

## THREE-WAY CONFIDENTIALITY AGREEMENT

This Agreement (“Agreement”) is made and entered into as of March 24, 2017 (“Effective Date”), by and among the University of Pittsburgh – Of the Commonwealth System of Higher Education, a non-profit corporation organized and existing under the laws of the Commonwealth of Pennsylvania, with an office at 1st Floor Gardner Steel Conference Center, 130 Thackeray Avenue, Pittsburgh, Pennsylvania 15260 (“University”), [company 1], a [entity type] with its principal business at [address] (“Company 1”), and [company 2], a [entity type] with its principal business at [address] (“Company 2”) (individually a “Party” and collectively the “Parties”).

WHEREAS, University owns certain developments relating to “[title]”, developed by [inventors] of the University faculty (University internal reference number [xxxxx]) (“University Confidential Information”); and

WHEREAS, Company 1 owns certain developments relating to “[title]”, developed by [inventors] of the Company 1 employees (“Company 1 Confidential Information”); and

WHEREAS, Company 2 owns certain developments relating to “[title]”, developed by [inventors] of the Company 2 employees (“Company 2 Confidential Information”) (collectively University Confidential Information, Company 1 Confidential Information, and Company 2 Confidential Information shall be referred to herein as “Confidential Information”); and

WHEREAS, the Parties acknowledge that each Party’s Confidential Information is proprietary to and of value to that Party; and

WHEREAS, the Parties are willing to disclose Confidential Information to each other only for the purpose of permitting each Party to determine whether it is interested in entering into an option and/or license agreement for University intellectual property and/or for the further development and commercialization thereof (the “Purpose”), and each Party is willing to receive such disclosure, subject to the terms and conditions hereafter set forth.

NOW, THEREFORE, the Parties, intending to be legally bound hereby, agree as follows:

1. The Parties shall treat and maintain the Confidential Information in the strictest confidence and, at a minimum, will take reasonable precautions, in accordance with procedures that each Party follows from time to time with respect to its own confidential information, to prevent disclosure, directly or indirectly, to any other party, except with prior written consent of the disclosing Party.
2. The Parties will not make use of the Confidential Information except for the Purpose contemplated by this Agreement.

3. The Parties' obligations as expressed in Sections 1 and 2 above shall not apply to:
  - (a) any information known to or received by a Party prior to the Effective Date, as demonstrated by written records of said Party;
  - (b) any information lawfully obtained, subsequent to Effective Date of this Agreement, by a Party from a third party not under an obligation of confidentiality to the disclosing Party;
  - (c) any information that is in the public domain at the date of the disclosure or thereafter enters the public domain (but this exception applies only after the release of the information into the public domain) without the receiving Party's breach of any obligation to the disclosing Party;
  - (d) any information that is independently developed by a receiving Party without use of, benefit of, knowledge of, or reference to the disclosing Party's Confidential Information, as demonstrated by written records of the receiving Party; and
  - (e) any information that is required by law, court order or government regulation to be disclosed. If a disclosure is required under Section (e) above, and if legally permitted to do so, receiving Party shall as soon as possible give written notice of such requirement to the disclosing Party to allow the disclosing Party reasonable opportunity to seek a protective order or its equivalent and receiving Party shall make a reasonable effort to obtain a protective order and/or maintain the confidential nature of the Confidential Information.
  
4. Notwithstanding any other provision of this Agreement, the Parties understand and agree that they are subject to, and agree to abide by, any and all applicable United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, including International Traffic in Arms Regulations ("ITAR") and/or Export Administration Act/Regulations ("EAR"), as may be amended, as well any and all embargoes and/or other restrictions imposed by the Treasury Department's Office of Foreign Asset Controls. It is the intent of the Parties not to disclose any export-controlled materials (including, without limitation, equipment, information and/or data). The Parties' obligations hereunder are contingent on their ability to comply with applicable United States export and embargo laws and regulations. As an institution of higher learning, the University does not wish to take receipt of export-controlled information except as may be knowingly and expressly agreed to in a writing signed by an authorized University representative and for which the University has made specific arrangements. Company 1 and Company 2 agree that they will not provide or make accessible to University any export-controlled materials without first informing University of the export-controlled nature of the materials and obtaining from University's Office of Research its prior written consent to accept such materials as well as any specific instructions regarding the mechanism pursuant to which such materials should be passed to University.
  
5. The Parties agree that all tangible embodiments and all information held in computer memory or software, in electronic storage media, and/or in the form of electronic mail and/or attachments ("Electronic Embodiments") of Confidential Information shall remain the property of the disclosing Party. At the completion of the Purpose, or at the disclosing Party's request, the receiving Party shall promptly

(within ten (10) business days) return all tangible embodiments of Confidential Information and any and all related materials and notes to disclosing Party and erase all Electronic Embodiments of Confidential Information and certify destruction thereof.

6. This Agreement grants no copyright, trademark, trade secret, patent rights or licenses express or implied, and the disclosure of Confidential Information does not result in any obligation to grant any such right in and to the Confidential Information.
7. Each Party's obligations of confidentiality as set forth herein shall continue for a period of five (5) years from the date of each disclosure of Confidential Information by a disclosing Party to a receiving Party.
8. Confidential Information is provided "as is." The Parties, including their agents and/or employees, make no warranty or condition of any kind, express, implied or otherwise, with respect to the accuracy, completeness or performance of the Confidential Information. The Parties, including their agents and/or employees, make no representation or warranty that the use of the Confidential Information will not infringe any patent or other proprietary right.
9. No Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Parties.
10. This Agreement may only be amended by the mutual written consent of authorized representatives of all Parties.
11. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability or any other term or provision of this Agreement.
12. This Agreement is made under, and shall be construed according to, the laws of the Commonwealth of Pennsylvania without regard to any conflict of laws principles thereof and all actions related to this Agreement, including those brought against individuals such as University employees and agents, shall be brought in the federal and state courts located in Pittsburgh, Pennsylvania.
13. This Agreement together with all attachments and exhibits represents the entire understanding of the Parties with respect to the subject matter hereof. In the event of any inconsistency between the terms of this Agreement and the Parties' understanding, the terms of this Agreement shall govern. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall be one document binding on all the Parties even though each Party may have signed different counterparts. This Agreement shall also be considered executed by the Parties upon receipt by University by electronic or facsimile transmission of the counterparts signed by all the Parties. Any party that

delivers a signature page by electronic or facsimile transmission shall deliver an original counterpart to the other party upon request.

14. The foregoing recitals are incorporated herein by reference.

IN WITNESS WHEREOF, the Parties represent and warrant that each has the authority to bind the party to this Agreement and hereto have executed this Agreement as of the date indicated above.

UNIVERSITY OF PITTSBURGH – OF  
THE COMMONWEALTH SYSTEM OF  
HIGHER EDUCATION

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Marc S. Malandro, Ph.D., CLP, RTTP  
Vice Chancellor for Technology  
Management and Commercialization

**[COMPANY 1]**

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**[*name*]**  
**[*title*]**

**[COMPANY 2]**

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**[*name*]**  
**[*title*]**