

NON DISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT (this “Agreement”) is made and entered into as of this _____ [ordinal number of day] day of _____ [name of month] _____ [identification of year] (“Effective Date”) between _____ [name of disclosing party] (“Company”) and _____ [name of recipient] (“Recipient”).

I. RECITALS

WHEREAS, Company possesses valuable information, data, and know-how relating to, among other things, _____ [summary description of the information to be disclosed] (as defined below, “Confidential Information”);

WHEREAS, Recipient is interested in receiving such Confidential Information to determine the desirability of entering into a business and research relationship with the Company; and

WHEREAS, Recipient acknowledges that the Company has invested substantial funds and effort in developing the Confidential Information.

II. AGREEMENT

NOW, THEREFORE, Company and Recipient agree as follows:

1. Purpose.

Company and Recipient wish to explore a business opportunity of mutual interest and in connection with this opportunity, Company may disclose to Recipient certain confidential technical and business information which Company desires Recipient to treat as confidential.

2. Confidential Information.

“Confidential Information” means any information (including any and all combinations of individual items of information) disclosed by the Company to the Recipient, including any information disclosed prior to the Effective Date, either directly or indirectly in writing, orally or by inspection of tangible objects, whether or not designated as “confidential” at the time of disclosure.

[OPTIONAL: Without limiting the foregoing, Confidential Information shall include the items set forth in the appendix attached hereto.]

Confidential Information may also include information of a third party that is in the Company's possession and is disclosed to the Recipient under this Agreement.

Confidential Information shall not, however, include any information which the Recipient can establish was publicly known and made generally available in the public domain prior to the time of disclosure to the Recipient by the Company.

If the Recipient becomes legally compelled to disclose any Confidential Information, other than pursuant to a confidentiality agreement, the Recipient will provide the Company prompt written notice of such disclosure and will assist Company in seeking a protective order or another appropriate remedy. If the Company waives the Recipient's compliance with this Agreement or fails to obtain a protective order or other appropriate remedies, the Recipient will furnish only that portion of the Confidential Information that is legally required to be disclosed.

3. Non-Use and Non-Disclosure & Non-Solicitation.

The Recipient agrees not to use any Confidential Information for any purpose except to evaluate and engage in discussions concerning a potential business relationship between the Recipient and the Company. The Recipient agrees not to disclose any Confidential Information to third parties or to employees of the Recipient, except to those employees who are required to have the information in order to evaluate or engage in discussions concerning the contemplated business relationship.

The Recipient shall not reverse engineer, disassemble or decompile any prototypes, software, or other tangible objects which embody the Company's Confidential Information and which are provided to the Recipient hereunder. The Recipient may not for a period of _____ **[INSERT PERIOD HERE IN MONTHS/YEARS]** following the date of this Agreement, directly or indirectly solicit, influence or entice, or attempt to solicit, influence or entice, any employee, consultant, customer, distributor, partner, joint venturer or supplier of the Company to cease his or her relationship with the other party or solicit, influence, entice or in any way divert any employee, consultant, customer, distributor, partner, joint venturer or supplier of the other party to do business directly with or in any way become associated with the Recipient or any competitor of the Company.

4. Maintenance of Confidentiality.

The Recipient agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information. Without limiting the foregoing, the Recipient shall take at least those measures that the Recipient takes to protect its own most highly confidential information and shall have its employees who have access to Confidential Information sign a nonuse and nondisclosure agreement in content substantially similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. The Recipient shall not make any copies of Confidential Information unless the same are previously approved in writing by the Company.

5. No Obligation.

Nothing herein shall obligate the Company or the Recipient to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity. Nothing in this Agreement shall be construed to restrict the Company's use or disclosure of its own Confidential Information.

6. No Warranty. ..

ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." THE COMPANY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE OR WITH RESPECT TO NON-INFRINGEMENT OR OTHER VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY OR OF THE RECIPIENT.

7. Return of Materials.

All documents and other tangible objects containing or representing Confidential Information and all copies thereof which are in the possession of the Recipient shall be and remain the property of the Company and shall be promptly returned to the Company upon the Company's request. In no event shall the Recipient have the right to use or exploit Residuals for any purpose after the return of Confidential Information to the Company. As used herein, "Residuals" shall mean ideas, information, and understandings retained in the memory of the Recipient or Recipient's employees as a result of their review, evaluation, and testing of the Confidential Information.

8. No License.

Nothing in this Agreement is intended to grant any rights to the Recipient under any patent, mask work right, or copyright of the Company, nor shall this Agreement grant the Recipient any rights in or to Confidential Information except as expressly set forth herein.

9. Term.

This Agreement shall survive until such time as all Confidential Information disclosed hereunder becomes publicly known and made generally available through no action or inaction of the Recipient.

10. Remedies.

The Recipient agrees that any violation or threatened violation of this Agreement will cause irreparable injury to the Company, entitling the Company to obtain injunctive relief in addition to all legal remedies.

11. Recipient Information.

The Company does not wish to receive any confidential information from the Recipient, and the Company assumes no obligation, either express or implied, with respect to any information disclosed by the Recipient. Any ideas, suggestions, guidance or other information disclosed by the Recipient related to _____

[ADD DESCRIPTION OF PRODUCT/TECHNOLOGY/COMPOUND/BIOLOGIC RELEVANT TO THE OPPORTUNITY] and any intellectual property rights relating to the foregoing shall be collectively deemed “Feedback.”

The Company shall own all Feedback, and the Recipient agrees to assign and hereby assigns to the Company all of its right, title, and interest in and to such Feedback. To the extent that the foregoing assignment is ineffective for whatever reason, the Recipient agrees to grant and hereby grants to the Company a nonexclusive, perpetual, irrevocable, royalty free, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform and otherwise exploit such Feedback without restriction.

12. Binding Agreement.

This Agreement shall bind and inure to the benefit of the parties and their respective successors and permitted assigns; except that the Recipient may not assign or otherwise transfer this Agreement, by operation of law or otherwise, (including by merger, reorganization, consolidation, change of control, or sale of all or substantially all of Recipient's assets to which this Agreement pertains), without the written consent of the Company.

Any assignment or transfer of this Agreement in violation of the foregoing shall be null and void. This Agreement will be interpreted and construed in accordance with the laws of the State of _____ **[NAME OF STATE]**, without regard to conflict of law principles. The Recipient hereby represents and warrants that the persons executing this Agreement on its behalf have express authority to do so, and, in so doing, to bind the Recipient thereto.

13. Entire Agreement.

This Agreement contains the entire agreement between the Parties with respect to the Opportunity and supersedes all prior written and oral agreements between the Parties regarding the business opportunity. No provision of this Agreement may be waived except by a writing executed by the Party against whom the waiver is to be effective. A party's failure to enforce any provision of this Agreement shall neither be construed as a waiver of the provision nor prevent the Party from enforcing any other provision of this Agreement. No provision of this Agreement may be amended or otherwise modified except by a writing signed by the parties to this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement below to indicate their acceptance of its terms. Notes This form is a basic unilateral nondisclosure agreement suitable for use when only one party in a proposed business relationship will be disclosing confidential information before the relationship. The form provides that the recipient will not use any of the confidential information to the disclosing party other than to evaluate and engage in discussions concerning a potential business relationship between the two parties and the recipient should agree, due to the limited nature of the use at that point, to strictly confine the dissemination of the confidential information within its organization.

COMPANY BY: _____
[NAME OF AUTHORIZED REPRESENTATIVE] [TITLE OF AUTHORIZED REPRESENTATIVE]

RECIPIENT BY: _____
[NAME OF AUTHORIZED REPRESENTATIVE] [TITLE OF AUTHORIZED REPRESENTATIVE]