



MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement is made and entered into as of this ___ day of _____, 20__ (“Effective Date”) by and between [INSERT COMPANY NAME], a [INSERT STATE OF INCORPORATION] corporation having a principal place of business at [INSERT ADDRESS] (“_____”) and Northeastern University, a non-profit Massachusetts educational corporation located at 360 Huntington Avenue, Boston MA 02115 (“NU”).

Whereas, the parties wish for their mutual benefit, to disclose to each other Confidential Information as defined below; and

Whereas, the parties wish to set forth the conditions and obligations which will govern the use, duplication and disclosure of any Confidential Information that one party may disclose to the other party.

Now, Therefore, the parties agree as follows:

1. It is anticipated that [INSERT COMPANY NAME] and NU will disclose to each other certain information, which each deems confidential and/or proprietary relating to_____. All such information of [INSERT COMPANY NAME] and NU is hereinafter referred to as "Confidential Information".
2. The receiving party shall use the Confidential Information provided by the disclosing party solely for the purpose of _____ (the “Purpose”). Both [INSERT COMPANY NAME] and NU as used herein, shall include, individually and collectively, their officers, directors, consultants, employees and associated researchers. NU shall not include its undergraduate students.
3. Unless otherwise agreed in writing by the parties, neither party shall disclose the other party’s Confidential Information to any third party nor use the other party’s Confidential Information other than for the Purpose. Each party agrees to take reasonable and appropriate measures to keep confidential, to safeguard from theft, or loss, and to limit access to Confidential Information to those officers, directors, employees and associated researchers within the receiving party'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.
4. 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: a) the disclosing party identifies it as Confidential Information at the time of the original disclosure and b) 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 receiving party, referencing the place and date of such oral disclosure and identifying the name(s) of the employees or officers of the receiving party to whom it was made.

5. Confidential Information shall not be considered confidential or subject to this Agreement, if the receiving party can establish that the information:

- a. is or becomes a part of the public knowledge or literature without breach of this Agreement by the receiving party; or
- b. was known to or rightfully in the possession of the receiving party prior to the date of disclosure of such Confidential Information as evidenced by competent proof; or
- c. is developed by the receiving party independent of the disclosure made under this Agreement as demonstrated by competent proof; or
- d. is supplied to the receiving party, without restriction on disclosure, by a third party who had a lawful right to disclose it and is under no obligation to either party or to a third party to maintain such Confidential Information in confidence;
- e. is required to be disclosed pursuant to a valid subpoena, court order or other requirement(s) of applicable law.

Confidential Information shall not be deemed to be available to the public or in the possession of the receiving party merely because it is embraced by more general information so available or in the receiving party's possession.

6. Should the receiving party be faced with judicial or United States governmental action to disclose Confidential Information received hereunder, said party shall make reasonable efforts to notify the disclosing party prior to complying with such action.

7. Any reproduction by either party of the other party's Confidential Information shall contain any and all confidential notices or legends which appear on the original, unless otherwise authorized in writing by the disclosing party.

8. [INSERT COMPANY NAME] shall not provide any export controlled information/materials/technology to NU, in any form, without prior written notice to NU of [INSERT COMPANY NAME]'s desire to share export controlled information, and written consent from NU to accept such information. [INSERT COMPANY NAME] shall indemnify and hold harmless NU against any claims, damages, losses, or costs arising out of [INSERT COMPANY NAME]'s breach of this Section 8.

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

10. 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: _____

[INSERT COMPANY NAME]: _____

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

11. Should the receiving party become aware of any breach or threatened breach of this Agreement, the receiving party agrees to promptly notify the disclosing party in writing and the disclosing party shall have the right to immediately terminate this Agreement.

12. Confidential Information, including all tangible media in which Confidential Information is fixed, and copies thereof, shall remain the property of the disclosing party. Neither this Agreement nor the disclosure of Confidential Information hereunder shall be construed as granting any right or license to any invention, patent, or other property now or hereafter owned or controlled by either party, nor shall any such disclosure constitute any representation, warranty, assurance, or guarantee, with respect to non-infringement of any patent or other proprietary rights of others. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR USE FOR ANY PURPOSE OF THE INFORMATION DISCLOSED UNDER THIS AGREEMENT, WHICH IS DELIVERED "AS IS". THE DISCLOSING PARTY SHALL HAVE NO LIABILITY FOR ANY DIRECT OR INDIRECT DAMAGES WHICH MAY ARISE FROM THE RECEIVING PARTY'S USE OF SUCH INFORMATION.

13. 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 the other party.

14. The rights and obligations provided by this Agreement shall take precedence over specific legends or statements associated with Confidential Information when received.

15. 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 five (5) years from the date of receipt thereof.

16. Upon expiration or termination of this Agreement, the receiving party 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 receiving party. Upon request, the receiving party shall send the disclosing party a certificate confirming the destruction or return of all Confidential Information delivered hereunder. Notwithstanding the other provisions of this paragraph, counsel for the receiving party may retain one copy of such Confidential Information for archival purposes only, provided the receiving party notifies the disclosing party in writing and provides the name, firm name and address of such counsel.

17. 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.

18. 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.

19. This Agreement constitutes the entire understanding of the parties with respect to the matters referred to herein and supersedes all prior negotiations, commitments and understandings with respect thereto. No variation or 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.

In Witness Whereof, the parties have caused this Agreement to be executed in duplicate originals by their authorized representatives.

Northeastern University

[INSERT COMPANY NAME]

By: _____
Name: Anthony N. Pirri, Ph.D.
Title: Director, Division of Technology
Transfer
Date: _____

By: _____
Name: _____
Title: _____
Date: _____