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# **MUTUAL NON-DISCLOSURE AGREEMENT**

This Agreement is made and entered into as of this \_\_\_\_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ (“Effective Date”) by and between [NAME], a [TYPE OF ENTITY] duly formed under the laws of [STATE OF INCORPORATION], having a principal place of business at [BUSINESS ADDRESS] (“Company”) and Northeastern University, a non-profit institution of higher education duly formed under the laws of the Commonwealth of Massachusetts, located at 360 Huntington Avenue, Boston, Massachusetts 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 (the “disclosing party”) may disclose to the other party (the “receiving party”).

**Now**, **therefore**, the parties agree as follows:

1. It is anticipated that each of Company and NU will disclose to each other certain information that it deems confidential and/or proprietary relating to [DESCRIBE SCOPE/SUBJECT MATTER OF INFORMATION TO BE EXCHANGED]. All such information of Company and NU is hereinafter referred to as "Confidential Information".
2. The receiving party shall use the Confidential Information disclosed by the disclosing party solely for the purpose of discussing or considering [PURPOSE OF THE EXCHANGE] (the “Purpose”). Both Company and NU, in their capacity as a receiving or disclosing party hereunder, shall include, individually and collectively, their officers, directors, consultants, employees and associated researchers.
3. Unless otherwise agreed in writing by the parties, neither party shall disclose the other party’s Confidential Information to any third party or use the other party’s Confidential Information for any purpose other than the Purpose. Each party agrees to take reasonable and appropriate measures to keep Confidential Information confidential and to safeguard it from theft or loss, and to limit access to Confidential Information to those officers, directors, employees, consultants and associated researchers within or engaged by the receiving party's organization who reasonably require access to the Confidential Information for carrying out the Purpose and who are bound by confidentiality obligations no less stringent than receiving party’s obligations under this Agreement.
4. Confidential Information disclosed hereunder (a) shall be disclosed in written, electronic or other permanent form and shall be clearly marked as confidential at the time of disclosure or (b) reasonably should be understood to be confidential given the nature of the information and/or the circumstances of disclosure (which may include information provided by verbal disclosure).
5. Confidential Information shall not be considered confidential or subject to this Agreement if the receiving party can establish that the information:
6. is or has become a part of the public knowledge or literature without breach of this Agreement by the receiving party; or
7. was known to be rightfully in the possession of the receiving party prior to the date of disclosure of such Confidential Information as evidenced by competent proof; or
8. is developed by the receiving party independent of the disclosure made under this Agreement as demonstrated by competent proof; or
9. 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.

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.

1. If the receiving party is required to disclose the disclosing party’s Confidential Information pursuant to a valid subpoena, court order or other requirement(s) of applicable law, it shall (a) make reasonable efforts to notify the disclosing party (if not prohibited from doing so) prior to complying with such requirement, and (b) disclose Confidential Information only to the limited extent required, as advised by counsel.
2. 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.
3. 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. Company shall indemnify and hold harmless NU against any claims, damages, losses, or costs arising out of Company’s breach of this Section 8. Any notice required by this Section shall include pertinent classification and reference to applicable law and/or regulations.
4. The primary 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: [NAME, TITLE]

Company: [NAME, TITLE]

1. If the receiving party becomes 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.
2. 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.
3. 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.
4. The rights and obligations provided by this Agreement shall take precedence over specific legends or statements associated with Confidential Information when received.
5. The term of this Agreement shall be for 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 Effective Date.
6. Upon expiration or termination of this Agreement, the receiving party shall cease use of all Confidential Information received or to which it had access 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 thereof made by the receiving party. Upon request, the receiving party shall send the disclosing party a certificate confirming the destruction or return of all such Confidential Information. Notwithstanding the foregoing, Confidential Information in the form of (i) information stored on back-up media for purposes of disaster recovery in the ordinary course of business that is subject to destruction in due course, and (ii) residual or latent data such as resulting from deleted files, automatically created temporary files, printer spool files, and metadata that is generally considered inaccessible without the use of specialized tools or techniques, may be maintained in accordance with the receiving party’s general data back-up and archiving policy; provided, however, that such information and data shall not otherwise be used or copied by the receiving party. 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.
7. This Agreement, and the parties’ rights and obligations hereunder, may not be transferred or assigned by either party without the prior written consent of the other party.
8. 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.
9. This Agreement constitutes the entire understanding and agreement 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 an authorized representative of each party. Electronic signature and signature in counterparts are expressly permitted and shall constitute original execution of this Agreement.

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

**Northeastern University Company**

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_