

Nondisclosure Agreement for the Engineering Research Center for Revolutionizing Metallic Biomaterials

THIS AGREEMENT, effective as of the date of execution by all parties, is made and entered into by and among the North Carolina Agricultural & Technical State University (hereinafter referred to as NCAT), the University of Pittsburgh - Of the Commonwealth System of Higher Education (hereinafter referred to as UPITT), the University of Cincinnati (hereinafter referred to as UC) and such other non-profit universities as may have executed the Instrument of Adherence attached hereto as Attachment A, (individually, "Party", collectively, "Parties").

WHEREAS, the Parties, for the purpose of conducting business on behalf of the funding to support the Engineering Research Center for Revolutionizing Metallic Biomaterials (the ERC), an NSF Engineering Research Center operated primarily by NCAT and established under an award from the National Science Foundation (NSF), desire that proprietary information (as defined below) be disclosed to each other, and that such information be held in confidence and not used except as set forth below; and

WHEREAS the Parties, for the purpose of conducting business on behalf of the ERC agree that information disclosed hereunder by one of the Parties may be disclosed by a receiving Party to others who are not a Party ("Third Parties") for the purpose of conducting business on behalf of the ERC.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. "Proprietary Information" may include, for example and without limitation the whole or any portion or phase of any scientific or technical information, know-how, inventions, products, business operations, customer requirements, designs, sketches, photographs, drawings, specifications, reports, studies, findings, data, plans or other records, biological materials, and/or software, designs, processes, procedures, formulae, patterns, compilations, programs, devices, methods, techniques, or improvements, or any business information or plans, or financial information.
2. Information that a disclosing Party ("Disclosing Party") considers to be Proprietary Information shall be clearly identified when disclosed, and when in written form shall be appropriately marked. The disclosing Party will identify oral disclosures of Proprietary Information at the time of disclosure, followed by written confirmation to the receiving Party within thirty (30) days of disclosure. While not required to do so, it is intended that the Parties cooperate in the identification and marking of Proprietary Information after its disclosure hereunder in the event the disclosing Party fails to properly mark a disclosure of Proprietary Information and the receiving Party ("Receiving Party") is not disadvantaged by a late marking thereof.
3. The Receiving Party agrees to protect the Proprietary Information of the Disclosing Party according to a reasonable standard of care, and no less rigorously than the Receiving

Party protects its own Proprietary Information. Disclosure of Proprietary Information within the Receiving Party shall be restricted to those individuals employed by the Receiving Party who have a bona fide need-to-know. The Disclosing Party hereunder consents to the disclosure of its Proprietary Information by a Receiving Party to Third Parties that are actual or potential members of the ERC if the Third Party executes an agreement at least as restrictive as this Agreement and within the unexpired term of this Agreement. It is the intent that such disclosures by a Receiving Party hereunder will be made with discretion and only to advance the purposes of the ERC. A Party may designate its Proprietary Information as not subject to disclosure to Third Parties if such Proprietary Information is so designated at the time of disclosure.

4. For purposes of clarity, it is not the intent of the Parties to disclose Third Party Proprietary Information to other Third Parties without specific written permission by the Third Parties involved. Parties shall protect Third Party Proprietary Information using the same standard set forth in paragraph 3 herein.

5. This Agreement shall remain effective for three (3) years from the date of the last signing of this Agreement, provided however that the obligations in paragraphs 3 and 4 regarding protection and nondisclosure of Proprietary Information shall survive for a period of three (3) years following the termination or expiration of this Agreement.

6. Each Party reserves the right to terminate this Agreement upon ten (10) days written notice to the other Parties.

7. Upon the termination or expiration of this Agreement, The Disclosing Party may request in writing that Receiving Party (i) promptly discontinue using and return all Proprietary Information (including all copies, reproductions, digests, abstracts, analyses and notes) in its possession or control, including any related computer files, and (ii) promptly terminates any Third Party rights granted by the Receiving Party to the Proprietary Information..

8. A receiving Party shall not use the Proprietary Information disclosed by a disclosing Party under this Agreement, except for the following purposes: to evaluate the Proprietary Information in order to determine the receiving Party's interest in conducting business on behalf of ERC including engaging in or supporting research with respect to the Proprietary Information, or in licensing and other business collaborations.

9. The receiving Party shall be under no obligation with respect to any information:

- i) which is, at the time of disclosure, available to the general public, or becomes public knowledge after such disclosure, through no action or omission by or on behalf of the Receiving Party;
- ii) which was known to the Receiving Party (i) as evidenced by documentary or other physical evidence predating the date of this Agreement, or (ii) was developed independently by the receiving Party without reference to the Proprietary Information provided by the disclosing Party;

iii) which is disclosed to the receiving Party without restriction on disclosure by a third party who has the lawful right to disclose such information; or

iv) which is required to be disclosed to comply with applicable laws or government regulations, provided that prior written notice is given to the disclosing Party of such required disclosure and the receiving Party takes lawful actions to avoid and/or minimize the degree of such disclosure.

10. No license to a receiving Party under any trademark, patent or copyright is either granted or implied by the conveying of information hereunder. The Proprietary Information shall remain the exclusive property of the Disclosing Party and will be used by the Receiving Party exclusively for the purposes contemplated herein. None of the Proprietary Information which is exchanged hereunder shall constitute any representation, warranty, assurance, guarantee, or inducement to infringe trademarks, patents, copyrights or any right of privacy, or other rights of third persons.

11. While the amount of Proprietary Information to be disclosed is completely within the discretion of the disclosing Party, only disclosures of Proprietary Information made under this Agreement shall be subject to the terms of this Agreement.

12. Disclosing Parties will not disclose or provide to any employee or agent of receiving Parties any information subject to the licensing provisions of the International Traffic In Arms Regulations (ITAR) under 22 CFR §§ 120-130, or the Export Administration Regulations (EAR) under 15 CFR §§ 730- 774, without the prior written notice to and advance approval by an authorized representative of receiving Party.

13. Any claim or controversy arising out of or relating to this Agreement or the breach thereof, shall be adjudicated in a court of competent jurisdiction within the United States.

14. This Agreement contains the entire understanding of the parties and may not be amended except by written agreement executed by and between the parties hereto.

15. Sections 3, 4, 5, 7, 8, 9, 10, 13 and 14 shall survive termination of this Agreement.

16. If any provision of this Agreement is determined unlawful by a court having jurisdiction, all other provisions shall continue in full force and effect and remain binding on all parties.

17. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

[THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Parties hereto have caused this Agreement to be duly executed by their duly authorized officers as of the day and year set forth next to each signature.

NORTH CAROLINA AGRICULTURAL &
TECHNICAL STATE UNIVERISTY

By: _____

Name: Celestine Ntuen, Ph.D,

Title: Interim Vice Chancellor for Research &
Economic Development

Date: _____

ACKNOWLEDGED BY:

By: _____

Name: Jaganathan Sankar, Ph.D.

Title: Executive Director: ERC for Revolutionizing
Metallic Biomaterials

Date: _____

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UNIVERSITY OF PITTSBURGH -
Of the Commonwealth System of Higher
Education

By: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGED BY:

By: _____

Name: _____

Title: _____

Date: _____

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UNIVERSITY OF CINCINNATI

By: _____

Name: Charles Jake, IV, J.D.

Title: Assistant General Counsel

Date: _____

ACKNOWLEDGED BY:

By: _____

Name: Vesselin N. Shanov, Ph. D.

Title: Associate Professor

Date: _____

By: _____

Name: Mark J. Schulz, Ph.D.

Title: Professor

Date: _____