

## NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made effective this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between The Board of Governors of the Colorado State University System, acting by and through Colorado State University, for the use and benefit of \_\_\_\_\_ (hereinafter called "University" or "CSU"), and \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, with its principal place of business located at: \_\_\_\_\_, hereinafter called "Company."

**NOW, THEREFORE** in consideration of the mutual promises and conditions contained in this Agreement, the parties, and each of them, do hereby further covenant and agree as follows:

### TERMS

#### 1.0 Confidential Information.

1.1 "Confidential Information," as used in this Agreement, shall include any information which: (a) belongs to the party disclosing the information; (b) is of a scientific, technical, clinical, business, financial, marketing, corporate, specialized or other nature; (c) has value to the disclosing party; and (d) has generally been considered and treated by the disclosing party as confidential prior to the time of disclosure and is clearly identified as "Confidential" or "Proprietary" when disclosed to the other party

1.2 Confidential Information shall not include any information which: (a) is disclosed orally or visually, unless the same is identified as Confidential Information at the time of the disclosure and identified in writing to the receiving party either at the time of disclosure or otherwise within 30 days of such oral or visual disclosure; (b) at the time of disclosure is in the public domain (whether or not any of the parties knows that the information is in the public domain); (c) after disclosure is published or otherwise becomes part of the public domain in any manner other than by violation of this Agreement; (d) was in the possession of the receiving party at the time of disclosure by the disclosing party as evidenced by competent written documents; or (e) was independently developed by the receiving party as evidenced by competent written records.

#### 2.0 Obligations of the Party to whom Confidential Information is Disclosed.

2.1 The receiving party shall not disclose to third parties any of the Confidential Information disclosed under this Agreement except:

Confidential Information may be disclosed as required by law. As used in this subsection, "required by law" shall include, but not be limited to, disclosures compelled by lawful subpoena, government regulation, court order, or demand pursuant to the Colorado Public (Open) Records Act (Colo. Rev. Stat. sec. 24-72-204, as amended), or any other lawful process; provided, however, that to the extent reasonably practicable under the circumstances, immediately upon receipt of any such subpoena, order or demand, the receiving party shall notify the disclosing party of the impending disclosure of records to afford the disclosing party an opportunity to avail itself of legal process to prevent the disclosure or to seek confidential treatment of the disclosure. This section shall not be construed to require Colorado State University, its governing board, or the State of Colorado, nor any agent, employee or attorney in the service of any of them, to pursue any claim, defense, cause of action, or legal process or proceeding on behalf of Company.

2.2 The Confidential Information may be made available only to those persons within or agents of the University or Company, as the case may be, who are necessary for collaboration or evaluation thereof, and when such information is disclosed or transmitted will inform each employee or agent who receives such Confidential Information of the confidential nature of such information and of the obligations specified in this Agreement.

2.3 The receiving party shall only use Confidential Information of the disclosing party to evaluate the potential collaborative efforts between the parties.

### 3.0 Effect of Agreement.

3.1 This disclosure and Agreement shall in no way be considered as a license under any intellectual property rights, including patents, trade secrets, trademarks or copyrights. The Confidential Information, including any documents, drawings, sketches, designs, materials or samples supplied hereunder, shall remain the property of the party disclosing or supplying the same and no rights are granted to the other party in the same, whether patented, trademarked, copyrighted, or not, except the limited right to use the Confidential Information as set forth above. Nothing herein shall require a party to disclose any Confidential Information to the other party.

3.2 Neither party has made any representation or warranty to the other party as to the accuracy or completeness of the Confidential Information.

### 4.0 Publication; Advertising or Promotion.

4.1 The University, as a state institution of higher education, engages only in research that is compatible, consistent, and beneficial to its academic role and mission. Therefore, significant results of research activities must be reasonably available for publication. The parties acknowledge that the University shall have the right to publish data, information and results relating to the same subject matter as the Confidential Information. The University agrees, however, that during the term of this Agreement and for three (3) years thereafter, the Company shall have 45 days to review and comment on any such proposed publication. The University agrees that any Confidential Information supplied to it by the Company during the course of research performed by the University will not be included in any published material without prior approval by the Company.

4.2 Neither party will include the name of the other party in any advertising, sales promotion, or other publicity matter without the prior written approval of that other party. In the case of the University, prior written approval is required from the University Vice President for Research. In the case of the Company, prior written approval is required from an authorized representative of the Company.

5.0 Waiver. No delay or failure to enforce any provision of this Agreement shall constitute a waiver or limitation of rights enforceable under this Agreement.

### 6.0 Term.

6.1 The term of this Agreement shall be one (1) year from the date first written above unless sooner terminated as provided herein or extended by written agreement of the parties. Any Confidential Information disclosed during the term of this Agreement (including any extensions hereof) shall be subject to this Agreement for a period of three (3) years from the date of disclosure irrespective of any termination of this Agreement.

6.2 Upon expiration or earlier termination of this Agreement, each party agrees to deliver or destroy, at the disclosing party's sole option, all Confidential Information of the disclosing party; provided, however, the receiving party may retain one copy of all such Confidential Information for the sole purpose of complying with the obligations set forth in this Agreement.

7.0 Termination. Any party may terminate this Agreement by giving sixty (60) days' written notice in accordance with the Notice provisions of this Agreement. Termination of this Agreement for any reason shall not relieve a party from its obligations incurred prior to the termination date.

8.0 Default. A party will be considered in default of its obligations under this Agreement if such party shall fail to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement. If such failure continues after the non-defaulting party gives the defaulting party written notice thereof, the defaulting party, may terminate this Agreement immediately and/or may seek such other and further relief as may be provided by law, including injunction or restraining order as required to prevent unauthorized disclosures of Confidential Information.

9.0 Notices. All notices and other correspondence related to this Agreement shall be in writing and shall be delivered by certified mail, return receipt, or by facsimile transmission if a fax number is shown below and notice of receipt is provided, addressed as follows:

If to University:

(Name/Title) \_\_\_\_\_

(Dept) \_\_\_\_\_

Colorado State University

Fort Collins, CO 80523-\_\_\_\_ (Dept. No.)

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

If to Company:

(Name/Title) \_\_\_\_\_

(Company) \_\_\_\_\_

(Address) \_\_\_\_\_

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

10.0 Legal Authority. Each party to this Agreement warrants that it possesses the legal authority to enter into this agreement and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this agreement and to bind it to its terms. The person(s) executing this agreement on behalf of a party warrant(s) that such person(s) have full authorization to execute this agreement. This Agreement shall not be binding upon Colorado State University, its governing board or the State of Colorado unless signed by the University Vice-President for Research and Information Technology or his/her authorized delegate.

11.0 Entire Agreement. This Agreement constitutes the entire agreement between the parties, and supersedes any previous contracts, understandings, or agreements of the parties, whether verbal or written, concerning the subject matter of this Agreement.

12.0 Amendment. No amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the parties.

13.0 Severability. In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

14.0 Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and construed under the laws of the State of Colorado. Any claim arising under this Agreement shall be filed and tried in the District Court, City and County of Denver, State of Colorado.

15.0 Assignment. This Agreement shall not be assigned without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed, provided however, such consent shall not be required in the case of a sale or transfer to a third party of all or substantially all of a Party's business. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding on the successors and permitted assigns of the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year written above.

**The Board of Governors of the Colorado State University System, acting by and through Colorado State University:**

Vice-President for Research

By: \_\_\_\_\_

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

**Principal Investigator:**

By: \_\_\_\_\_

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

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

**Company:**

By: \_\_\_\_\_

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

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

**APPROVED:**

By: \_\_\_\_\_

Dean or Department Head