MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

This Mutual Confidential Disclosure Agreement (“Agreement”) is made as of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Effective Date”), between The University of North Carolina at Charlotte (“UNIVERSITY”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with principal offices located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“COMPANY”) on behalf of itself and its Affiliates (as that term is defined herein). For purposes of this Agreement, UNIVERSITY and COMPANY are sometimes collectively referred to as the “Parties” and individually referred to as a “Party.”

RECITALS

A. Each party has certain information related to its business or technology, including, without limitation, information relating to advanced technologies, patentable inventions, copyrightable materials, trade secrets, know-how, and printed or electronically recorded matter, background information owned by a Party prior to the date hereof, and other forms of intellectual property, supporting materials and other materials; and

B. The parties intend to engage in discussions and negotiations to explore possible collaborative research and development activities between them.

C. In the course of such discussions and negotiations and in the course of any such collaborative research and development activities, it is anticipated that a Party will disclose or deliver to the other Party certain of its trade secrets or confidential or proprietary information for the purposes of enabling each Party to evaluate the feasibility of such activities and to perform its obligations and exercise its rights under any such activities that is agreed to between them (the “Purpose”).

D. Therefore, the Parties agree that this Agreement will govern their respective obligations regarding such Confidential Information disclosed to the other after complete execution of this Agreement.

NOW, THEREFORE, the parties hereby agree as follows.

1. Definitions:
	1. “Confidential Information” means:
		1. information disclosed to the Recipient in writing and suitably marked as “confidential” or “trade secret”, and
		2. information disclosed to the Recipient orally or visually, but only if
			1. Discloser informs Recipient of the confidential nature of the information at the time of initial disclosure, and
			2. such orally or visually disclosed information is reduced to writing and delivered to Recipient, suitably marked as confidential, within 30 days of the initial oral or visual disclosure.
	2. “Affiliates” means any person or entity directly or indirectly controlling, controlled by, or under direct or indirect common control with COMPANY, where the term “control” means the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity. “Control” will be conclusively presumed in the case of the ownership of 50% or more of the equity interests.
	3. “Recipient” means a party receiving Confidential Information pursuant to this Agreement,
	4. “Discloser” means a party disclosing Confidential Information pursuant to this Agreement.
2. Each Party shall use the same degree of care and means it utilizes to protect its own information of a similar nature, but in any event not less than reasonable care and means, to prevent unauthorized use or disclosure of the other Party’s Confidential Information. The Confidential Information may be disclosed only to employees, personnel, or contractors of the Recipient or its Affiliates with a manifest "need to know" who are subject to confidentiality obligations sufficient to carry out the intent of this Agreement and the Purpose.
3. Except as expressly stated herein, Recipient may not disclose Discloser’s Confidential Information to any third party or parties without the prior written consent of the Discloser. No express or implied license to use the Confidential Information for any purpose other than the Purpose is granted by this Agreement. This Agreement does not constitute an offer for license or sale by the Discloser.
4. All Confidential Information is and shall remain the property of the respective Discloser. Discloser hereby reserves all rights in and to its Confidential Information, and nothing herein shall be construed as granting Recipient any license, express or implied, under any of the Discloser's patents, copyrights, trademarks, trade secrets, or other intellectual property rights, except a limited right to use the Confidential Information solely for the Purpose.
5. Upon expiration or termination of this Agreement, or at any time upon written request, the Recipient will promptly, at Discloser's instruction, return or destroy all material embodying Confidential Information and all material containing or reflecting Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) in its possession or under its control, whether prepared by the Discloser, the Recipient, or otherwise, and will not retain any copies, extracts or other reproductions in whole or in part of such materials. However, the foregoing notwithstanding, the Recipient may retain data or records in electronic form for archival, backup, recovery, compliance with laws, contingency planning, and as a record of its obligations, provided that such copy is kept in limited access files.
6. This Agreement shall impose no obligation of confidentiality upon Recipient with respect to any portion of Discloser’s Confidential Information received hereunder that: (i) now or hereafter, through no unauthorized act on Recipient’s part, is or becomes part of the public domain; (ii) known to Recipient without an obligation of confidentiality at the time Recipient receives the same from the Discloser; (iii) hereafter furnished to Recipient by a third party as a matter of right and without restriction on disclosure; (iv) furnished to others by Discloser without restriction on disclosure; or (v) independently developed by Recipient without the use or reference to the Confidential Information.
7. Notwithstanding any other term in this Agreement, any information disclosed under this Agreement is subject to the North Carolina Public Records Act (N.C. Gen. Stat. 132-1 et al.) and information held by UNIVERSITY may be disclosed under that Act except for information qualifying as confidential information under N.C. Gen. Stat. 132-1.2 and information excluded from that Act under N.C. Gen. Stat. 116-43.17.
8. If Recipient is required by law or by a government body or court of law to disclose Confidential Information, the Recipient shall give the Discloser reasonable advance notice, so that Discloser may contest the disclosure or seek a protective order or other appropriate remedy. Such notice must include, without limitation, identification of the information to be disclosed and a copy of the order. Recipient will disclose only such information as it reasonably deems is legally required and will use reasonable efforts to obtain confidential treatment for any Confidential Information that is disclosed.
9. With respect to the activities of the Parties pursuant to this Agreement, each Party will comply with all applicable federal, national, state, provincial and local statutes, rules and regulations, including, but not limited to, United States export control laws and regulations as they currently exist and as they may be amended from time to time.
10. This Agreement shall cover Confidential Information disclosed or received by either Party subsequent to the date of this Agreement. Unless otherwise earlier terminated, this Agreement will automatically expire five (5) years from the date of its full execution by the Parties. This Agreement may be terminated immediately with written notice by either Party upon any material breach by the other Party of any term or condition of this Agreement and on thirty (30) days written notice for its convenience. Each Party's obligations with respect to the other Party's Confidential Information disclosed or received prior to termination or expiration will survive termination/expiration of this Agreement for a period of three (3) years.
11. Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other. This Agreement is legally binding upon the undersigned parties, their directors, officers, employees, successors and permitted assigns. This Agreement does not create any agency, partnership, joint venture, or alliance relationship.
12. NO WARRANTIES, REPRESENTATIONS OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ACCURACY, SUFFICIENCY, SUITABILITY OR NON-INFRINGEMENT ARE MADE BY EITHER PARTY WITH RESPECT TO ITS CONFIDENTIAL INFORMATION UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS," AND THE DISCLOSER SHALL HAVE NO LIABILITY WHATSOEVER FOR ANY DAMAGES, LOSSES OR EXPENSES INCURRED BY THE RECIPIENT AS A RESULT OF ITS RECEIPT OF DISCLOSER’S INFORMATION PURSUANT TO THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.
13. All notices shall be in writing and delivered by hand or sent by certified or registered mail, return receipt requested, or reputable overnight courier service, to the below address of the other party, to the attention of the Recipient's Legal Department, and shall be deemed received on the earlier of actual receipt or five days after deposit in the mail.
14. Each Party acknowledges that a Recipient's improper disclosure of Confidential Information may cause irreparable harm to the Discloser; and as such, the injured Party is entitled to seek equitable relief to the extent permitted by law, in addition to all other remedies. The Recipient will promptly provide notice to the Discloser of any unauthorized disclosure of Confidential Information, and will take prompt and effective steps to mitigate any effects, and stop any continuation, of such unauthorized disclosure.
15. If any provision of this Agreement is held to be unenforceable, such unenforceable part shall be deemed modified or eliminated to the extent necessary to make the remaining parts enforceable. Any waiver of a default in performance hereunder shall be deemed a waiver of the particular instance only and shall not be deemed consent to continuing default.
16. The interpretation and validity of this Agreement is governed by the laws of the State of North Carolina, without regard to its conflict of law provisions. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter and supersedes all prior agreements or understandings, written or oral, between the Parties with respect thereto.

# **IN WITNESS WHEREOF**, the Parties have agreed to and accepted the foregoing terms and have caused this Agreement to be signed by their duly authorized representatives.

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Laura A. Peter, Executive Director

Bradley C. Fach, Director

Office of Research Commercialization and Development

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9201 University City Blvd.

Charlotte, NC 28223-0001

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name:

Title:

Company:

Address: