

**MATERIALS AND INFORMATION TRANSFER
And
NON-DISCLOSURE AGREEMENT**

This Agreement is entered into as of _____ (the "*Effective Date*") by and between _____, ("*Recipient*" or "*Receiving Party*"), and the *University of North Carolina at Wilmington* ("*UNCW*" or "*Discloser*" or "*Disclosing Party*").

UNCW desires the analysis of and/or consultation with Recipient relating to a technology/property labeled _____, and as part of such analysis or consultation or discussions, and/or testing conducted between Recipient and UNCW, certain sensitive, confidential and proprietary information and/or materials will be disclosed and/or released to recipient.

In order to protect valuable intellectual property and/or materials of UNCW, Recipient and UNCW hereby expressly agree as follows:

1. Confidential Information. This Agreement shall apply to all information disclosed by "*Disclosing Party*" to the Recipient (or "*Receiving Party*"), in the course of the analysis, discussions, and/or testing that (a) relates to Discloser's technology, property, intellectual property assets, financial or business plans and affairs, financial statements, internal management tools and systems, products and product development plans, marketing plans, customers, clients and contracts, and (b) is designated by the Disclosing Party as confidential in the manner set forth below ("*Confidential Information*"). Confidential information shall be synonymous with "proprietary information" for all purposes herein. All information communicated shall be considered Confidential Information in the course of this relationship regardless of whether it appears in written form, so long as it is marked or designated as confidential when transferred, provided, or communicated. Oral statements constitute Confidential Information, as are product demonstrations or know-how or technology that is not documented in hard-copy form. For all purposes herein, the terms 'Recipient' or 'Receiving Party' shall apply to all individuals and entities receiving confidential material(s) and/or information; the signatory Recipient/Receiving Party agrees to ensure compliance with all material terms and conditions herein by its employees and agents receiving confidential materials and/or information attendant to the technology or property disclosed hereunder.

Confidential Information will not include any information or data which is already known to the Receiving Party at the time that it is disclosed or which has been:

- (a) Publicly released and now known through no wrongful act of the Receiving Party;
- (b) Rightfully received by the Receiving Party from a third party without restriction on disclosure and without breach of this Agreement;
- (c) Independently developed by the Receiving Party;
- (d) Approved for release by written authorization of the Disclosing Party;
- (e) Furnished by Disclosing Party to a third party without a similar restriction on disclosure; or
- (f) Disclosed pursuant to a requirement of a governmental agency or of law (unless subject to a protective order or disclosed under seal).

2. Restrictions on Use and Disclosure. Recipient, as a Receiving Party, represents, warrants, and agrees that:

(i) it will not copy or reproduce any of the Disclosing Party's Confidential Information without the consent of the Disclosing Party for a period of three (3) years following receipt of such Confidential Information;

(ii) it will not disclose any of the Disclosing Party's Confidential Information to any third party without the consent of the Disclosing Party for a period of three (3) years following receipt of such Confidential Information;

(iii) in fulfilling its obligations under clauses (i) and (ii) above, it will use the same care and discretion to avoid disclosure, publication, or dissemination of Confidential Information of the Disclosing Party, other than to those employees of the Receiving Party and its subsidiaries (“Agents”) who have a *need to know* such Confidential Information for purposes of the analysis, discussions and testing solely within the scope of this Agreement, as the Receiving Party employs with respect to similar information of its own that it does not desire to publish, disclose or disseminate;

(iv) it will inform any Agents to whom it discloses Confidential Information of these confidentiality obligations and obtain a written agreement, in this form, from all such Agents and require compliance with such provisions as a condition precedent to their participation on the scope of work associated with Discloser’s technology/invention/discovery/property;

(v) it will not use any copyrighted, patented or patentable, or trade secret Confidential Information of Discloser except for the exclusive purposes set forth in this Agreement; and

(vi) it will immediately return or destroy all or any part of the Disclosing Party’s Confidential Information as requested by the Disclosing Party at any time during the term of this Agreement and at the termination or expiration of this Agreement.

3. Materials and/or Information Transferred. Material or confidential information may be transferred attendant to Recipients efforts or assistance on behalf of Discloser. No specimen of the Material or confidential information will be given or made available to any other person, institution, firm or corporation without the express written consent of UNCW.

a. This permission to use the Material or confidential information shall be restricted to Recipient’s internal research use only. The Material may not be used commercially or for research that is subject to consulting or licensing obligations to another commercial organization whether or not such obligations presently exist or are entered into in the future.

b. Recipient shall not disclose proprietary information or know-how provided in the Material or make the Material available to any other person, institution or firm. Additionally, except as expressly provided for herein, Recipient agrees and acknowledges it shall not use the Material for any commercial benefit or any research purpose beyond efforts contemplated by this Agreement.

4. Equitable Relief. Recipient acknowledges and agrees that Discloser shall be entitled to seek injunctive relief to prevent and actual breach of this Agreement and enforce the terms herein; The Discloser may pursue any other remedy to which it is entitled in law or in equity.

5. No Obligation to Complete Transactions. Nothing herein shall imply any obligation of either party to proceed with any transaction between the parties, and, except as may be set forth in any other written agreement between the parties; each party explicitly reserves the right to terminate the Discussions for any reason or no reason, without liability for such termination. No license, express or implied, is conveyed to Recipient in the Confidential Information by signing this Agreement or the disclosure of any information hereunder.

6. Continuing Obligations. Recipient agrees and acknowledges that the Confidentiality obligations contained herein shall survive termination of this Agreement and remain fully enforceable to full extent of law.

7. Governing Law. This Agreement shall be construed and enforced pursuant to the laws of the State of North Carolina; Parties agree all actions arising under this Agreement shall be proper and brought in the courts of the state of North Carolina.

8. No Assignment. Neither party may assign this Agreement, nor may any of the rights hereunder be assigned or otherwise transferred to any third party, without the prior written consent of the other party. Any attempted or purported assignment or other such transfer by either party to any third party without such written consent having first been obtained shall be void.

9. Term. This Agreement shall have a term commencing upon the first disclosure of Confidential Information and/or Materials and ending on the third anniversary of the Effective Date

unless mutually extended by the parties in writing. With respect to any Confidential Information received by either party during the term of this Agreement, the terms of Sections 2 will survive any expiration or earlier termination of this Agreement.

10. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof. Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable by any court or tribunal of competent jurisdiction, such determination shall not affect the remaining provisions hereof which will remain in full force and effect. No waiver or modification of any of the provisions of this Agreement shall be valid unless in writing and signed by authorized representatives of both parties.

11. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Recipient

_____ **Date:** _____

By:

Recipient

_____ **Date:** _____

By:

****Recipient**

_____ **Date:** _____

By:

Disclosing Party:

_____ **Date:** _____

***By: Robert D. Roer**

Title: Dean Graduate School and Research

**Document may only be signed by authorized UNCW representative with delegated signature authority.*

[If you've shared this document with the other party, or you started with a form provided by the other party, and now wish to have the document reviewed and/or signed by a University official with signature authority, please forward the document in electronic format to the following office for review and/or signatures providing email addresses to those recipients requiring a signed copy:

*Office of General Counsel
hoonr@uncw.edu
Robert R. Hoon 910.962.7886*

The OGC will forward a pdf copy of the executed document to the individuals for whom you have provided email addresses.]

***Attach additional pages as necessary for any additional signators.*