

All provisions contained in this document are expressly non-binding, are set out for discussion purposes only and are part of the ongoing negotiations between North Carolina State University and \_\_\_\_\_. There is no legal or other commitment by any party as to any of the provisions in this document unless and until the necessary internal approvals have been given and a formal written agreement has been signed by authorized signatories of both parties.

## NORTH CAROLINA STATE UNIVERSITY CONFIDENTIAL DISCLOSURE AGREEMENT

WHEREAS, NORTH CAROLINA STATE UNIVERSITY (the UNIVERSITY) has certain confidential information relating to “\_\_\_\_\_” (NCSU File No. \_\_\_) (hereinafter referred to as “NCSU’s INFORMATION”) and desires to disclose the same to \_\_\_\_\_ (the “COMPANY”), and;

WHEREAS, the COMPANY has certain confidential information relating to \_\_\_\_\_ (hereinafter referred to as “the COMPANY’s INFORMATION”) and desires to disclose the same to the NCSU; and

WHEREAS, the COMPANY is interested in examining and evaluating the NCSU’s INFORMATION, in order to determine the desirability of acquiring rights in, and to, such information, and under any patent rights now existing, or hereafter obtained, relative to such INFORMATION, and/or evaluating NCSU’s INFORMATION in order to plan research projects with NCSU, and;

WHEREAS, the NCSU is interested in examining and evaluating the COMPANY’s INFORMATION in order to plan research projects and/or to explore opportunities to collaborate with the COMPANY.

WHEREAS, NCSU’s INFORMATION and COMPANY’s INFORMATION are hereinafter referred to as the “INFORMATION”;

Now, therefore, the parties hereby agree to the following terms and conditions:

1. Each party shall disclose their INFORMATION to the other party in writing, marked “Confidential,” and in sufficient detail to enable the other party to fully evaluate the same. If INFORMATION is provided orally, visually or in another non-tangible form, the INFORMATION will be reduced to written form, marked “Confidential”, and submitted to the receiving party within thirty (30) days of the disclosure. The receiving party shall be permitted to retain one copy of any material submitted to it hereunder, or copies thereof, for the sole purpose of fulfilling their obligations under this Agreement. Upon written request, all other copies will be returned by the receiving party to the disclosing party.
2. This Agreement becomes effective on the last signature date below (“Effective Date”) and terminates \_\_\_ (X) days/months/years after the Effective Date. INFORMATION shall only be provided to the receiving party during the term of this Agreement. The restrictions and obligations on such INFORMATION shall survive termination and remain in full force and effect for a period of five (5) years from the date that the INFORMATION was disclosed by NCSU to RECIPIENT (hereinafter referred to as the “Confidentiality Term”).
3. The parties agree, for the duration of the Confidentiality Term, that the receiving party will treat the disclosing party’s INFORMATION with the same degree of care with which it treats its own confidential information, but with no less than reasonable care to avoid disclosure of the INFORMATION to any other person, firm or corporation. The receiving party shall have no obligation, with respect to the INFORMATION, or any part thereof, which the receiving party can demonstrate is:
  - (a) already known to the receiving party at the time of the disclosure;
  - (b) publicly known without the wrongful act or breach of this agreement by the receiving

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party;

- (c) rightfully received by the receiving party from a third party on a non-confidential basis;
  - (d) subsequently and independently developed by employees of the receiving party who had no knowledge of the INFORMATION by written records;
  - (e) approved for release by written authorization of the disclosing party;
  - (f) required to be disclosed by law or judicial action.
4. The receiving party shall be entitled, at its option, to subject the INFORMATION to such tests, analyses, experiments, or studies as are warranted in its judgment or of interest to it in order to fully evaluate the INFORMATION in accordance with the terms of this Agreement; and to disclose the INFORMATION on a confidential basis to its employees, and by a written non-disclosure agreement to its clients, its consultants or non-employees retained by the receiving party because of their standing and expertise in the area concerned. The receiving party's employees and/or clients, consultants or non-employees who are bound under terms of a non-disclosure agreement covering this INFORMATION, who become privy to INFORMATION and subsequently leave such employment, shall be bound to maintain the secrecy of INFORMATION for the duration of the Confidentiality Term.
5. No obligation of payment, of any kind, is assumed by, nor may be implied against, the receiving party, other than that of treating the INFORMATION as described above. Acceptance of the INFORMATION by the receiving party shall not give it the right to use the INFORMATION except as provided herein, until or unless a formal written agreement is entered into providing the terms and conditions of such further use, and the rights to be acquired by the receiving party.
6. No rights, other than those specified in this Agreement, are provided to either party under any patents, patent applications, trade secrets, or other proprietary rights. Neither party shall be entitled to make any commercial use of the other party's INFORMATION without a separate written agreement to that effect. Except as strictly provided for in this AGREEMENT, no right or license, either express or implied, to the INFORMATION is granted by virtue of this Agreement or by virtue of disclosure of any INFORMATION hereunder.
7. This Agreement is entered into in the State of North Carolina and must be interpreted in accordance with and its performance governed by the laws of the State of North Carolina, without reference to its conflicts of laws provisions. Any and all litigation relating to this Agreement or the parties' performance hereunder must be in the State Courts of North Carolina with the venue being Wake County. The parties consent to the jurisdiction of those courts.
8. In the event an action or any proceeding is commenced regarding a breach, violation, or threatened breach or violation of any of the covenants, duties, or obligations under this Agreement, the prevailing party in any such action or proceeding shall be entitled to seek reasonable attorneys' fees and costs incurred in: (a) enforcing its rights hereunder, and (b) enforcing and/or collecting upon any judgment, decree, or order entered and for such other relief as may be awarded.
9. The failure of the disclosing party to require the performance by receiving party of any provision of this Agreement shall in no way affect the rights of the disclosing party to enforce the same in the future, nor shall the waiver by the disclosing party of any breach, violation, or threatened breach or violation of any provision of this Agreement be construed as a waiver of any subsequent breach, violation, or threatened breach or violation of the Agreement by receiving party. The waiver of a breach of any term or condition of this Agreement will not constitute the waiver of any other breach of the same or any other term.

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10. The parties represent to each other that to their present knowledge they have the full right and authority to disclose the INFORMATION, and to its present knowledge, there has been no sale, assignment, license or transfer to any person, firm or corporation which would be inconsistent with said representations and warranties.
11. For the purpose of all written communications and notices between the parties, their addresses are:

NCSU Notice

COMPANY Notice

For delivery via the U.S. Postal Service

Office of Technology Transfer  
North Carolina State University  
Attn: Compliance Officer  
Campus Box 8210  
Raleigh, NC 27695-8210 USA

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For delivery via courier

Office of Technology Transfer  
North Carolina State University  
Attn: Compliance Officer  
Corporate Research I  
1021 Main Campus Drive  
Raleigh, NC 27606 USA

NCSU Technical/Scientific Contact

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Raleigh, NC 27695 USA

12. In the event any provision of this Agreement is found by any court or tribunal to be partially or wholly invalid or unenforceable, the remainder of the Agreement nevertheless shall be enforceable and binding, and the invalid or unenforceable provision shall be modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or, if such provision cannot under any circumstances be so modified or restricted, it shall be excised from the Agreement without affecting the validity or enforceability of any remaining provisions. The parties agree that any such modification, restriction or excision may be accomplished by their mutual written agreement.
13. The Undersigned, by signing this Agreement, represents that he/she is authorized on behalf of NCSU to enter into this Agreement for and on behalf of NCSU. The Undersigned, by signing this Agreement, represents that he/she is authorized on behalf of the Company to enter into this Agreement for and on behalf of the Company.
14. The parties to this document agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties further waive any right to challenge the admissibility or authenticity of this document in a court of law based solely on the absence of an original signature.

IN WITNESS WHEREOF, the parties have signed or caused this agreement to be signed as of the dates

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below.

NORTH CAROLINA STATE UNIVERSITY

\_\_\_\_\_(Company Name)

\_\_\_\_\_

\_\_\_\_\_(Signed)

Billy B. Houghteling  
Director  
Office of Technology Transfer  
Date: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

*North Carolina State University  
Office of Technology Transfer  
Campus Box 8210, Raleigh, N.C. 27695-8210  
919.515.7199 919.515.3773(fax)*