

THE UNIVERSITY OF TEXAS
M. D. ANDERSON CANCER CENTER
1515 Holcombe Boulevard, Box 510
Houston, Texas 77030

ONE-WAY CONFIDENTIAL DISCLOSURE AGREEMENT

Recipient:

Effective Date:

Subject Matter:

This Agreement is made as of the Effective Date by and between The University of Texas M. D. Anderson Cancer Center (“UTMDACC”) and the above named Recipient. UTMDACC and Recipient are collectively referred to as the “Parties.”

WHEREAS, the Parties desire to engage in general discussions to determine the desirability of the Recipient acquiring rights in, and to, the above referenced Subject Matter (the “Business Opportunity”); and,

WHEREAS, pursuant to any discussions of the Business Opportunity, the Recipient shall have access to confidential and proprietary information of UTMDACC;

NOW, THEREFORE, as a material inducement to the disclosure of such confidential and proprietary information and in consideration of the premises and the mutual covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, UTMDACC and Recipient agree as follows:

1. Confidential Information. As used in this Agreement, the term “Confidential Information” means any and all data and information relating to the Business Opportunity that:
 - (a) is delivered to Recipient by UTMDACC;
 - (b) has value to UTMDACC; and
 - (c) is not generally known by third parties.

Confidential Information includes, but is not limited to, any information that is disclosed to Recipient during any meeting with UTMDACC or during any discussions regarding the Business Opportunity and information relating to UTMDACC’s drawings, schematics, samples, devices, biological materials, applications for intellectual property protection, services, processes, procedures, trade secrets, intellectual property, pricing, costs, business or strategic plans,

and marketing or advertising strategies. Any orally disclosed Confidential Information must be summarized in writing, identified as "confidential" and delivered to Recipient. Confidential Information shall not include:

- (a) information which at the time of disclosure is in the public domain;
- (b) information which, after disclosure, becomes part of the public domain by publication or otherwise except by breach of this Agreement;
- (c) information which reasonable proof can establish was in the Recipient's possession prior to the time of disclosure by UTMDACC and was not acquired directly or indirectly from UTMDACC;
- (d) information which is independently developed by Recipient with no reliance on the Confidential Information as shown by contemporaneous written record; and
- (e) information that is required to be disclosed by operation of law or court order (after providing UTMDACC with reasonable notice of such requirement to divulge and with an opportunity to obtain a protective order).

2. No Disclosure of Confidential Information. In consideration of the disclosure of the Confidential Information, Recipient represents and warrants that it has not disclosed any Confidential Information to any third party, and Recipient agrees that the Confidential Information shall be kept strictly confidential and shall not be disclosed to anyone in any manner whatsoever, except as otherwise set forth in this Agreement, or with the written consent of UTMDACC.
3. Care of Confidential Information. In handling the Confidential Information, Recipient covenants and agrees (a) to use the same care and discretion as it employs with its own proprietary information (but in no event less than reasonable care and discretion) to prevent disclosure, publication, or dissemination of the Confidential Information, and (b) not to use, duplicate, reproduce, copy, distribute, disclose or otherwise disseminate the Confidential Information, except as permitted pursuant to this Agreement.
4. No Rights to Confidential Information. The furnishing of Confidential Information to Recipient by UTMDACC hereunder shall not serve to grant or convey any right or license (a) to use any invention, trade secret, patent, or other intellectual property of UTMDACC; or (b) to practice any invention or patents relating to the Confidential Information. Further, nothing herein shall give Recipient the right to file patent applications on or related to the Confidential Information without UTMDACC's express written consent. This Agreement shall not place UTMDACC under any obligation to enter into any further agreement with Recipient.

5. No Business Use. Recipient agrees not to make any use whatsoever of the Confidential Information in the conduct or operation of its business and to restrict the review and use of Confidential Information solely for the purposes of discussion of the Business Opportunity.
6. Disclosure of Confidential Information. Disclosure of Confidential Information to persons or entities, other than employees of the Recipient, may be made by Recipient only with the written consent of UTMDACC and upon signature of the form in Exhibit A by such third person or entity. Recipient agrees that it shall be responsible for ensuring that all persons to whom Confidential Information is disclosed under this Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized person or in any unauthorized manner. Recipient also agrees that it shall be responsible for ensuring that all persons to whom the Confidential Information is disclosed under this Agreement return such information to UTMDACC or destroy it in accordance with the terms of this Agreement.
7. Discussions are Confidential. Recipient agrees that neither Recipient nor its employees and representatives will disclose to any person either the fact that discussions regarding the Business Opportunity are taking place nor any terms, conditions, or other facts with respect to any transaction that may be proposed or undertaken, including the status thereof.
8. Return of Confidential Information. Upon completion of the discussions of the Business Opportunity or within ten (10) working days of a written request by UTMDACC, the Recipient must return (a) all Confidential Information and copies thereof in its possession and in the possession of all persons or entities to whom it was disclosed, and (b) all materials generated by the Recipient based on the Confidential Information and copies thereof in its possession and in the possession of all person or entities to whom it was disclosed, including but not limited to, abstracts, notes, memoranda, or other documents. Recipient's legal department is allowed to keep one copy of the Confidential Information to verify compliance with this Agreement.
9. Injunctive Relief. Breach of this Agreement will entitle UTMDACC to immediate injunctive relief as well as any other remedies available at law or in equity. The Parties acknowledge that the Confidential Information is valuable and unique and that disclosure in breach of this Agreement may result in irreparable injury to UTMDACC.
10. Term of the Agreement. Recipient's obligations of confidentiality under this Agreement shall remain in effect for a period of three (3) years following the Effective Date (the "Term"), unless such period is extended by the Parties in writing.

11. Governing Law; Jurisdiction; and Venue. This Agreement shall be construed and enforced in accordance with the laws of the United States and of the State of Texas without regard to its conflict of law provisions. The Texas state courts of Harris County, Texas (or, if there is exclusive federal jurisdiction, the United States District Court for the Southern District of Texas) shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement, and Recipient hereby consents to jurisdiction of such courts.
12. Full Agreement of the Parties. This represents the entire agreement between the Parties with respect to the disclosure and use of Confidential Information and it supersedes and cancels all prior communications, understandings, and agreements between the Parties whether express, oral or implied. No right or obligation other than those recited herein are to be implied from this Agreement. No license is hereby promised or granted to Recipient, directly or indirectly, under any patent, copyright, trade secret, or other proprietary right of UTMDACC.
13. Use of University's Name. Recipient shall not use the name of UTMDACC or its employees without UTMDACC's express written consent secured through:

The University of Texas
M. D. Anderson Cancer Center
Legal Services, Unit 537
P.O. Box 301439
Houston, TX 77230-1439
ATTENTION: Natalie Wright
Email: nwright@mdanderson.org

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

THE UNIVERSITY OF TEXAS
M. D. ANDERSON CANCER CENTER

By _____
Christopher C. Capelli, M.D.
Vice President,
Technology Transfer

Date: _____

RECIPIENT

By _____
Name
Title

Date: _____

I acknowledge that I have read this Agreement in its entirety and that I shall use reasonable efforts to uphold my individual obligations and responsibilities set forth herein:

Signature: _____
Enter Principal Investigator Name

Date: _____

EXHIBIT A

By execution of this document, as evidenced by my signature below, I, the undersigned, acknowledge and agree to the following:

1. I have read and understand the Confidentiality Agreement between The University of Texas M. D. Anderson Cancer Center ("UTMDACC") and the Recipient, to which this form is an exhibit and I agree to abide by the terms of this Agreement.
2. I understand that I will acquire Confidential Information from UTMDACC as a third party to which Recipient will disclose Confidential Information with the written consent of UTMDACC.
3. I further understand that disclosing such Confidential Information to, or by discussing such Confidential Information with, any person not specifically authorized to receive such information could potentially violate UTMDACC's right to have such information kept confidential, and thereby I could incur both personal liability and liability on the part of the Recipient for damages that result from such unauthorized disclosure.
4. Accordingly, by executing this document, I agree to:
 - (a) Maintain the confidentiality of any and all information that I acquire as a result of my participation in evaluating the Business Opportunity; and
 - (b) Not participate in any discussions concerning (i) the Business Opportunity, or (ii) any information that I acquire from this business process, with anyone other than those persons authorized to discuss such matters with me, as defined by this Confidentiality Agreement.

Signature

Date

Printed Name