MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

This Mutual Confidential Disclosure Agreement (“Agreement”) is made as of the \_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_\_\_\_\_\_\_) day of \_\_\_\_\_\_\_\_\_\_ 20\_\_\_\_ (the “Effective Date”), between The University of North Carolina at Charlotte (“UNIVERSITY”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ with principal offices located at \_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“COMPANY”) on behalf of itself and its Affiliates (as that term is defined herein).

RECITALS

A. Each party has certain confidential information and proprietary rights to advanced technologies, patentable inventions, copyrightable materials, and other forms of intellectual property, supporting materials and other materials; and

B. COMPANY wishes to explore possible collaborative research and development activities with UNIVERSITY; and

C. The parties anticipate that sharing Confidential Information (as defined below) will assist in the exploration of possible collaborative research and development activities,

NOW, THEREFORE, the parties hereby agree as follows.

1. Definitions:
   1. “Confidential Information” means:
      1. information disclosed to the Recipient in writing and suitably marked as “confidential” or “trade secret”, and
      2. information disclosed to the Recipient orally or visually, but only if
         1. Discloser informs Recipient of the confidential nature of the information at the time of initial disclosure, and
         2. such orally or visually disclosed information is reduced to writing and delivered to Recipient, suitably marked as confidential, within 30 days of the initial oral or visual disclosure.
   2. “Affiliates” means any person or entity directly or indirectly controlling, controlled by, or under direct or indirect common control with COMPANY, where the term “control” means the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity. “Control” will be conclusively presumed in the case of the ownership of 50% or more of the equity interests.
2. Upon complete execution of this Agreement, either party (“Discloser”) may disclose to the other party (“Recipient”) Confidential Information during the term of this Agreement. Recipient may receive and use the Confidential Information solely for the purposes of

Research advancement and of evaluating possible collaborative research and development activities, and for no other purpose.

1. Recipient may not disclose the Confidential Information to any third party or parties without the prior written consent of the Discloser. No express or implied license to use the Confidential Information for any purpose other than as specified in Section 2 is granted by this Agreement. This Agreement does not constitute an offer for license or sale by the Discloser.
2. Confidential Information is owned by the Discloser and will continue to be owned by the Discloser after it is transmitted to Recipient pursuant to this Agreement.
3. Upon expiration or termination of this Agreement, and upon written request, Recipient must promptly return to the Discloser the Confidential Information and all copies thereof, including but not limited to prototypes, written documentation, drawings, photographs and models. However, and notwithstanding the foregoing or any other provisions of this Agreement, each party’s legal department or outside counsel may maintain a copy of the Confidential Information in a restricted access file for actual or anticipated litigation, regulatory compliance, or corporate record keeping purposes, and neither party nor any of its respective representatives shall be required to destroy any computer records or files containing any Confidential Information that have been created pursuant to automatic electronic archiving and back-up procedures in the ordinary course of business where it would be unduly burdensome to do so or would be contrary to applicable law, rules or regulations.
4. Recipient must use all reasonable efforts to preserve the confidentiality of the Confidential Information as it would if the Confidential Information had been developed by Recipient. Recipient must obligate its Affiliates with access to any portion of the Confidential Information to protect the Confidential Information in accordance with this Agreement.
5. Information disclosed under this Agreement is subject to the North Carolina Public Records Act (N.C. Gen. Stat. 132-1 et al.) and information held by UNIVERSITY may be disclosed under that Act except for information qualifying as confidential information under N.C. Gen. Stat. 132-1.2 and information excluded from that Act under N.C. Gen. Stat. 116-43.17.
6. Recipient has no obligation to refrain from disclosing or from otherwise using information which:
   1. is generally available to the public when this Agreement is signed by the parties;
   2. becomes part of the public domain or becomes publicly known or available by publication or otherwise, but not through any unauthorized act or omission of Recipient;
   3. is lawfully disclosed to the Recipient by a third party without breaching any obligation of non-use or confidentiality;
   4. has been independently developed by persons in Recipient’s employ or otherwise who have no contact with Confidential Information, as shown by written records; or
   5. is required to be disclosed by law or judicial order.
7. If Recipient is required by law or by a government body or court of law to disclose Confidential Information, the Recipient agrees to give the Discloser reasonable advance notice so that Discloser may contest the disclosure or seek a protective order.
8. The interpretation and validity of this Agreement is governed by the laws of the State of North Carolina, without reference to its conflict of laws provisions.
9. Discloser must use reasonable efforts to notify Recipient in writing of any Confidential Information which Discloser believes to be subject to any export control laws or regulations of the United States and must do so in advance of providing any such Confidential Information to the Recipient.
10. The term of this Agreement is five years from the Effective Date hereof. All obligations of Recipient with respect to the use and disclosure of the Confidential Information continue for a period of three years from the expiration or termination of this Agreement.
11. This Agreement is the entire agreement and understanding in this matter by and between the parties hereto, and all prior oral and written understandings or agreements are expressly superseded hereby.
12. Neither party may assign any rights or obligations under this Agreement without the prior written consent of the other.
13. This Agreement is legally binding upon the undersigned parties, their directors, officers, employees, successors and assigns.
14. The parties make no representations with respect to, and do not warrant, any information provided under this Agreement but the information is furnished in good faith. Without restricting the generality of the foregoing, the parties make no representations or warranties, whether written, oral, statutory, express, or implied, with respect to any Confidential Information which may be provided hereunder, including without limitation, any warranty of merchantability or fitness for a particular purpose. The Discloser is not liable for any special, incidental, or consequential damages of any nature whatsoever resulting from the receipt or use of the Confidential Information by Recipient.

In witness whereof, the parties have executed this Agreement by their respective duly authorized officer or representative.

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

Carl P.B. Mahler, II, Executive Director Name

Bradley C. Fach, Assistant Director Title

Office of Research Commercialization and Company

Development

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