

**Boston College**  
**CONFIDENTIALITY AGREEMENT**

This Agreement is entered into as of \_\_\_\_\_ by and between Trustees of Boston College (hereinafter referred to as the "University") and \_\_\_\_\_, having a place of business at \_\_\_\_\_ (hereinafter referred to as "Company").

1. When used in this Agreement, the term "Information" means certain confidential and proprietary information relating to \_\_\_\_\_ which is disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") that (i) prior to disclosure, is marked with a legend indicating its confidential status, or (ii) is disclosed orally or visually, if the Disclosing Party identifies such information as confidential at the time of disclosure and, within 30 days of such disclosure, delivers to the Receiving Party a marked notice summarizing the confidential information disclosed. The Disclosing Party agrees to disclose Information to Receiving Party under the terms set forth in this Agreement.
2. The Information is being disclosed to Receiving Party, and Receiving Party may use the Information, solely for the following purpose (the "Purpose"):  
\_\_\_\_\_
3. Information may be disclosed to and access maintained by Receiving Party for a period of \_\_\_\_\_ (the "Term") from the date this Agreement is signed by the parties.
4. In consideration of its receipt of the Information, Receiving Party agrees for a period of three years from the date of disclosure that the Information shall be considered confidential and proprietary to the Disclosing Party, and that Receiving Party shall
  - (a) not disclose or publish the Information (or any portion or copy thereof) except that the Receiving Party may disclose or permit disclosure of any of the Information to its directors, officers, employees, consultants, and, in the case of University, students, and advisors who need to know such Information to fulfill the Purpose; and
  - (b) not use the Information (or any portion or copy thereof) for any purpose except the Purpose expressly set forth above.Prior to disclosing Information pursuant to 4(a), above, , Receiving Party will advise such persons of the confidential and proprietary nature of the Information and secure the agreement of such persons to comply with the terms of this Agreement.
5. Notwithstanding the foregoing provisions, Information shall not be deemed to include information which the Receiving Party:
  - (a) can establish was, at the time of disclosure, in the public domain;
  - (b) can establish has, after disclosure, become part of the public domain by publication or otherwise, except by breach of this Agreement by Receiving Party;
  - (c) can establish, by its pre-existing records, was in its possession at the time of disclosure by the Disclosing Party; or
  - (d) can establish was provided to it by a third party, provided that such information was lawfully disclosed by such third party free of restrictions upon disclosure and without breach of any obligation to the Disclosing Party. For the purposes of this Agreement, University students and fellows shall not be considered third parties vis à vis University.
6. This Agreement will not preclude disclosure of Information which is disclosed pursuant to valid court order or other governmental directive, so long as Receiving Party has provided to the Disclosing Party immediate notice of such order or directive so as to enable the Disclosing Party to interpose appropriate objections thereto.
7. All forms of the Information, such as written documentation, delivered pursuant to this Agreement shall be and remain the property of the Disclosing Party and all such tangible information, all copies thereof, any electronic or digital manifestations of the Information, and all materials containing any such Information shall be promptly returned upon the earlier of (a) a written request by the Disclosing Party or (b) the expiration or termination of this Agreement except that the Receiving Party may retain one copy of the Information solely for the purpose of monitoring its obligations under this Agreement
8. In no event shall the Disclosing Party be liable for any damages whatsoever, regardless of the form of action, whether in contract, in tort or otherwise, including, but not limited to, any direct, indirect, incidental, special, consequential or punitive damages, any lost profits or damages resulting from Receiving Party's receipt or use of Information, even if the Disclosing Party has been advised, knew or should have known of the possibility thereof. **THE DISCLOSING PARTY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, CONCERNING THE**

INFORMATION, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON- INFRINGEMENT.

9. Nothing contained in this Agreement shall be construed as a grant by the Disclosing Party, expressly or impliedly, of any rights, by license or otherwise, on or with respect to any patent, other intellectual property, rights in software or other invention, discovery or improvement relating to the Information, which is developed, made, conceived, or acquired prior to or after the date of this Agreement.
10. This Agreement expresses the entire agreement and understanding of the parties with respect to their obligations hereunder and supersedes all prior agreements and understandings relating directly to the Information disclosed hereunder. This Agreement may not be varied or modified except by a writing signed by the authorized representatives of both parties. Any waiver of compliance with the terms of this Agreement must be in writing, and any waiver in one instance shall not be deemed a waiver in any future instance. The provisions of this Agreement are severable. In the event any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions hereof and the provision shall be reformed to be enforceable and reflect as closely as possible the intent of the original provision. The parties do not intend that any agency, partnership, joint venture, or exclusive relationship is created between the parties by this Agreement, and each party is free to pursue relationships and opportunities with others similar to those contemplated by this Agreement. Nothing in this Agreement shall be construed as obligating the parties to enter into any subsequent agreement or relationship. Each party covenants and warrants that it will not disclose to the other any information that contains information, technology or data identified on any U.S. export control list, including the Commerce Control List at 15 CFR 774 and the U.S. Munitions List at 22 CFR 121, unless and until it obtains the written consent of the other party. In the case of University, the written consent must be executed by University's Export Control Officer. This Agreement, and the interpretation, construction and enforceability hereof, and all rights and obligations of the parties, whether arising under this Agreement or otherwise, shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to its principles of conflict of laws. The sole and exclusive jurisdiction for resolution of any disputes between the Parties shall be in the state and federal courts located in Boston, Massachusetts, and each of the parties hereby submits to the jurisdiction of such courts. This Agreement may not be assigned by either Party without the prior written consent of the other Party.

Accepted by: \_\_\_\_\_

Trustees of Boston College:

Signature: \_\_\_\_\_

\_\_\_\_\_

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

Jason Wen, Ph.D., MBA, CLP, RTTP

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

Director, Office of Technology Transfer and Licensing

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

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