

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

TWO-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 the Recipient are individually referred to as a "Party," and collectively as the "Parties."

WHEREAS, the Parties are interested in examining and evaluating the scientific promise, business potential, and/or commercial market relative to the Subject Matter, and to determine the desirability of fostering research, and/or acquiring rights in, and to, such information, including an interest in any patent rights now existing, or hereafter obtained (the "Business Opportunity"); and,

WHEREAS, pursuant to any discussions of the Business Opportunity, the Parties shall have access to the confidential and proprietary information of the other Party;

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 from one Party (the "disclosing party") to the other party (the "receiving party");
 - (b) has value to the disclosing party; and
 - (c) is not generally known by the competitors of the disclosing party.

Confidential Information includes, but is not limited to, information, whether written or oral, that is disclosed during any meeting or during any discussions regarding the Business Opportunity. Any orally disclosed Confidential Information must be summarized in writing, identified as "confidential" and delivered to receiving party.

Confidential Information shall not include:

- (a) information which, at the time of disclosure, is in the public domain or which, after disclosure, becomes part of the public domain through no fault of the receiving party;
 - (b) information which the receiving party can show was in its possession at the time of disclosure and which was not acquired, directly or indirectly, from the disclosing party;
 - (c) information which was lawfully obtained or received from a third party, other than the disclosing party, having the right to transmit same;
 - (d) information which is disclosed by the disclosing party to a third party without a duty of confidentiality on the third party;
 - (e) information which is independently developed by the receiving party without any use of Confidential Information received from the disclosing party;
 - (f) information which is disclosed under operation of law, including but not limited to the Texas Public Information Act, Texas Government Code, Chapter 552 or court order (after the receiving party has provided the disclosing party reasonable notice of such potential disclosure and afforded the disclosing party an opportunity to obtain a protective order); or
 - (g) information which is disclosed by the receiving party with the disclosing party's prior written approval.
2. No Disclosure of Confidential Information. In consideration of the disclosure of the Confidential Information, the Parties represent and warrant that they have not disclosed any Confidential Information of the other Party to any third party, and the Parties agree that the Confidential Information of the other Party shall be kept strictly confidential and shall not be disclosed to anyone in any manner whatsoever, except as otherwise set forth in this Agreement.
3. Care of Confidential Information. In handling the Confidential Information of the disclosing party, the receiving party must: (a) 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 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 hereunder shall not serve to grant or convey any right or license to the receiving party (a) to use any invention, trade secret, patent, or other intellectual property of the disclosing party or (b) to practice any invention or patents relating to the Confidential Information of the disclosing party. Further, nothing herein shall give the receiving party the right to file patent applications on or related to the Confidential Information of the disclosing party without the disclosing party's express written consent. This Agreement shall not place either Party under any obligation to enter into any further agreement with the other Party.
5. No Business Use. The receiving party agrees not to make any use whatsoever of the Confidential Information of the disclosing party in the conduct or operation of its business and to restrict the review and use of Confidential Information of the disclosing party solely for the purposes of discussion of the Business Opportunity.
6. Disclosure of Confidential Information. Disclosures of Confidential Information to persons or entities, other than employees of the receiving party, may be made by the receiving party only with the written consent of the disclosing party and upon signature of the form in Exhibit A by such third person or entity. The receiving party 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. The receiving party 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 the disclosing party or destroy it in accordance with the terms of this Agreement.
7. Discussions are Confidential. The Parties agree not to 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 the disclosing party, the receiving party must return (a) all Confidential Information of the disclosing party 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 receiving party based on the Confidential Information of the disclosing party 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. The receiving party may provide a certificate

of destruction in lieu of return of biological or chemical materials that constitute Confidential Information of the disclosing party, and may keep one copy of Confidential Information within their legal department to verify compliance with this Agreement.

9. Injunctive Relief. Breach of this Agreement will entitle either party 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 the disclosing party.
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. Warranty. Each Party represents and warrants that to its present knowledge it has the full right and authority to disclose its Confidential Information to the other Party.
13. 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 is to be implied from this Agreement. No license is hereby promised or granted to the Recipient, directly or indirectly, under any patent, copyright, trade secret, or other proprietary right of UTMDACC.
14. Use of UTMDACC'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: _____

Enter Company Name

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 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 as a third party to which the receiving party will disclose Confidential Information with the written consent of the disclosing party.
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 the disclosing party's right to have such information kept confidential, and thereby I could incur both personal liability and liability on the part of the receiving party 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

Printed Name

Date