**MUTUAL CONFIDENTIALITY AGREEMENT** (“Agreement”) dated [ ] (“Effective Date”)

**BETWEEN**

**(1)**      **THE** **UNIVERSITY OF MANCHESTER** whose registered office is at Oxford Road, Manchester M13 9PL, United Kingdom (hereinafter referred to as the "**Manchester**") in this instance acting through [Dr/Prof \_\_\_\_\_\_\_\_\_\_\_\_\_ of the School of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]; and

**(2)**  **[** (Company Number: [ ] whose registered office is at [ ] (hereinafter referred to as the “**Company**”);

Each a “Party” and together the “Parties”

**BACKGROUND**

A WHEREAS, the Parties possess valuable information, technical knowledge, experience and data of a secret and confidential nature which may be regarded as assets of scientific, clinical and/or commercial value.

B WHEREAS, the Parties wish to enter into discussions of mutual interest in which they may exchange Confidential Information (as defined below) for the purpose of furthering discussions and facilitating the evaluation of possible collaborative arrangements in relation to the field of “[ ]”(the **“Purpose”**) on the terms and conditions of this Agreement.

C In the case of these discussions each Party is willing, at its own discretion and solely to meet the Purpose, to disclose such Confidential Information to the other Party.

**NOW, THEREFORE, in** consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

# definitions

1.1“**Affiliate”** means any entity directly or indirectly controlling or controlled by or in common control with such entity, where "control" is defined as the ownership of at least fifty percent (50%) of the equity or beneficial interests of such entity, or the right to vote for or appoint a majority of the board of directors or other governing body of such entity.

“**Confidential Information”** means any and all knowledge, know-how, information and techniques not publically known, disclosed by one Party to the other Party in connection with this Agreement including but not limited to research data, databases, software, bioinformatics tools, specifications, plans, drawings, prototypes, models, documents, recordings, instructions, manuals, papers, or other materials of any nature whatsoever including all information provided hereunder in writing, orally, visually and/or observed while on the premises of either Party or incorporated or embodied in a sample product or other equipment, material or item that a reasonable business person would consider confidential. Confidential Information disclosed in a documentary or tangible form shall be marked or labelled by the Discloser as "Proprietary", "Confidential" or "Sensitive at the time of disclosure to indicate its confidential nature.

**“Discloser”** means either Party to this Agreement when it or its Affiliate discloses Confidential Information to the other or its Affiliate.

**“Recipient”** shall mean either Party to this Agreement in instances where it or its Affiliate receives Confidential Information from the other or its Affiliate.

1.2 Headings in these conditions shall not affect their interpretation.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.5 A reference to writing or written includes e-mail.

1.6 Any obligation in this Agreement on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.

# Confidential Information Disclosure and Obligations of the Parties

## In consideration of the disclosure of Confidential Information by a Discloser to the Recipient, the Recipient shall treat as strictly confidential and not divulge to any third party any of the Confidential Information relating to the Purpose disclosed by a Discloser and shall not make use of any such Confidential Information without the Discloser’s prior written consent other than for the Purpose in accordance with this Agreement.

## In the event of any Party visiting the establishment of the other, the visiting Party shall ensure that any further Confidential Information which may come to its knowledge as a result of any such visit, shall be kept strictly confidential and will not be divulged to any third party and will not be made use of in any way by the Recipient Party without the Discloser’s prior written consent other than for the Purpose in accordance with this Agreement.

## The Recipient shall take such precautions and make such arrangements as are reasonably necessary to protect the Confidential Information and, in any event, shall protect the Confidential Information with no less than the degree of care which the Recipient uses to safeguard its own Confidential Information.

## Notwithstanding Clause 9, the above-stated obligations of confidentiality and non-use with respect to any Confidential Information identified as a trade secret by either Party will survive the termination or expiration of this Agreement indefinitely.

## Neither Party shall use the name, trademark, service mark or logo of the other Party in any publicity, advertising or information, which is disseminated to any third person or to the general public without the other Party’s prior written approval.

## Neither Party shall reverse engineer, decompile, disassemble, chemically analyse, modify or create derivative works based on any Confidential Information provided under this Agreement in tangible form, including without limitation, any product, sample, prototype, electronic media, composition or equipment without the prior written permission of the Discloser.

# RECIPIENT’s obligations

## The Recipient shall be entitled to use the Confidential Information only for the Purpose stated in this Agreement and to disclose the Confidential Information in confidence to such of its employees, officers and Affiliates that need to know in order to carry out that Party’s obligations under this Agreement provided that it procures that each such person to whom the Confidential Information is disclosed to complies with the obligations set out in this Agreement as if they were the Recipient.

## The Recipient shall inform the Discloser immediately and without delay in the event any Confidential Information is disclosed to an unauthorized third party.

# EXCEPTIONS

4.1 The obligations of confidentiality under Clause 2 above shall not apply to the disclosure, treatment or use of any part of the Confidential Information which the Recipient can show to the Discloser’s reasonable satisfaction:

4.1.1 is known to the Recipient before the Effective Date, and not impressed already with any obligation of confidentiality to the Discloser; or

4.1.2 is or becomes publicly known without the fault of the Recipient; or

4.1.3 is obtained by the Recipient from a third party in circumstances where the Recipient has no reason to believe that there has been a breach of an obligation of confidentiality owed to the Discloser; or

4.1.4 is independently developed by the Recipient; or

4.1.5 is approved for release in writing by an authorised representative of the Discloser; or

4.1.6 the Recipient is specifically required to disclose pursuant to (i) an order of any competent judicial, governmental or regulatory body or (ii) the laws or regulations of any country with jurisdiction over it (provided, in the case of a disclosure under the Freedom of Information Act 2000, none of the exemptions to that Act applies to the Confidential Information disclosed).

## In relation to any disclosure pursuant to clause 4.1.6, the Recipient, to the extent permitted by law, shall give prompt notice to the Discloser upon learning of such order or requirement, to enable the Discloser to oppose the order or obtain a protective order (if appropriate) and the Parties will cooperate to a reasonable extent with each other in such proceedings. If the Recipient is thereafter required to disclose Confidential Information, the Recipient and the Discloser will endeavour to agree a mutually satisfactory means to disclose such information, which shall be to the minimum extent necessary for compliance.

## Confidential Information which is specific, such as Confidential Information pertaining to materials, samples, processes and/or equipment, shall not be deemed to be within the exceptions specified above merely because it is embraced by more general published or available information. In addition, any combination of features shall not be deemed to be within the exceptions specified merely because individual features are published or available, but only if the combination itself and its principle of operation are published or available.

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# return of confidential information

# 5.1 Upon the Discloser’s written request, the Recipient, including any Affiliates will:

## 5.1.1. return to the Discloser or will destroy, at the Discloser’s discretion, any Confidential Information not captured by the exceptions set out in Clause 4; provided, however, that the Recipient will be permitted to retain one copy of such Confidential information for the sole purpose of ensuring compliance with the ongoing obligations created in this Agreement; and

## 5.1.2 immediately cease use of the Confidential information not captured by the exceptions in Clause 4.1.

5.2 The Recipient will not be required to destroy Confidential Information contained within any computer files stored securely that are created during automatic system back up disaster recovery processes.

# no licence

No licence to any part of the Confidential Information or under patents, trademarks, copyright or any other intellectual property rights is granted or implied by the disclosure of Confidential Information under this Agreement except as expressly stated in this Agreement. The Parties hereby acknowledge that the Discloser retains any and all right title and interest in and to the Confidential Information.

# Termination

Either Party may terminate this Agreement by providing thirty (30) days’ written notice to the other Party.

# NO REPRESENTATIONS OR WARRANTIES

# The Discloser makes no representations or warranties either express or implied with respect to the Confidential Information and specifically disclaims any implied warranty of non-infringement or merchantability, satisfactory quality or fitness for purpose.

# term

This Agreement shall expire three (3) years after the Effective Date. The obligations of confidentiality and non-use set out in this Agreement shall subsist from the Effective Date and shall survive termination or expiration for a period of five (5) years.

**10. ASSIGNMENT**

Neither Party shall assign or otherwise dispose of any or all of the rights duties or obligations under this Agreement without the prior written consent of the other Party.

**11. Further Agreements**

11.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of the other Party, nor authorise any Party to make or enter into any commitments for or on behalf of any other Party.

11.2 Neither Party has an obligation to supply information under this Agreement and neither Party has an obligation to enter into any further contract with the other Party.

11.3 Neither Party has an obligation under this Agreement to offer for sale or the purchase of products using or incorporating the Confidential Information.

**12. NOTICES**

Any notice or other communication to the Parties required to be given under this Agreement shall be sent to the address set out above unless otherwise advised.

**13. GOVERNING LAW**

This Agreement shall be construed and governed in accordance with English Law and the Parties agree to submit to the exclusive jurisdiction of the English Courts for all contractual and non-contractual disputes.

**14. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement. Each Party acknowledges that an original signature or a copy thereof transmitted by PDF shall constitute an original signature for purposes of this Agreement and this Agreement may be exchanged and executed electronically.

**15. RIGHTS OF THIRD PARTIES**

A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 (UK) or other substantively similar legislation, to enforce any of its terms.

**16. Miscellaneous**

16.1 The Discloser warrants that it has the right to disclose its Confidential Information to the Recipient and to authorise the Recipient to use such Confidential Information for the Purpose.

16.2 Each person signing below represents and warrants that he or she has the necessary authority to bind that Party.

16.3 No variation of this Agreement shall be effective unless it is in writing and signed by each of the Parties (or their authorised representatives).

16.4 This Agreement constitutes the entire understanding and agreement between the Parties relating to the Purpose and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to this Agreement or the Purpose.

16.5 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable so long as such modification achieves the intended commercial result of the original provision. This clause shall not affect the validity and enforceability of the rest of this Agreement.

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| Signed by and on behalf of  **The univerity of Manchester**  acting by a duly authorised signatory: | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Position: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  | |
| Signed by and on behalf of  **THE COMPANY**  acting by a duly authorised signatory: | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Position: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |