
NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (“Agreement”) is made as of this ____ day of _____ by and between University of Puerto Rico at Mayaguez (“Company”), a Puerto Rican educational institution and ECO2Capture, Inc. (“ECO”), a Delaware company,

WHEREAS, the parties desire to engage in discussions and negotiations relating to a potential business relationship concerning algal technology, gas capture, production, distribution and related industry opportunities and relationships (the “Project”);

WHEREAS, in order to facilitate such discussions and negotiations, certain Confidential Information (as defined below) may be disclosed between the parties orally or in writing;

WHEREAS, such Confidential Information shall only be used for the limited purposes of the Project and in connection with any business relationship that arises between the parties and any services provided in connection there with; and

WHEREAS, each party is prepared to furnish such Confidential Information in connection with the Project, provided that each party enter into this Agreement and agree to abide by the terms hereof.

NOW, THEREFORE, in consideration of the premises and the agreements herein contained, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Mutual Protection. This Agreement confirms the understanding between the parties concerning their mutual obligations of confidentiality with respect to Confidential Information. The party disclosing Confidential Information is referred to as the “Disclosing Party” and the party receiving Confidential Information is referred to as the “Receiving Party.”

2. Definition of Confidential Information. (a) As used in this Agreement, “Confidential Information” means any information, provided orally or in writing relating to the Project: (i) that is not generally known in the relevant industry and affords possessors of the information a commercial or business advantage, or that is a proprietary trade secret, method, process, or procedure of the Disclosing Party; (ii) that, if provided in tangible form, is clearly labeled “Confidential,” “Proprietary” or with a similar legend denoting confidentiality;

(b) Notwithstanding Section 2(a) above, Confidential Information shall not include, and these confidentiality obligations shall not operate as a restriction on, a Receiving Party’s right to use, disclose, or otherwise deal with information that:

- (i) is or becomes generally available to the public through no wrongful act of the Receiving Party;
- (ii) was in the Receiving Party’s possession before the time it was acquired from the Disclosing Party;
- (iii) is required to be disclosed by court order or operation of law, provided the Disclosing Party is notified promptly in order to contest such disclosure and the Receiving Party takes reasonable steps to assist in contesting such request;
- (iv) is independently made available to the Receiving Party by a third party; or
- (v) is independently developed by or for the Receiving Party by persons not having exposure to the Disclosing Party’s Confidential Information.

3. Nondisclosure of Confidential Information. Other than in connection with evaluating the possibility of proceeding with the Project and completing the Project if the parties agree to pursue the Project, a Receiving Party and its employees and agents shall not use the Confidential Information of the Disclosing Party and will keep such Confidential Information strictly confidential. A Receiving Party shall limit access to the Disclosing Party's Confidential Information to the Receiving Party's employees and agents with a legitimate need to know such information ("Representatives"), and shall not use or copy any such Confidential Information except to the extent necessary or appropriate to carry out the purposes of the Project, without the prior written consent of the Disclosing Party. The Receiving Party agrees (i) that its Representatives will be informed by the Receiving Party of the confidential nature of the Confidential Information and the requirement that it not be used other than for the purposes permitted herein, and will agree to protect the Confidential Information, and (ii) in any event, the Receiving Party will be responsible for any disclosure of Confidential Information, or any other breach of this Agreement, by any of its Representatives. A Receiving Party shall not disclose the Disclosing Party's Confidential Information to any person other than as permitted hereby, and shall safeguard such Confidential Information from unauthorized disclosure using the same degree of care as it takes to preserve its own confidential information (but in any event no less than a reasonable degree of care). For purposes hereof, "person" will be interpreted broadly to include any corporation, company, partnership or other entity or any individual. The parties will not reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the other parties' Confidential Information and that are provided to them in accordance with this Agreement. For purposes of clarity, neither party will use the other party's Confidential Information to: (i) file a patent application or to provoke interference with any patent application which the other party has filed or will file or any improvements thereof; (ii) amend any claim in any pending patent application to expand the claim to read on, cover or dominate any invention (whether or not patentable) disclosed or suggested in the Confidential Information; or (iii) enhance or improve the design or operation of any identical or similar machinery, equipment, or process or the manner in which any such machinery, equipment, or process is fabricated, assembled or used. Neither party will reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the other party's Confidential Information and that are provided to the party in accordance with this Agreement.

4. No Disclosure of Project. Neither party shall disclose, and each shall prohibit its Representatives from disclosing, to any person either the fact that discussions regarding the Project are taking place or any of the terms, conditions or other facts with respect to any proposal related to the Project, or the status of the negotiations relating to any such proposal, all of which information shall be deemed to be included within the definition of "Confidential Information" for purposes of this Agreement. It is understood and agreed that neither this Agreement nor disclosure of any Confidential Information to a Receiving Party shall be construed as granting to the Receiving Party or any of its Representatives any license or rights in respect of any part of such Confidential Information disclosed to it or any concepts, designs, or trade secrets included therein.

5. Return of Information. Upon the written request of a Disclosing Party, the Receiving Party and its Representatives shall return to the Disclosing Party all documents or other materials in whatever form which contain the Disclosing Party's Confidential Information, or destroy all copies thereof and certify to the Disclosing Party in writing that all copies of such materials have been destroyed. The legal department or legal advisors of the Receiving Party shall nevertheless be permitted to keep a record copy of all Confidential Information in a confidential file for archival purposes.

6. Remedies. The Receiving Party acknowledges that the Disclosing Party's Confidential Information constitutes unique and valuable information to the Disclosing Party and that the breach of any of the provisions contained herein will result in irreparable harm and continuing damages to the Disclosing Party and its business, and that the Disclosing Party's remedy at law for any such breach or threatened breach would be inadequate. Accordingly, in addition to such remedies as may be available to a Disclosing Party at law or in equity in the event of any such breach, a Disclosing Party shall be entitled to an injunction (both preliminary and permanent) from any court of competent jurisdiction, without posting bond or other security, enjoining and restricting the breach or threatened breach of any such provision, including, but not limited to, an injunction restraining the Receiving Party from disclosing, in whole or in part, any Confidential Information of the Disclosing Party.

7. Termination. This Agreement shall apply to all Confidential Information disclosed until either party notifies the other in writing that future communications shall not be so governed. Any such notification shall not affect the confidential status of then-existing Confidential Information.


8. Compensation Determined Separately. Neither acceptance of any Confidential Information nor anything in this Agreement shall be construed to bind the Receiving Party to pay any compensation to the Disclosing Party, nor be relevant to determination of the proper amount of such compensation, if any, to be paid to the Disclosing Party in connection therewith. The amount of compensation, if any, to be paid to the Disclosing Party for further use, development, research, or sale of any Confidential Information, if any, shall be the subject of a separate agreement between the parties. The parties are not bound to enter into or negotiate toward a separate agreement.

9. Competing Products. Subject to its confidentiality and nondisclosure obligations as set forth in this Agreement, each party's right to develop, use and market products and/or services similar to or competitive with those of the other party shall remain unimpaired. Each party acknowledges that the other party may already possess or have developed products or services similar to or competitive with those of the other party disclosed in the Confidential Information.

10. Jurisdiction and Governing Law. This Agreement and all acts and transactions pursuant hereto shall be governed, construed and interpreted in accordance with the laws of the Commonwealth of Puerto Rico, U.S.A. If any portion of this Agreement is invalid under any federal, state, local or other law or regulation, only such invalid portion shall be ineffective and void. Each of the parties waives any defense of inconvenient forum to the maintenance of any such action or proceeding so brought and waives any bond, surety, or other security that might be required of any party hereto. If, contrary to the provisions of this section, a party commences any legal actions involving this Agreement in any forum other than either of those specified above, the other party shall be entitled to the dismissal of such action based upon the agreement of the parties contained in this section.

11. Miscellaneous. No failure or delay in exercising any right, power or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. This Agreement inures to the benefit of and is binding on the parties hereto and their respective successors and assigns. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law of a federal, state or local government having jurisdiction over this Agreement, the validity of the remaining portion or portions shall not be affected thereby. Nothing in this Agreement creates the relationship of principal and agent, employer and employee, partnership or joint venture between the parties. The parties agree that they are and will at all times remain independent and are not and shall not represent themselves to be the agent, employee, partner or joint venture of the other. Neither party accepts responsibility for, nor makes any representation or warranty, express nor implied, as to the truth, accuracy, completeness or reasonableness of any Confidential Information of the other party. Neither party will be liable to another person in respect of any Confidential Information or its use. Neither party is obliged to update any Confidential Information or to correct any inaccuracies in any Confidential Information. No provision of any Confidential Information, discussions, negotiations or another matter constitutes an offer by either party or on its behalf, or will form the basis of any agreement, except as expressly provided for in a definitive written agreement.

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

University of Puerto Rico at		ECO2Capture, Inc.	
Mayaguez			
By: _____		By: _____	
Name: _____	Jorge Rivera Santos, PhD	Name: _____	
Title: _____	Chancellor	Title: _____	
Date: _____	January 12, 2012	Date: _____	