

Mutual Nondisclosure Agreement

This Agreement is made and entered into as of _____ (“Effective Date”) by and between _____ (“_____”), a _____ corporation having a principal place of business at _____ and Northeastern University (“Northeastern”), a non-profit Massachusetts educational institution located at 360 Huntington, Boston MA 02115.

Whereas, the parties wish for their mutual benefit, to disclose to each other Proprietary Information as defined below; and

Whereas, the parties wish to set forth the conditions and obligations, which will govern the use, duplication and disclosure of any Proprietary Information that one party may disclose to the other party.

Now, Therefore, the parties agree as follows:

1. It is anticipated that _____ and Northeastern will disclose to each other certain information, which each deems proprietary relating to _____. All such information of _____ and Northeastern is hereinafter referred to as "Proprietary Information".
2. The receiving party shall use the Proprietary Information disclosed by the originating party solely for the purpose of _____. Both _____ and Northeastern as used herein, shall include, individually and collectively, their officers, directors, consultants, employees and associated researchers.
3. The receiving party shall neither disclose to any third party nor use the Proprietary Information it receives from the originating party for any purpose other than that contemplated under this Agreement for so long as Proprietary Information must be maintained in confidence unless the originating party shall agree otherwise in writing. Each party agrees to take reasonable and appropriate measures to keep confidential and to safeguard from theft, or loss, and to limit access to Proprietary Information to those officers, directors, employees and associated researchers within the receiving party's organization who reasonably require access to the Proprietary Information for carrying out the purpose of this Agreement and who have agreed to maintain the Proprietary Information in confidence.
4. Proprietary Information disclosed hereunder shall be disclosed in written or other permanent form and be prominently identified as proprietary using an appropriate legend, marking stamp, or other clear and conspicuous written identification, which unambiguously indicates the information being provided is the originating party's Proprietary Information. If Proprietary Information is disclosed in other than written or other permanent form, it shall be considered Proprietary Information as of the time of original disclosure if identified as Proprietary Information at the time of disclosure and clearly confirmed in writing or other permanent form, by the originating party to the receiving party within thirty (30) calendar days of the non-written disclosure.
5. Proprietary Information shall not be considered confidential or subject to this Agreement, if the receiving party can establish that the same:
 - a. is or becomes a part of the public knowledge or literature without breach of this Agreement by the receiving party; or

- b. was rightfully in the possession of the receiving party prior to the date of disclosure of such Proprietary Information as evidenced by competent proof; or
- c. is developed by the receiving party independently of the disclosure made under this Agreement as demonstrated by competent proof; or
- d. is supplied without restriction on disclosure to the receiving party by a third party who had a lawful right to disclose it and is under no obligation to the originating party to maintain such Proprietary Information in confidence.

Proprietary Information shall not be deemed to be available to the Public or in the possession of the receiving party merely because it is embraced by more general information so available or in the receiving party's possession.

6. Should the receiving party be faced with judicial or United States Governmental action to disclose Proprietary Information received hereunder, said party shall take reasonable steps to notify the originating party of such disclosure.

7. The exclusive point of contact with respect to the transmission and control of Proprietary Information disclosed hereunder is designated by the respective parties as follows:

Northeastern University: _____
_____: _____

Each party may change its designees by written notice to the other.

8. Should the receiving party become aware of any breach of this Agreement, the receiving party agrees to promptly notify the originating party thereof in writing and the originating party shall have the right to immediately terminate this Agreement.

9. Proprietary Information, including all tangible media in which Proprietary Information is fixed and copies thereof, shall remain the property of the originating party. Neither this Agreement nor the disclosure of Proprietary Information hereunder shall be construed as granting any right or license to any invention, patent, or other property now or hereafter owned or controlled by either party, nor shall any such disclosure constitute any representation, warranty, assurance, or guarantee, with respect to noninfringement of patent or their rights of others. **WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR USE FOR ANY PURPOSE.**

10. Each party shall bear its own cost incurred under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either party to enter into a contract, subcontract, or other business relationship with the other party.

11. The rights and obligations provided by this Agreement shall take precedence over specific legends or statements associated with Proprietary Information when received.

12. The term of this Agreement shall be 1 year from the Effective Date. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. Termination or expiration of this Agreement shall not relieve either party of its obligations hereunder to maintain in confidence and not to use Proprietary Information received hereunder for a period of five (5) years from the date of receipt thereof.

13. Upon expiration of this Agreement or termination, the receiving party shall cease use of all Proprietary Information furnished hereunder and shall, upon written direction of the originating party, return to the originating party, or destroy, all such Proprietary Information, together with all copies made thereof by the receiving party. Upon request, the receiving party shall send the originating party a certificate confirming the destruction or return of all Proprietary Information delivered hereunder. Notwithstanding the other provisions of this paragraph, counsel for the receiving party may retain one copy of such Proprietary Information, but for archival purposes only and provided the receiving party notifies the originating party thereof in writing and provides the name, firm name and address of such counsel.

14. This Agreement, and the rights and obligations hereunder, may not be transferred or assigned by either party without the prior written consent of the other party.

15. The validity, interpretation, and effect of this Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

16. This Agreement constitutes the entire understanding of the parties with respect to the matters referred to herein and supersedes all prior negotiations, commitments and understanding with respect thereto. No variation or modification of this Agreement or waiver of any terms of provisions hereof shall be deemed valid unless in writing and signed by authorized representatives of both parties.

In Witness Whereof, the parties have caused this Agreement to be executed in duplicate originals by their authorized representatives.

Northeastern University

By: _____
Name: Anthony N. Pirri, Ph.D.
Title: Director, Division of Technology
Transfer
Date: _____

By: _____
Name: _____
Title: _____
Date: _____