**FLORIDA ATLANTIC UNIVERSITY**

**CONFIDENTIAL DISCLOSURE AGREEMENT No. XX**

This Confidentiality Disclosure Agreement is effective when the last party signs and is between, Florida Atlantic University Board of Trustees, located at 777 Glades Road, Boca Raton, Florida 33431 (“FAU”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , (“CORPORATION”).

FAU possesses certain ideas and information relating to that is confidential and proprietary to FAU and is provided to CORPORATION and marked as confidential ("Confidential Information").

CORPORATION possesses information relating to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ that is confidential and proprietary to CORPORATION; and is provided to FAU and marked as confidential (“Confidential Information”)

FAU and CORPORATION desire to disclose such information to each other for the purposes of considering the merits of potential collaborative research, under terms that will protect the Confidential Information.

The parties therefore agree as follows:

1. **Confidential Information**

Any and all trade secret, technical information, including without limitation third party information, that the Disclosing Party discloses to the Receiving Party shall be deemed “Confidential Information” that is protected pursuant to this Agreement if:

* 1. with respect to information disclosed in writing, the Disclosing Party marks as confidential at the time it is disclosed; or,
	2. with respect to information disclosed orally or visually, the Disclosing Party identifies it as confidential at the time of disclosure and then reduces it to writing, marks it as confidential, and delivers it to the Receiving Party within thirty (30) days of the non-written disclosure; or,
	3. with respect to information disclosed by electronic transmission (e.g., facsimile, electronic mail, etc.), the Disclosing Party marks it electronically as confidential within the electronic transmission, such marking to be displayed in readable form along with any display of the Confidential Information; or,
	4. with respect to information disclosed by delivery of an electronic storage medium or memory device, the Disclosing Party marks the storage medium or memory device itself as containing Confidential Information and electronically marks the stored information as confidential, such marking to be displayed in readable form along with any display of the Confidential Information; or
	5. with respect to any information disclosed pursuant to subparagraphs (a), (c) or (d) of this Paragraph 2 without a mark indicating that it is Confidential Information, the Disclosing Party describes and identifies such information as Confidential Information in writing delivered to and received by the Receiving Party within thirty (30) days of such disclosure and the Receiving Party has not disclosed it in the interim.

Disclosing Party shall mark the information as confidential by an appropriate legend, stamp, or other marking. Information not in fact confidential to Disclosing Party (or to another for which the Disclosing Party is acting) shall not be so claimed or marked, and the parties shall endeavor to keep to a minimum the amount of Confidential Information disclosed hereunder.

1. **Obligations of Receiving Party**
	1. No Disclosure. The Receiving Party agrees to use the same degree of protection it uses for its own trade secret information, and in no event less that reasonable efforts, to prevent and protect the Confidential Information, or any part thereof, from disclosure to any person other than the Receiving Party’s employees having a need for disclosure in connection with the Receiving Party’s authorized use of the Confidential Information.
	2. No Duplication/No Use. The Receiving Party shall not duplicate or use Confidential Information furnished in tangible form except for purposes of this Agreement.
	3. Return of Information. Upon the request of the Disclosing Party, the Receiving Party shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within ten (10) days of such request.
2. **Limits on Confidential Information**

The obligations and restrictions imposed by this Agreement will not apply to any information that:

* 1. The Receiving Party can demonstrate was already known to the Receiving Party prior to the disclosure by the Disclosing Party; or,
	2. has become publicly known through no wrongful act of the Receiving Party; or,
	3. was received by the Receiving Party without breach of this Agreement from a third party without restrictions of the use and disclosure of the information; or,
	4. was independently developed by the Receiving Party without use of the Confidential Information;
	5. is required to be disclosed by law.
1. **Public Records Law**

Notwithstanding the above, FAU is subject to Ch. 119, Fla. Stat., commonly known as Florida’s Public Records Law. No Party shall be deemed to be in breach of the Agreement for withholding records when release is permitted by law or for disclosing records when required by law, provided the party making the disclosure provided the other party with notice prior to disclosure when possible so that other party may intervene to protect the confidentiality of the information.

1. **Ownership of Confidential Information**

The Receiving Party agrees that all Confidential Information shall remain the property of the Disclosing Party, and that the Disclosing Party may use such Confidential Information for any purpose without obligation to the Receiving Party.

1. **Export Control**

Disclosure of export-controlled information, as defined in 15 CFR 730 under the Export Administration Regulations (EAR) and in 22 CFR 120 under the International Traffic in Arms Regulations (ITAR), is not permitted under this agreement unless the Disclosing Party has received prior written approval from both parties’ authorized export control representatives. If the Disclosing Party receives prior written approval allowing for disclosures of export-controlled information, both parties will adhere to all applicable export control regulations including U.S. state and federal export control laws and regulations.

1. **Contact Person**

The parties agree to appoint the following contact persons to control dissemination of the Confidential Information:

**For FAU:** **For CORPORATION:**

Name: Name:

Phone: Phone:

Email: Email:

**With Copy To:**

Florida Atlantic University, Office of Technology Development

Phone: 561-297-3511

Email: technologydevelopment@fau.edu

Each Contact Person shall maintain a list of all individuals who receive the Confidential Information, and such list shall be made available to the other party upon reasonable request.

1. **Term and Termination**

 The obligations of this Agreement shall continue for five (5) years from the effective date of this Agreement.

1. **No Assignment**

Neither Party can assign this Agreement or any interest herein without the other Party’s express prior written consent.

1. **Survival of Rights and Obligations**

This Agreement shall be binding upon and be enforceable by each Party, its successors, and assigns.

1. **Governing Law**

The laws of the State of Florida shall govern this Agreement. In the event of litigation arising out of this Agreement, venue shall be in Palm Beach County, Florida.

1. **Severability**

 If a court of competent jurisdiction holds any term of this Agreement to be invalid or unenforceable, all the remaining terms will remain in full force and effect as if such invalid or unenforceable term had never been included.

1. **Entire Agreement / Amendment**

 This Agreement constitutes the entire Agreement between the parties with respect to the subject matter of this Agreement. This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only in writing that is duly executed by both parties.

1. **Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall be deemed to constitute one agreement. The Parties have agreed to accept electronic signatures pursuant to the United States Electronic Signatures in Global and National Commerce Act and the Florida Uniform Electronic Transaction Act, and any document accepted, executed or agreed to in conformity with such law will be binding on both parties the same as if it were physically executed. The affixing of the parties of their actual signatures to this Agreement, and delivery then by facsimile or scanned copy attached to an email, shall constitute sufficient delivery, communication and record of the formation of this transaction.

The parties have caused their duly authorized representatives to sign this Agreement as of the dates below.

**FLORIDA ATLANTIC UNIVERSITY CORPORATION**

**BOARD OF TRUSTEES**

By: By:

Name: Name:

Title: Title:

Date: Date:

**FAU Principal Investigator CORPORATION Principal Investigator**

By: By:

Name: Name:

Title: Title:

Date: Date: