

**CONFIDENTIALITY AGREEMENT**

*between*

**HERIOT-WATT UNIVERSITY**

*and*

**[FULL COMPANY NAME]**

**N.B.** Heriot-Watt University will only be bound by this Agreement if it is signed by any one of:

D G Brown, Legal Services Manager, RES

Lynne Raventos, Intellectual Property & Contracts Adviser, RES

Jade Ross, Intellectual Property & Contracts Adviser, RES

G E McFadzean, Director, RES

## CONFIDENTIALITY AGREEMENT (the "Agreement")

between

**HERIOT-WATT UNIVERSITY**, a higher education institution incorporated by Royal Charter and Scottish Registered Charity (with Charity Number SC000278), having its principal address at Riccarton, Edinburgh EH14 4AS (hereinafter referred to as the "University")

and

**[FULL COMPANY NAME]** a company incorporated under the Companies Act (Registered No. ????) and having its registered office at **[full registered office address]** (hereinafter referred to as the "Company") (each a "Party" and together, the "Parties").

### WHEREAS

- (A) The University owns intellectual property and other rights in and to the **[details of relevant Patent or IP/know-how in the area of]** ("the Development");
- (B) The Company is engaged in research and development work in the field of [ ] ("the Field"); and
- (C) The University and the Company now wish to **[discuss and evaluate the possibility of working together in regards to the Development in the Field]** and for this purpose wish to disclose to each other certain information including but not limited to know-how, data, samples and other information in any form whatsoever relating to the Development and the Company's business which they regard as confidential (the "Confidential Information").

### THE PARTIES AGREE as follows:-

1. The disclosing party and the receiving party, as the case may be, in relation to the Confidential Information under this Agreement, are respectively referred to as "the Disclosing Party" and "the Receiving Party".
2. Each Party may use the Confidential Information disclosed to it pursuant to this Agreement for the purpose of evaluating the possibility of the University and the Company working together to exploit the Development in the Field ("the Purpose") and for no other purpose, commercial or otherwise, whatsoever.
3. The Receiving Party shall keep the Confidential Information confidential and shall exercise at least the same degree of care with it as it exercises with its own confidential information which it does not wish to be disclosed to third parties.

4.

4.1 The Receiving Party shall:-

- 4.1.1 subject to Clause 5 below, not disclose or divulge the Confidential Information or any part of it or extracts from it to any third party without the Disclosing Party's prior written consent;
- 4.1.2 disclose or divulge the Confidential Information only to those of its employees, agents and/or representatives who need to have access to it for the proper performance of their duties and then only to the extent actually required for the Purpose;
- 4.1.3 ensure that each of its employees, agents and/or representatives to whom the Confidential Information is disclosed is made fully aware of (before such disclosure is made) and complies with the restrictions placed upon the Receiving Party in this Agreement and the Receiving Party shall obtain a written undertaking to do so from each of its employees, agents and/or representatives wherever practicable;
- 4.1.4 clearly label, where possible, all Confidential Information received by it as being the Confidential Information and property of the Disclosing Party;
- 4.1.5 not copy or reproduce in any manner the Confidential Information or any part of it or take notes in any form of the Confidential Information without the prior written approval of the Disclosing Party;
- 4.1.6 not store the Confidential Information on a computer or electronic retrieval system accessible from outwith its usual place of business nor transmit it in any form by any means outwith its usual place of business without the prior written approval of the Disclosing Party; and
- 4.1.7 return the Confidential Information and all copies of it howsoever and in any form whatsoever stored to the Disclosing Party if so requested at any time by the Disclosing Party within thirty (30) days from the date of such request and delete the Confidential Information and any notes in any form of the Confidential Information taken by the Receiving Party from any computer or electronic retrieval system where such Confidential Information and notes are stored.

4.2 The Receiving Party shall be responsible to the Disclosing Party for any breach of the terms of this Agreement by any of the parties specified in Clause 4.1.2.

5. The restrictions contained in Clauses 2, 3 and 4 above do not apply to any part of the Confidential Information which the Receiving Party can show:-
  - 5.1 was already known by the Receiving Party prior to its disclosure under this Agreement, provided that the Receiving Party informs the Disclosing Party that it was so known as soon as the Receiving Party becomes aware of this fact; or
  - 5.2 at the time of its disclosure is, or subsequently becomes, public knowledge through no fault of the Receiving Party or any of its employees, agents and/or representatives to whom the Receiving Party has disclosed the Confidential Information; or
  - 5.3 is lawfully received by the Receiving Party from a third party without any breach of a confidential relationship; or
  - 5.4 is generated independently by the Receiving Party without using of any of the Confidential Information; or
  - 5.5 that it is required by law court order or a government agency to disclose the Confidential Information in which case the Receiving Party shall inform the Disclosing Party of such requirement as early as reasonably possible.
6. This Agreement does not grant to the Receiving Party any rights in the Confidential Information which shall remain at all times the exclusive property of the Disclosing Party nor does it oblige the Parties to enter into any subsequent negotiations or other agreement relating to exploitation of the Development.
7. This Agreement shall continue in force for a period of three [3] years from the date of execution hereof notwithstanding the return of all the Confidential Information by the Receiving Party to the Disclosing Party.
8. This Agreement shall be construed and governed in accordance with the laws of Scotland and the Parties hereby submit to the non-exclusive jurisdiction of the Scottish courts.

**IN WITNESS WHEREOF** these presents consisting of this and the four preceding pages have been executed by the Parties as follows:-

Subscribed for and on behalf of **HERIOT-WATT UNIVERSITY** by ,

Authorised Signatory, at Edinburgh on the day of \_\_\_\_\_ 2012 in the presence of this witness:-

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Witness \_\_\_\_\_

Full Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

Subscribed for and on behalf of \_\_\_\_\_ by

\_\_\_\_\_ Authorised Signatory, at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 2012 in the presence of this witness:-

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Witness \_\_\_\_\_

Full Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_