

MUTUAL NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 201 between:

1. **UNIVERSITY COLLEGE DUBLIN**, National University of Ireland, Dublin, located at Belfield, Dublin 4, Ireland (“**UCD**”); and
2. **COMPANY LIMITED** having its registered office at **[INSERT ADDRESS]** (“**COMPANY**”) and

Individually referred to as a “**Party**” and collectively referred to as the “**Parties**”.

WHEREAS:

1. COMPANY wishes to enter into discussions with the Research Team (defined below) to ***[explore and discuss commencing a possible research collaboration in the area of [describe topic][explore certain licensing and commercialisation opportunities in the area of [describe topic]].***
2. As part of this process, the Parties **have entered** into Discussions (defined below) and the Parties will exchange certain Confidential Information (defined below).
3. In consideration of each of the Parties disclosing to the other Confidential Information each Party has agreed to undertake to the other in the terms set out below.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

- (a) “**Confidential Information**” means all documents, materials and other information which are disclosed to or obtained by the Recipient in the course of the Discussions and/or to which the Recipient has access (whether in oral, written, electronic or any other form) in the course of the Discussions, after the Effective Date, PROVIDED THAT:
- (i) if Confidential Information is in writing or any tangible form, that it is stamped confidential, or that the Discloser notifies the Recipient in writing within 30 days of said disclosure that such information is confidential; and
 - (ii) if Confidential Information is disclosed verbally, that the Discloser notifies the Recipient in writing within 30 days of said disclosure that such information is confidential.

By way of example, Confidential Information may include, but not be limited to intellectual property rights owned by or licensed to the Discloser, information (whether technical, commercial, scientific or other information), current or historical data, techniques, know-how, practices, trade secrets, reports, forecasts, ideas, designs, plans, processes, drawings, sketches, specifications, models, samples, material compositions, circuit schematics, manufacturing

techniques, devices, computer programs, pro formas or documentation, business plans, research and development activities, proposals or projects, and all other technical, financial or business data.

Notwithstanding the foregoing, for the avoidance of doubt, ***[identify any specific confidential UCD information to be disclosed]*** shall be deemed to be Confidential Information of UCD under this Agreement.

- (b) “**Discloser**” means the Party giving access to or making disclosure of Confidential Information to the Recipient;
- (c) “**Discussions**” means the proposed discussions to take place between the Research Team and the Company ***[from the Effective Date and for a subsequent period of [] months]*** in respect of the Purpose;
- (d) “**Effective Date**” means ***[insert Effective Date]***;
- (e) “**Purpose**” means the purpose of ***[exploring and discussing the commencement of a possible research collaboration in the area of [describe topic][explore certain licensing and commercialisation opportunities in the area of [describe topic]]]***;
- (f) “**Recipient**” means the Party receiving access to Confidential Information; and
- (g) “**Research Team**” means ***[name UCD personnel]*** at ***[UCD location]***.

2. CONFIDENTIALITY

- 2.1 In consideration of the disclosure by the Discloser of the Confidential Information, the Recipient undertakes and agrees:
- (a) to use the Confidential Information only for the Purpose, and for no other purpose;
 - (b) without prejudice to the generality of subparagraph (a) above, not to make any commercial use of or make any commercial gain from the Confidential Information or seek to obtain any protection of the intellectual property contained in the Confidential Information without the Discloser’s prior written consent;
 - (c) to keep the Confidential Information in strict confidence and not to disclose it to any third party for any purpose without the express prior written permission of the Discloser, save that it can disclose the Confidential Information to such employees, consultants, and other parties as require same for the Purpose, and have undertaken to

comply with and have been made aware of the terms of this Agreement;

- (d) not to use, transform, or store any of the Confidential Information in any externally accessible computer or electronic retrieval system or transmit it in any form or by any means whatsoever outside the Recipient's usual place of business;
- (e) not to make or use any copies, synopses or summaries of any of the Confidential Information, except such as are strictly necessary for the Recipient's internal communications in connection with the Purpose or as are strictly necessary for the Purpose;
- (f) at the Discloser's written request, and in any event upon termination or expiration of this Agreement for whatever reason, to return to the Discloser all documents (and copies thereof) and other materials concerning or incorporating, or in any way recording any of the Confidential Information, in whatever form, which are in its possession or control, and shall make no further use or disclosure of any of the Confidential Information; and
- (g) to give notice to the Discloser of any unauthorised misuse, disclosure, theft or loss of the Confidential Information immediately upon becoming aware of the same.

2.2 The obligations of the Recipient set out in paragraph 2.1 above shall not apply to any Confidential Information which:

- (a) was lawfully available to the public prior to receipt by the Recipient;
- (b) becomes lawfully available to the public after receipt by the Recipient through no fault on the part of the Recipient;
- (c) corresponds in substance to any information received in good faith by the Recipient from any third party that owes no obligation of confidentiality to the Discloser with respect to such information and such information is provided without any obligation of confidentiality or restriction on use;
- (d) was already known to the Recipient prior to its disclosure as evidenced by the written records of the Recipient;
- (e) is independently created by the Recipient, without the use of any such

information as evidenced by the written records of the Recipient; or

- (f) is required to be disclosed by law or by court order.

2.3 For the avoidance of doubt, specific Confidential Information disclosed to or made available to the Recipient shall not be deemed to be publicly known, or in the Recipient's prior possession, merely because such Confidential Information is embraced by more general information which is publicly known or in the Recipient's prior possession. Likewise, specific Confidential Information disclosed to or made available to the Recipient shall not be deemed to be publicly known merely because other Confidential Information contained in the same document or embodiment becomes publicly known.

2.4 In the event of the Recipient, under any applicable law (in particular the Freedom of Information Acts 1997-2003), being required (by oral questions, interrogatories, requests for information or document subpoenas, civil investigative demand, governmental investigations or similar processes) to disclose any Confidential Information, the Recipient will provide the Discloser with prompt notice of such request or demand so that the Discloser may seek an appropriate protective order and/or consider granting a waiver of the Recipient's compliance with the provisions of this Agreement.

2.5 The Recipient acknowledges that all Confidential Information received from the Discloser is received on an "as is" basis, without any warranty whatsoever, and all express or implied warranties are hereby excluded to the fullest extent permitted by law, including without limitation warranties as to fitness for purpose, accuracy and non-infringement of third party intellectual property or other rights.

3. DURATION

3.1 This Agreement shall continue in full force and effect from the Effective Date for a period of **[five]** years. Notwithstanding the foregoing, the provisions of Clauses 2.1(f) Clause 2.5 and Clause 4 shall continue in full force and effect after expiry or termination of this Agreement for whatever reason.

4. MISCELLANEOUS

4.1 Each Recipient acknowledges that no licence or other rights of any nature in, to, or over any intellectual property of the Discloser shall be deemed to be conferred on the Recipient by this Agreement or by any disclosure of Confidential Information to the Recipient, and the Recipient

shall hold any Confidential Information disclosed to it as bare trustee for the Discloser.

4.2 This Agreement constitutes the full and complete agreement in this matter between the Parties. Any amendment to this Agreement must be made in writing and signed by the Parties.

4.3 Unless and until a definitive agreement between the Parties with respect to any proposed arrangement has been executed and delivered, neither Party will be under any legal obligation of any kind whatsoever with respect to such a transaction by virtue of this or any written or oral expression by any of its representatives. Nothing in this Agreement shall oblige either of the Parties to enter into any further agreement with the other in relation to the subject-matter of this Agreement.

4.4 It is understood and agreed that notwithstanding any other provision of this Agreement, a breach by the Recipient of any of the provisions of this Agreement will cause the Discloser irreparable damage for which recovery of money damages would be inadequate, and that the Discloser will be entitled to seek an injunction to protect its rights under this Agreement in addition to any and all remedies available at law.

4.5 Notices under this Agreement must be in writing and may be delivered by hand or pre-paid registered post to the address of the recipient set out in this Agreement (or to such other address as that Party may have notified to the other under the provisions of this clause). Notices delivered by hand shall be deemed delivered upon receipt while notices delivered by post as aforesaid shall be deemed delivered 72 hours after posting.

4.6 Each of the provisions of this Agreement is separate and severable and enforceable accordingly. If at any time any of the provisions is held to be void or unenforceable, the validity or enforceability of the remaining provisions shall not be affected. If any provision is held to be void or unenforceable, the Parties agree to substitute any such provision with a valid enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

4.7 This Agreement is specific to the Parties hereto and the rights and obligations hereunder may not be assigned in whole or in part by any Party without the prior written consent of the other Parties.

4.8 The Parties have the power and authority to enter into and perform the obligations within this Agreement.

4.9 This Agreement can be executed in multiple counterparts, each of which shall be deemed an original.

4.10 This Agreement is made in accordance with the laws of Ireland and the Parties agree to submit to the exclusive jurisdiction of the Irish courts as regards any claim or matter arising under this Agreement.

IN WITNESS whereof the Parties hereto have executed this Agreement on the day and year first above **WRITTEN**

Signed by
For and on Behalf of University College Dublin

Date

Signed by
For and on Behalf of **COMPANY**
and I confirm I am an authorised signatory of the
above company

Date

I hereby confirm that I have read and understood the terms of the above Agreement, and agree to comply with its terms, and ensure compliance within my research team.

Signature of Lead PI:

Dated: