

INSTITUTIONAL CONFIDENTIAL DISCLOSURE AGREEMENT

BETWEEN

Provider: EAST CAROLINA UNIVERSITY (“ECU”), a public university and constituent of the University of North Carolina, with offices located at 209 East 5th Street, Greenville NC, 27858

And

Collaborator: Name and address

I. Definitions:

1. SUBJECT MATTER: (Insert SUBJECT MATTER here)

2. CONFIDENTIAL INFORMATION: Information related to SUBJECT MATTER that is not generally known to the public, considered non-releasable without prior approval, and conveyed in written, graphic, oral, or physical form including but not limited to specifications, scientific knowledge, know-how, processes, inventions, techniques, formulae, products, data, materials, or other records. CONFIDENTIAL INFORMATION consists of, but is not limited to, any innovative concepts/ideas or trade secrets, disclosure of which outside of the parties hereto would result in irreparable damage to the respective Party. Therefore, due to the sensitive nature of CONFIDENTIAL INFORMATION, dissemination of CONFIDENTIAL INFORMATION shall be restricted in accordance with the provisions of this Agreement.

3. PROVIDING PARTY: The party providing CONFIDENTIAL INFORMATION.

4. RECEIVING PARTY: The party receiving CONFIDENTIAL INFORMATION.

5. PARTY or PARTIES: EAST CAROLINA UNIVERSITY and/or COLLABORATOR

6. PURPOSE (Describe proposed use for CONFIDENTIAL INFORMATION): (Insert “PURPOSE” here)

- Research
- Evaluation
- Other

II. Terms and Conditions:

7. The PARTIES acknowledge that use of CONFIDENTIAL INFORMATION is subject strictly to business and/or technical evaluation related to the SUBJECT MATTER as defined above.

8. ECU and COLLABORATOR are authorized to evaluate CONFIDENTIAL INFORMATION. Access to CONFIDENTIAL INFORMATION by ECU and COLLABORATOR shall be on a need-to-know basis.

9. This Agreement becomes effective on the last signature date below (“EFFECTIVE DATE”). CONFIDENTIAL INFORMATION shall only be provided to the RECEIVING PARTY during the term of this Agreement. The restrictions and obligations on such CONFIDENTIAL INFORMATION shall survive termination and remain in full force and effect for a period of five (5) years from the date that the CONFIDENTIAL INFORMATION was disclosed by disclosing party to the RECEIVING PARTY.

10. CONFIDENTIAL INFORMATION does not include information which RECEIVING PARTY can demonstrate and document in writing to PROVIDING PARTY which:

a. was in its knowledge or possession prior to disclosure by the PROVIDING PARTY or its assigns / inventors;

b. was public knowledge or becomes public knowledge through no fault of the RECEIVING PARTY;

c. was properly provided to the RECEIVING PARTY by an independent third party who has no obligation of secrecy to the PROVIDING PARTY or its assigns; or

d. was independently developed by the RECEIVING PARTY without reference to the CONFIDENTIAL INFORMATION from the PROVIDING PARTY.

e. is disclosed by RECEIVING PARTY under a valid court order, by law, or information that constitutes a “public record” for which ECU is obligated to disclose pursuant to N.C.G.S. 132-1 et seq., provided that RECEIVING PARTY provides written notice to the

PROVIDING PARTY of such obligation prior to any such disclosure.

11. The PARTIES agree to use CONFIDENTIAL INFORMATION under the following restrictions:

- a. CONFIDENTIAL INFORMATION made available in written form to the RECEIVING PARTY shall be marked as "Confidential and Proprietary" or an equivalent by the PROVIDING PARTY. CONFIDENTIAL INFORMATION of an oral nature shall be reduced to written form within fifteen (15) days and marked as "Confidential and Proprietary" or an equivalent;
- b. RECEIVING PARTY may duplicate or reproduce CONFIDENTIAL INFORMATION solely for the purpose of business and/or technical evaluation, provided however, that such CONFIDENTIAL INFORMATION may not be disclosed by RECEIVING PARTY to third parties, published or copyrighted, except as specifically authorized by this agreement;
- c. RECEIVING PARTY shall not duplicate or use CONFIDENTIAL INFORMATION to develop, produce, or offer for sale products or technologies for commercialization unless a release, option, or license granting same is executed with the PROVIDING PARTY;
- d. Any person employed by RECEIVING PARTY who has access to or utilizes CONFIDENTIAL INFORMATION shall be advised of and is subject to the conditions in this Agreement;
- e. RECEIVING PARTY agrees to utilize CONFIDENTIAL INFORMATION solely for the purpose of business or technical evaluation and shall not disclose or distribute CONFIDENTIAL INFORMATION to any third party without the prior written permission of PROVIDING PARTY.

12. The PARTIES agree to protect, handle, and safeguard all CONFIDENTIAL INFORMATION disclosed hereunder with the same degree of care and confidentiality, as they would their own confidential information.

13. ECU DOES NOT MAKE ANY WARRANTIES, REPRESENTATIONS OR UNDERTAKINGS WITH RESPECT TO UTILITY, EFFICACY, SAFETY, OR FITNESS FOR A PARTICULAR PURPOSE OF CONFIDENTIAL INFORMATION, THAT INFORMATION WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHTS, OR THAT USE OF INFORMATION WILL NOT REQUIRE AN EXPORT CONTROL LICENSE FROM A COGNIZANT AGENCY OF THE U.S. GOVERNMENT.

14. Upon completion of PURPOSE, upon written request by PROVIDING PARTY, or one year from the EFFECTIVE DATE of this Agreement, RECEIVING PARTY shall promptly discontinue use of and return or destroy all documents and tangible evidence of CONFIDENTIAL INFORMATION in the possession of or in the control of RECEIVING PARTY.

15. This Agreement will terminate upon thirty (30) days prior written notice from ECU to the COLLABORATOR or one year from EFFECTIVE DATE of this Agreement.

16. Neither PARTY acquires any intellectual property rights under this agreement, including but not limited to the grant of a license, whether expressed or implied, or the transfer of ownership of CONFIDENTIAL INFORMATION under any patent, patent application, copyright, trademark, trade secret, or any other proprietary information. Neither PARTY may use any trade name, trademark, service mark, logo, or commercial symbol, or any other proprietary rights of the other PARTY without the prior written authorization of such use by the other PARTY.

17. The PARTIES agree and understand that no contract or agreement providing for a transaction between the PARTIES or obligation to enter into a contract or subcontract between the PARTIES shall be deemed to exist unless and until a definitive written agreement with respect to the transaction has been executed. This Agreement is not intended to be, nor shall it be construed as, a joint venture, partnership, or other formal business relationship, and neither ECU nor COLLABORATOR shall have the right or obligation to share any of the profits or bear any of the losses of the other under any contract or subcontract formed in conjunction with this Agreement.

18. This Agreement is made subject to all United States laws and regulations which may be enacted or promulgated from time to time concerning the export of products, technical information, computer software, laboratory prototypes and other commodities and technology. It is understood that ECU is subject to United States laws and regulations concerning the export of products, technical information, computer software, laboratory prototypes and other commodities and technology (including those implemented by the U.S. Department of Commerce through the Bureau of Industry and Security's Export Administration Regulations (EAR) (trade and dual use protection); the U.S. Department of State through its International Traffic in Arms Regulations (ITAR) (national security); and the U.S. Treasury Department through its Office of Foreign Assets (OFAC) (trade embargo)), and ECU's obligations under this Agreement are contingent on COLLABORATOR's compliance with United States export control laws and regulations. The export or deemed export of certain commodities and technical information may require a license or other approval from one or more agencies of the United States government. COLLABORATOR will not export any such commodities or technical information without first obtaining necessary governmental licenses or other approvals. ECU expressly disclaims any representation, certification or warranty that no governmental licenses or other approvals are required for export or that, if required, they will be.

19. To the extent that use of INFORMATION is necessary for joint research between PROVIDING PARTY and RECEIVING PARTY, this Agreement shall be considered a Joint Research Agreement as defined under the CREATE Act, 35 U.S.C. Section 103(c). Intellectual Property made in performance of activities described hereunder in SUBJECT MATTER shall be deemed made as result of activities undertaken within the scope of this Agreement and subject to the CREATE Act.

20. The provisions of Section I and Section II, Articles 8, 9, 10, 12, 13, 18, 19, 20 and 21 shall survive the expiration or termination of this Agreement.

21. 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 and the United States of America.

22. 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.

23. The failure of ECU to require the performance by COLLABORATOR of any provision of this Agreement shall in no way affect the rights of ECU to enforce the same in the future, nor shall the waiver by ECU of any breach, violation, or threatened breach or violation of any provision of the Agreement be construed as a waiver of any subsequent breach, violation, or threatened breach or violation of this Agreement by COLLABORATOR. The waiver of a breach of any term or condition of this Agreement will not constitute the waiver of any other beach of the same or any other term.

24. 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 modification, restriction or excision may be accomplished by their mutual written agreement.

25. ECU and COLLABORATOR agree that a copy of the original signature (including electronic copy) may be used for any and all purposes for which the original signature may have been used.

In Witness Thereof, this Agreement entered the day and the month indicated as signed below, EAST CAROLINA UNIVERSITY and COLLABORATOR hereby accept the terms and conditions of this Agreement.

EAST CAROLINA UNIVERSITY

COLLABORATOR:

Artie Carlyle Rogers
Director
Licensing & Commercialization

Name

Title

Date

Date

Read and Understood

Read and Understood

ECU REPRESENTATIVE

COLLABORATOR'S REPRESENTATIVE