

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 CONFIDENTIALITY AGREEMENT

The undersigned, _____ (hereinafter called the "RECIPIENT"), in consideration for the use of certain confidential information, knowledge, data and/or know-how related to _____ (hereinafter called "INFORMATION") made available to the RECIPIENT by **NORTH CAROLINA STATE UNIVERSITY**, its employees, faculty and students (hereinafter called "NCSU"), hereby agrees as follows:

1. The RECIPIENT agrees to keep the INFORMATION in confidence and to use the INFORMATION only for the purpose of discussions regarding a potential relationship. Except as expressly provided for in Section 2 below, RECIPIENT shall not disclose or make available the INFORMATION to any other person, institution or firm. Further, except as expressly provided for herein, the RECIPIENT shall not use the INFORMATION for any commercial benefit or any research purpose. NCSU shall disclose their INFORMATION to the other party in writing, insofar as is practical, and in sufficient detail to enable the other party to fully evaluate the same. The restrictions and obligations of this Agreement shall 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.
2. Any obligation of the RECIPIENT as set forth in the preceding paragraph shall not apply to any information, knowledge, data and/or know-how which 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 party;
 - (c) rightfully received by the receiving party from a third party on a non-confidential basis;
 - (d) approved for release by written authorization of the disclosing party;
 - (e) required to be disclosed by law or judicial action.
3. The RECIPIENT agrees to obligate in writing its employees and/or consultants who shall have access to any portion of INFORMATION to protect the confidential and proprietary nature of INFORMATION under obligations at least as strict as those contained in this Agreement. RECIPIENT agrees to return to NCSU all written INFORMATION received hereunder upon completion of its use or upon request of NCSU (whichever shall first occur); provided, however, one (1) copy of such material may be retained by RECIPIENT for the purpose of fulfilling its obligations under this Agreement.
4. Except as strictly provided for in this Agreement, no right or license, either express or implied, to the INFORMATION is granted by the signing of the Agreement or the disclosure of any information hereunder.
5. The Undersigned, by signing this Agreement, represents that he/she is authorized on behalf of to enter into this Agreement for and on behalf of RECIPIENT.
6. 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.

7. This Agreement is subject to all of the United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities and technology. It is understood that NCSU is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and that its obligations under this Agreement are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by the Company that the Company will not export data or commodities to certain foreign countries without prior approval of such agency. NCSU makes no promise or representation that a license is not required nor that, if required, it will be issued.
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.
10. 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.
11. For the purpose of all written communications and notices between the parties, their addresses are:

NCSU Notice

RECIPIENT 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. 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.

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)*