



MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (this “Agreement”) is made and entered into as of this _____ day of _____, 20 _____ (“Effective Date”) by and between _____, a _____ corporation having a principal place of business at _____ (“Company”) and Northeastern University, a non-profit Massachusetts educational corporation located at 360 Huntington Avenue, Boston MA 02115 (“NU”). NU and Company referred herein individually as a “Party” and collectively, as the “Parties”.

WHEREAS, the Parties may enter into discussion and transactions regarding a collaborative project for the purpose of [add description of the purpose] (the “Purpose”)

WHEREAS, solely in connection with the Purpose the Parties wish for their mutual benefit, to disclose to each other Confidential Information (defined below); and

WHEREAS, the Parties wish to set forth the conditions and obligations which will govern the access, use, duplication and disclosure of any Confidential Information that one party (the “Disclosing Party” may disclose to the other party (the “Recipient”).

NOW THEREFORE, to enable the Parties to proceed with these discussions and in consideration of the mutual covenants, premises and agreements contained herein, the Parties hereto hereby agree as follows:

:

1. **Confidential Information.** “Confidential Information” means all the information of the Disclosing Party furnished or made available, orally, in writing, by electronic means, or by inspection, at any time on and after the Effective Date regarding the Disclosing Party or its business plans, processes, technology, data, material, documents regarding the infrastructure, businesses, assets, liabilities, financial conditions, operations, identity of personnel, intellectual property (including, without limitation, trade secrets), Personal Data (defined below) and other related or its similar information provided in all cases such information is marked conspicuously with a confidentiality or a substantially similar legend in accordance with Section 4 of this Agreement.

For purposes of this Agreement, “Personal Data” shall mean any and all personally identifiable information, in any form or media, about current or former NU faculty members, employees, students, prospective students, and other persons associated with NU. Personal Data includes, without limitation, (i) an individual’s social security number, bank or other financial account numbers, credit or debit card numbers, driver’s license number, passport number, other government-issued identification numbers, biometric data, health and medical information, and data about the individual obtained through a Project; (ii) financial information, employee benefits information, education records, NU identification numbers;

and (iii) any additional categories of information about individuals that NU from time to time designates in writing as Personal Data.

Exclusions. Notwithstanding the foregoing, "Confidential Information" shall not include the following types of information if the Recipient establishes by competent proof that the information: (i) is now or subsequently becomes generally available to the public without a breach of this Agreement by the Recipient; (ii) was known to or rightfully in the possession of the Recipient prior to the date of disclosure of such Confidential Information; (iii) is developed by the Recipient independent of the disclosure made under this Agreement; (iv) is supplied to the Recipient by a third party without restriction on such disclosure; or (v) is required to be disclosed pursuant to a valid subpoena, court order or other requirement(s) of applicable law, provided, however, that the foregoing exceptions to Confidential Information shall not apply to Personal Data. Notwithstanding the foregoing, Confidential Information shall not be deemed to be available to the public or in the possession of the Recipient merely because it is embraced by more general information so available or in the possession of the Recipient. If the Recipient will disclose Confidential Information of the Disclosing Party pursuant to a judicial or United States governmental action, the Recipient shall make reasonable efforts to notify the Disclosing Party prior to complying with such action.

2. **Purpose.** The Recipient shall use the Confidential Information provided by the Disclosing Party solely for the Purpose and for no other purpose. As used herein, _____ and NU shall include, individually and collectively, their respective officers, directors, consultants, employees and associated researchers, provided, however, that NU shall not include its students.

3. **Duty.** The Recipient shall not disclose the Confidential Information of the Disclosing Party to any third party nor access or use such Confidential Information other than solely for the Purpose. In all cases, the Recipient shall use reasonable measures that are at least as stringent as those used by the Recipient to protect its own information of a similar nature (and in no event shall the Recipient use less than reasonable measures) to keep confidential and safeguard from theft loss and/or unpermitted uses the Confidential Information disclosed to Recipient. In addition, the Recipient shall limit access to Confidential Information to those officers, directors, employees and associated researchers within the Recipient's organization who reasonably require access to the Confidential Information for carrying out the Purpose and who have agreed to maintain the Confidential Information in confidence. The fact that discussions or negotiations are taking place concerning the Purpose, including without limitation the status or termination thereof, and any terms, conditions or other facts with respect to the Purpose (including, but not limited to, the existence and terms of this Agreement) are Confidential Information subject to the confidentiality requirements set forth herein. Recipient shall implement and maintain appropriate security measures for Personal Data which shall be at least as protective of the confidentiality of such information as the safeguards for personal information set forth under applicable federal, state and local law.

4. **Identification of Confidential Information.** Confidential Information disclosed hereunder shall be disclosed in written, electronic or other permanent form and shall be prominently identified as confidential using an appropriate legend, marking stamp, or other clear and conspicuous written identification which unambiguously indicates that the information being provided is the Disclosing Party's Confidential Information. If Confidential Information is disclosed in other than written or other permanent form, it shall be considered Confidential Information as of the time of original disclosure if: i) the Disclosing Party identifies it as Confidential Information at the time of the original disclosure and ii)

within thirty (30) days of the non-written disclosure, the Disclosing Party reduces the information to written or other permanent form, clearly identifying the information confidential as indicated above, and transmits it to the Recipient, referencing the place and date of such oral disclosure and identifying the name(s) of the employees or officers of the Recipient to whom it was made. The rights and obligations provided by this Agreement shall take precedence over specific legends or statements associated with Confidential Information when received.

5. **Notices.** Any reproduction by either party of the other party's Confidential Information permitted under this Agreement shall contain any and all confidential notices or legends which appear on the original, unless otherwise authorized in writing by the Disclosing Party.

6. **Ownership.** Recipient affirms and agrees that all rights, titles and interests in and to the Confidential Information of the Disclosing Party are and shall remain at all times the sole property of the Disclosing Party. Nothing in this Agreement or the disclosure of Confidential Information expressly or implicitly grants or confers on Recipient any right, title or interest in or to the Confidential Information or other property of the Disclosing Party other than the limited rights to receive, access, possess and use such information solely for the Purpose in accordance with this Agreement.

7. **Export Control.** Company shall not provide any export controlled information, materials, technology to NU, in any form, without prior written notice to NU of Company's desire to share export controlled information, and written consent from NU to accept such information. Notice to the University shall include the proper export classification and a reference the applicable export control laws and regulations. Company shall indemnify and hold harmless NU and its faculty, employees, student, agents and representatives against any and all claims, damages, losses, or costs arising out of Company's breach of this Section 7.

8. **CREATE Act.** This Agreement is not a joint research agreement under the CREATE Act and the Recipient shall not invoke the CREATE Act during patent examination to overcome prior art rejections.

9. **Contact.** The exclusive point of contact with respect to the transmission and control of Confidential Information disclosed hereunder is designated by the respective Parties as follows:

Northeastern University: _____

Company: _____

Each Party may change its designees by written notice to the other.

10. **Notice.** Should the Recipient become aware of any breach or threatened breach of this Agreement, the Recipient agrees to promptly notify the Disclosing Party in writing and, in addition to the other rights set forth in this Agreement, the Disclosing Party shall have the right to immediately terminate this Agreement.

11. **Representations & Warranties.** Each Party represents and warrants that (i) it has the authority to enter into this Agreement, (ii) it is not a party to any agreement with any third party which prohibits it from fulfilling its obligations under this Agreement and (iii) this Agreement, when executed

and delivered, shall be a valid and binding obligation on such Party, enforceable in accordance in its terms. , The disclosure of Confidential Information shall not constitute any representation, warranty, assurance, or guarantee, with respect to non-infringement of any patent or other proprietary rights of others. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES AS TO THE COMPLETENESS, ACCURACY, MERCHANTABILITY OR FITNESS FOR USE FOR ANY PURPOSE OF THE INFORMATION DISCLOSED UNDER THIS AGREEMENT, WHICH IS DELIVERED "AS IS". EXCEPT AS SET FORTH IN SECTION 7 OF THIS AGREEMENT AND IN THE CASES OF FRAUD OR WILLFUL MISCONDUCT, THE DISCLOSING PARTY SHALL HAVE NO LIABILITY FOR ANY DIRECT OR INDIRECT DAMAGES WHICH MAY ARISE FROM THE RECIPIENT'S POSSESSION OR USE OF SUCH INFORMATION.

12. **Costs and Expense.** Each party shall bear its own costs incurred under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either party to enter into a contract, subcontract, or other business relationship with or grant additional rights to the other party.

13. **Term; Non-disclosure obligation.** The term of this Agreement shall be one (1) year from the Effective Date. This Agreement may be terminated by either party upon thirty (30) days prior written notice to the other party. Termination or expiration of this Agreement shall not relieve either party of its obligations hereunder to maintain in confidence and not to use Confidential Information received hereunder for a period of three (3) years from the date of receipt thereof.

14. **Effect of Expiration or Termination.** Upon expiration or termination of this Agreement, the Recipient shall cease use of all Confidential Information furnished hereunder and shall, upon written direction of the Disclosing Party, return to the Disclosing Party, or destroy, all such Confidential Information, together with all copies made thereof by the Recipient. Upon request, the Recipient shall send the Disclosing Party a certificate confirming the destruction or return of all Confidential Information delivered hereunder. Notwithstanding the other provisions of this Section, Recipient may retain one copy of such Confidential Information for archival purposes only and such Confidential Information shall remain subject to this Agreement in accordance with the terms and conditions of this Agreement,.

15. **No Assignment.** This Agreement, and the rights and obligations hereunder, may not be transferred or assigned by either party without the prior written consent of the other party.

16. **Governing Law; Severability.** The validity, interpretation, and effect of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. The Parties hereby expressly consent to the exclusive personal jurisdiction of the state and federal courts located in the Commonwealth of Massachusetts for any dispute arising from or relating to this Agreement. If any term or condition of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby, and each remaining term or condition hereof shall be valid and enforced to the fullest extent permitted by law. In the event such determination prevents the accomplishment of the purpose of this Agreement, the invalid provision shall be restated to conform with applicable law and to reflect as nearly as possible the original intention of the Parties.

17. **Entire Agreement; Amendment.** This Agreement constitutes the entire understanding of the Parties relating to the subject matter hereof and supersedes all prior negotiations, commitments and understandings, written or oral, with respect thereto. This Agreement may be executed by facsimile or electronic transmission in one or more counterparts, each of which shall be deemed an original and all counterparts will constitute one and the same agreement. No variation, amendment or other modification of this Agreement or waiver of any terms or provisions hereof shall be deemed valid unless in writing and signed by authorized representatives of both Parties.

18. **Interpretation.** In the Agreement, unless the context otherwise requires, words describing the singular number shall include the plural and vice versa, and words denoting any gender shall include all genders, and words denoting natural persons shall include corporations and partnerships and vice versa. Whenever the words “include,” “includes,” or “including” are used in the Agreement, they shall be understood to be followed by the words “without limitation.” The words “hereof,” “herein,” and “hereunder,” and words of similar import, when used in the Agreement refer to the Agreement as a whole and not to any particular provision of the Agreement unless otherwise specified. All terms used herein with initial capital letters have the meanings ascribed to them herein, and all terms defined in the Agreement shall have such defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein. The definitions contained in the Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument, or statute defined or referred to herein, or in any agreement or instrument that is referred to herein, means such agreement, instrument, or statute as from time to time amended, modified, or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. The headings used in this Agreement are merely for reference and impose no obligation nor have any substantive significance. Each of the Parties has participated in the drafting and negotiation of the Agreement. If any ambiguity or question of intent or interpretation arises, the Agreement must be construed as if it is drafted by all the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of the Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate originals by their authorized representatives.

NORTHEASTERN UNIVERSITY

COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____