

## NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (the "Agreement") is made as of (date) \_\_\_\_\_, by and between \_\_\_\_\_ ("Sender") and/or a to-be formed entity (collectively, the "Company"), and \_\_\_\_\_ ("Recipient").

1. **Purpose.** The Company and Recipient wish to explore a possible business opportunity of mutual interest (the "Relationship") in connection with which the Company has disclosed and/or may further disclose its Confidential Information (as defined below) to Recipient. This Agreement is intended to allow the parties to continue to discuss and evaluate the Relationship while protecting the Company's Confidential Information (including Confidential Information previously disclosed to Recipient) against unauthorized use or disclosure.

2. **Definition of Confidential Information.** "Confidential Information" means any oral, written, graphic or machine-readable information, technical data or know-how disclosed by the Company or obtained by the Recipient in connection with the proposed Relationship, including, but not limited to, that which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, regulatory information, medical reports, clinical data and analysis, reagents, cell lines, biological materials, chemical formulas, business plans, agreements with third parties, services, customers, marketing or finances of Discloser, some of which may be listed on Exhibit A. Notwithstanding any failure to so identify it, however, all of the Company's information shall be Confidential Information of the Company.

### 3. **Nondisclosure of Confidential Information**

a. Recipient agrees not to use any Confidential Information disclosed to it by the Company for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Relationship.

Recipient shall not disclose or permit disclosure of any Confidential Information of the Company to third parties or to employees of Recipient, other than directors, officers, employees, consultants and agents of Recipient who are required to have the information in order to carry out the discussions regarding the Relationship. Recipient has had or will have its directors, officers, employees, consultants and agents who have access to Confidential Information of the Company sign a nondisclosure agreement in content substantially similar to this Agreement and shall notify the Company in writing of the names of each person who has

signed such agreements promptly after such agreements are signed. Recipient agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Company in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that Recipient utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Recipient further agrees to notify the Company in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of the Company's Confidential Information which may come to Recipient's attention.

b. Exceptions. Notwithstanding the above, Recipient shall not have liability to the Company with regard to any Confidential Information which Recipient can prove:

i. was in the public domain at the time it was disclosed by the Company or has entered the public domain through no fault of Recipient;

ii. was known to Recipient, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;

iii. is disclosed with the prior written approval of the Company;

iv. becomes known to Recipient, without restriction, from a source other than the Company without breach of this Agreement by Recipient and otherwise not in violation of the Company's rights; or

v. is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that Recipient shall provide prompt notice of such court order or requirement to the Company to enable the Company to seek a protective order or otherwise prevent or restrict such disclosure.

**4. No Duplication; Return of Materials.** Recipient agrees, except as otherwise expressly authorized by the Company, not to make any copies or duplicates of any Confidential Information. Any materials or documents that have been furnished by the Company to Recipient in connection with the Relationship shall be promptly returned by Recipient, accompanied by all copies of such documentation, within

ten (10) days after (a) the Relationship has been rejected or concluded or (b) the written request of the Company.

**5. No Rights Granted.** Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of the Company, nor shall this Agreement grant Recipient any rights in or to the Company's Confidential Information other than the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the Relationship. Recipient understands that nothing in this Agreement (a) requires the disclosure of any Confidential Information, which shall be disclosed, if at all, solely at the Company's option, or (b) requires the Company to proceed with the Relationship or any transaction in connection with which the Confidential Information may be disclosed.

**6. Term.** The foregoing commitments of each party shall survive any termination of the Relationship between the parties, and shall continue for a period terminating on the later to occur of the date (a) five (5) years following the date of this Agreement or (b) three (3) years from the date on which Confidential Information is last disclosed under this Agreement.

**7. Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that the Company's Confidential Information may not be assigned without the prior written consent of the Company. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

**8. Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

**9. Independent Contractors.** The Company and Recipient are independent contractors, and nothing contained in this Agreement shall be construed to constitute the Company and Recipient as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

10. **Governing Law; Jurisdiction.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of New Jersey, without giving effect to principles of conflicts of law. Each of the parties hereto consents to the exclusive jurisdiction and venue of the courts of Bergen County, New Jersey.

11. **Remedies; Indemnification.** The Company and Recipient each agree that the obligations of Recipient set forth in this Agreement are necessary and reasonable in order to protect the Company and its business. The Company and Recipient each expressly agree that due to the unique nature of the Company's Confidential Information, monetary damages would be inadequate to compensate the Company for any breach by Recipient of its covenants and agreements set forth in this Agreement. Accordingly, the Company and Recipient each agree and acknowledge that any such violation or threatened violation shall cause irreparable injury to the Company and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Company shall be entitled (a) to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by Recipient, without the necessity of proving actual damages, and (b) to be indemnified by Recipient from any loss or harm, including but not limited to attorney's fees, arising out of or in connection with any breach or enforcement of Recipient's obligations under this Agreement or the unauthorized use or disclosure of the Company's Confidential Information.

12. **Amendment and Waiver.** Any term of this Agreement may be amended with the written consent of the Company and Recipient. Any amendment or waiver effected in accordance with this Section shall be binding upon the parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

13. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

14. **Entire Agreement.** This Agreement is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

15. **No Modification.** Recipient agrees that it shall not modify, reverse engineer, decompile, create other works from or disassemble any software programs contained in the Confidential Information of the Company unless permitted in writing by Company.

16. **Restrictions on Export.** Recipient shall not export, directly or indirectly, any technical data acquired from Company pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have executed this Nondisclosure Agreement as of the date first above written.

**THE COMPANY:**

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

AGREED TO AND ACCEPTED:

**RECIPIENT:**

\_\_\_\_\_:

\_\_\_\_\_  
(Signature)

Email: \_\_\_\_\_

SIGNATURE PAGE TO NDA