each party's Confidential Information against unauthorized use or disclosure. The party disclosing confidential information is willing to provide such information to the other party, subject to the execution of and in reliance on this Agreement.

2. **Definition of Confidential Information.** "Confidential Information" means any information or compilation of information not generally known which relates to the disclosing party's existing or reasonably foreseeable business, including but not limited to technical data, trade secrets or know-how and information which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, regulatory information, business plans, agreements with third parties, services, customers and existing and potential customer lists, marketing or finances of the disclosing party. Information, regardless of its source or whether provided in writing or orally, shall be treated as Confidential Information if it would, under the circumstances, appear to a reasonable person to be confidential or proprietary and all information identified as being "confidential" or "trade secret" shall be presumed to be Confidential Information. Confidential Information does not include any of the foregoing items which: (i) prior to or after the time of disclosure becomes publicly known and made generally available other than as a result of any improper action or inaction of the receiving party; (ii) is approved in advance by the disclosing party, in writing, for release; (iii) is at any time rightfully disclosed to the receiving party by a third party or parties without violation of any obligation of confidentiality and without restriction on disclosure; (iv) is independently developed by the receiving party without the use of any Confidential Information of the disclosing party by employees of the receiving party who have had no access to such Confidential Information; or (v) is required to be disclosed by applicable law or proper legal, governmental or other competent authority, provided that the party whose information is to be disclosed shall be notified sufficiently in advance of such requirement so that it may seek an appropriate protective order (or equivalent) with respect to such disclosure, with which the other party shall fully comply; and provided further that in the event such protective order is not obtained, the receiving party shall disclose only that portion of the Confidential Information which its counsel advises that it is legally required to disclose.

3. **Nondisclosure of Confidential Information.** The Company and _____ each agree not to use any Confidential Information disclosed to it by the other party for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Transaction. Neither party shall disclose or permit disclosure of any Confidential Information of the other party to third parties or to employees of the party receiving Confidential Information, other than directors, officers, employees, consultants and agents who are required to have the information in order to carry out the discussions regarding the Transaction. Each party has had or will have its directors, officers,

employees, consultants and agents who have access to Confidential Information of the other party sign a nondisclosure agreement in content substantially similar to this Agreement and shall notify the other party in writing of the names of each person who has signed such agreements promptly after such agreements are signed. Each party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the receiving party utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Each party agrees to notify the other in writing of any misuse, misappropriation or unauthorized disclosure of Confidential Information of the disclosing party which may come to the receiving party's attention.

4. **Return of Materials.** Any materials or documents that have been furnished by one party to the other in connection with the Transaction shall be promptly returned by the receiving party, accompanied by all copies of such documentation, within ten (10) days after (i) the Transaction has been rejected or concluded or (ii) the written request of the disclosing party.

5. **No Rights Granted.** Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of either party, nor shall this Agreement grant either party any rights in or to the other party's Confidential Information other than the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the proposed Transaction.

6. **Term.** The foregoing commitments of each party shall survive any termination of the Transaction between the parties, and shall continue in perpetuity.

7. **Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that neither this Agreement nor any Confidential Information of either party may be assigned without the prior written consent of the other party unless the assignee shall be the successor entity to the assignor upon: (i) the sale of all or substantially all of the assets or stock of the assignor, (ii) the acquisition by or merger with or into another company of the assignor or (iii) dissolution of the assignor in its present form. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

8. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then: (i) such provision shall be excluded from this Agreement; (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded; and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

9. **Independent Contractors.** The Company and _____ are independent contractors, and nothing contained in this Agreement shall be construed to constitute the Company and _____ as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

10. **Governing Law; Jurisdiction.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law. Each of the parties hereto consents to the jurisdiction of the courts of New York county, New York.

11. **Remedies; Indemnification.** The Company and _____ each agree that its obligations set forth in this Agreement are necessary and reasonable in order to protect the disclosing party and its business. The Company and _____ each expressly agree that due to the unique nature of the disclosing party's Confidential Information, monetary damages would be inadequate to compensate the disclosing party for any breach by the receiving party of its covenants and agreements set forth in this Agreement. Accordingly, the Company and _____ each agree and acknowledge that any such violation or threatened violation shall cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled (i) to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages, and (ii) to be indemnified by the receiving party from any loss or harm, including but not limited to attorney's fees, arising out of or in connection with any breach or enforcement of the receiving party's obligations under this Agreement or the unauthorized use or disclosure of the disclosing party's Confidential Information.

12. **Amendment and Waiver.** Any term of this Agreement may be amended with the written consent of the Company and _____. Any amendment or waiver effected in accordance with this Section shall be binding upon the parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

13. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

14. **Entire Agreement.** This Agreement is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

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

NAME:.

By: _____

DATE" _____

**INSTITUTE OF SCIENTIFIC SIMULATION,
LLC.**

By: _____
David M. Russell, Ph. D.
Director
DATE _____