

## MUTUAL CONFIDENTIALITY AGREEMENT

THIS AGREEMENT, effective \_\_\_\_\_, 20\_\_\_\_, by and between (hereinafter “\_\_\_\_\_”), having an address at \_\_\_\_\_, and North Dakota State University, located at Fargo, North Dakota (hereinafter "NDSU"), shall govern the conditions of disclosure by either party to the other of INFORMATION, hereinafter defined \_\_\_\_\_, relating to \_\_\_\_\_.

Orally disclosed information shall be considered INFORMATION and subject to the terms of this Agreement only if confirmed in writing within one (1) month of the initial oral disclosure thereof. For the purposes of this Agreement, INFORMATION on the part of NDSU shall mean that related to \_\_\_\_\_; and on the part of \_\_\_\_\_ shall mean information relating to \_\_\_\_\_ considered proprietary and confidential to \_\_\_\_\_.

The party disclosing INFORMATION is called DISCLOSER, and the party receiving INFORMATION is called RECEIVER. DISCLOSER warrants and represents that DISCLOSER possesses all necessary powers, rights, and authority to lawfully make the disclosure subject to this Agreement. With regard to INFORMATION received from the DISCLOSER, each RECEIVER hereby agrees:

- not knowingly to use INFORMATION except for the purpose of evaluating its interest in entering into a further relationship with DISCLOSER
- not knowingly to analyze or determine the physical characteristics, properties, or chemical compositions of any tangible INFORMATION provided by DISCLOSER except as specifically permitted
- not knowingly to disclose INFORMATION to others (except to employees and agents who reasonably require same for the purpose hereof and who are bound by like obligations of confidentiality) without the express written permission of DISCLOSER, except that RECEIVER shall not be prevented from using or disclosing information:
  - which RECEIVER can demonstrate by written records was known to RECEIVER prior to the date of disclosure hereunder; or
  - which is now public knowledge, or becomes public knowledge in the future other than by breach of this Agreement by RECEIVER; or

- which is lawfully disclosed to RECEIVER by a third party who is not obligated to DISCLOSER to retain such information in confidence;
- which is independently developed by an affiliate of RECEIVER having no knowledge of this Agreement; or
- which RECEIVER is required by law to disclose.

INFORMATION shall not be deemed to be in the public domain because any part of said INFORMATION is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public. RECEIVER shall have the right to refuse to accept any part of INFORMATION under this Agreement and nothing herein shall obligate DISCLOSER to disclose to RECEIVER any particular INFORMATION.

RECEIVER's obligations hereunder with respect to each item of INFORMATION shall terminate three (3) years from the date of the receipt thereof by the RECEIVER. This provision shall survive expiration or earlier termination of this Agreement.

The parties hereto shall not be obligated to compensate each other for disclosure of any INFORMATION under this Agreement and agree that no warranties or promises of any kind are given with respect to such INFORMATION, as well as the use thereof, and that neither party, including agents, directors, officers, employees, or representatives thereof, will have liability to the other resulting from the use or misuse of INFORMATION (except from that arising from a breach of this Agreement). It is further agreed that the furnishing of INFORMATION to RECEIVER shall not constitute any grant, option, or license to RECEIVER under any patent or other patent rights now or hereafter held by the DISCLOSER thereof.

INFORMATION shall remain the property of and be returned to DISCLOSER (along with all copies thereof) within sixty (60) days of the effective date of this Agreement if requested by DISCLOSER.

RECEIVER shall have no obligation to enter into any further agreement with DISCLOSER except as RECEIVER, in its sole judgment may deem advisable. The parties acknowledge that the exchange of INFORMATION as contemplated herein may not be the only means of the parties' participation in information or technology exchange relative to the technological fields of interest set forth above. One or both parties hereto may have now, or in the future, active discussions or exchange ongoing with other parties, and may elect to enter into further discussions or agreement with such other parties.

The parties hereto agree to keep in strict confidence, and not to disclose the identity, interest, and participation of each other in connection with this Agreement, or any relationship they may have with each other, except as required by law or policy.

This Agreement shall be effective as of the date set forth in the first line above, and shall expire two (2) years thereafter, unless earlier terminated with respect to further

disclosures upon ten (10) days prior notice in writing. The rights and obligations accruing prior to termination as set forth herein, shall, however, survive the termination as specified in this Agreement.

No failure or delay in exercising any right, power, or privilege hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any further exercise.

This Agreement represents the entire understanding and agreement of the parties and supersedes all prior communications, agreements, and understandings relating to the subject matter hereof. The provisions of this Agreement may not be modified, amended, or waived, except by a written instrument duly executed by both parties. This Agreement may not be assigned by either party without the prior written consent of the other. This Agreement is made subject to and shall be construed under the laws of the State of North Dakota, without regard to its choice of laws principles.

North Dakota State University

By:

Title:

Date:

By:

Title:

Date: