

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Non-Disclosure and Confidentiality Agreement (this “Agreement”), dated as of [redacted], 202[redacted] (the “Effective Date”), is entered into by and between The University of Texas M. D. Anderson Cancer Center, an institution of higher education and an agency of the State of Texas (“MD Anderson”), located at 1515 Holcombe Boulevard, Houston, Texas 77030, and [Enter Counterparty’s Name] (“Counterparty”), a [Enter State] [Enter type of entity], located at [Enter Counterparty’s Address]. MD Anderson and Counterparty may be collectively referred to herein as the “Parties” and sometimes individually as a “Party.”

1. In connection with the exploration of a potential research and/or business relationship (the “Purpose”), a Party may provide (the “Disclosing Party”) to the other party (the “Receiving Party”) certain information which is non-public, confidential, and/or proprietary in nature (“Confidential Information”). Receiving Party shall use the Confidential Information solely for the Purpose and shall disclose the Confidential Information only to Receiving Party’s Representatives who have been informed of this Agreement, who need to know such Confidential Information to assist the Receiving Party in evaluating the Purpose, and who are subject to obligations of confidentiality and non-use at least as strict as the Receiving Party’s obligations under this Agreement. Receiving Party shall be liable for Receiving Party’s Representatives’ compliance with this Agreement and will safeguard the Confidential Information from unauthorized use, access, and disclosure using no less than a commercially reasonable degree of care.
2. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party’s breach of this Agreement; (b) is obtained by Receiving Party or its Representatives (as defined herein) on a non-confidential basis from a third-party that, to Receiving Party’s actual knowledge, was not legally or contractually restricted from disclosing such information; (c) was available to Receiving Party or its Representatives prior to its disclosure by the Disclosing Party or its Representatives; or (d) was or is independently developed by Receiving Party or its Representatives without the use of any Confidential Information. Confidential Information also includes (x) the fact that the Parties are in discussions regarding the Purpose and that Confidential Information has been disclosed; and (y) any terms, conditions, or arrangements discussed, except as required by applicable law or regulation. As used herein, the term “Representatives,” with respect to either Party, shall include the directors, officers, affiliates, employees, agents, attorneys, accountants, and consultants of that Party.
3. If Receiving Party or any of its Representatives is requested or required by applicable law or a valid legal order to disclose any Confidential Information, Receiving Party shall, to the extent practicable, provide Disclosing Party with reasonable notice of such request or requirement, as applicable, so that Disclosing Party may seek, at Disclosing Party’s expense, an appropriate protective order and/or waive Receiving Party’s compliance with the provisions of this Agreement. If Receiving Party remains legally compelled to make such disclosure, Receiving Party shall only disclose that portion of the Confidential Information that Receiving Party is compelled to disclose. Any Confidential Information disclosed by Receiving Party pursuant to this Section shall remain Confidential Information for all other purposes under this Agreement.
4. Upon Disclosing Party’s request and/or at the expiration or termination of this Agreement, Receiving Party will destroy or deliver to Disclosing Party all copies of any Confidential Information received from Disclosing Party. Notwithstanding the foregoing, (a) Receiving Party and its Representatives shall be permitted to retain one (1) copy of any Confidential Information for legal or regulatory compliance purposes, and (b) Receiving Party and its Representatives shall not be required to alter or destroy backup tapes or other media containing Confidential Information made in the ordinary course of business pursuant to automated archival processes; provided, however, that any Confidential Information retained shall be kept confidential subject to the confidentiality obligations set forth herein.
5. This Agreement imposes no obligation on either Party to disclose any Confidential Information or to negotiate for, enter into any definitive agreements regarding, or otherwise pursue the Purpose. Unless and until a written, definitive agreement concerning the Purpose has been mutually negotiated and executed by the Parties, neither of the Parties nor any of their respective Representatives shall have any liability or obligation (except as to the confidentiality and other obligations expressly set forth in this Agreement) to the other Party or its Representatives with respect to the Purpose. Counterparty understands and acknowledges that if MD Anderson decides to procure any product or service from Counterparty, MD Anderson shall at all times follow MD Anderson’s required procurement rules and obligations.
6. The Disclosing Party’s Confidential Information shall remain the property of the Disclosing Party, and nothing in this Agreement grants the Receiving Party or its Representatives any license, assignment, right, title, or interest to any invention, work of authorship, product, material, patent or other intellectual property, or other subject matter pertaining to the Disclosing Party’s Confidential Information. Nothing herein grants or provides the Receiving Party the right to file patent applications on or related to the Disclosing Party’s Confidential Information. Receiving Party understands that Disclosing

Party is making no representation of any kind as to the accuracy or completeness of Confidential Information and agrees to rely solely on representations and warranties relating to such Confidential Information as may be made in a definitive agreement relating to the Purpose, if any.

7. The rights and obligations of the Parties under this Agreement expire upon the earliest to occur of (a) twelve (12) months after the Effective Date, (b) the date the Parties enter into a written, definitive agreement regarding the Purpose, or (c) the date the Confidential Information is no longer confidential, as defined by Texas law.

8. Receiving Party acknowledges and agrees that any breach of this Agreement may cause injury to Disclosing Party for which money damages may be an inadequate remedy and that, in addition to remedies at law, Disclosing Party is entitled to seek equitable relief as a remedy for any such breach.

9. This Agreement and all matters relating hereto are governed by, and construed in accordance with, the laws of the State of Texas, without regard to its conflicts of law provisions. Subject to the sovereign immunity of the State of Texas, any lawsuit brought against MD Anderson under this Agreement may only be filed in the State District Court in Harris County, Texas.

10. MD Anderson is an agency of the State of Texas and under the Constitution and laws of the State of Texas possesses certain rights and privileges, is subject to certain limitations and restrictions, and only has such authority as is granted to it under the Constitution and laws of the State of Texas. Notwithstanding any provision hereof, nothing in this Agreement is intended to be, nor will it be construed to be, a waiver of the sovereign immunity of the State of Texas or a prospective waiver or restriction of any of the rights, remedies, claims, and privileges of the State of Texas.

11. All notices must be in writing and addressed to the relevant Party: if to MD Anderson, The University of Texas M. D. Anderson Cancer Center, Attn: Chief Legal Officer, 7007 Bertner Avenue, Houston, Texas 77030; and if to the other Party, at its address set forth in the preamble. All notices must be personally delivered or sent prepaid by nationally recognized courier or certified or registered mail, return receipt requested, and are effective (a) upon hand delivery, (b) on the date of delivery by a nationally recognized overnight courier service, or (c) on the third (3rd) day following the date of deposit into the mail.

12. Notwithstanding any other provision of this Agreement, it is understood that the Parties are subject to, and shall comply with, United States laws, regulations, and governmental requirements and restrictions controlling the export of technology, technical data, computer software, laboratory prototypes, and other commodities, information and items, including without limitation, the Arms Export Control Act, the Export Administration Act of 1979, relevant executive orders, and United States Treasury Department embargo and sanctions regulations, all as amended from time to time ("Restrictions"), and that the Parties' obligations hereunder are contingent on compliance with applicable Restrictions.

13. English is the official language of this Agreement. Accordingly, all notices, documents and communications relating to this Agreement and all dispute resolution proceedings arising under this Agreement must be, in their entirety, in English.

14. This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed an original of this Agreement, but all of which together will constitute one and the same document. This Agreement also may be evidenced by facsimile signature or by e-mail delivery of a ".pdf" format data file, and a facsimile or ".pdf" signature page will be deemed to be an original signature, or may be signed by electronic means, including, but not limited to, DocuSign, and shall be valid and binding on the Parties.

15. This Agreement constitutes the entire agreement of the Parties with respect to its subject matter, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, whether written or oral, with respect to such subject matter. This Agreement may only be amended, modified, waived, or supplemented by an agreement in writing signed by both Parties.

[Remainder of page intentionally left blank; Signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**THE UNIVERSITY OF TEXAS
M. D. ANDERSON CANCER CENTER:**

(INSERT COUNTERPARTY'S NAME):

By: _____

By: _____

Name: _____

Name: _____

Its: _____

Its: _____

READ AND APPROVED:

By: _____

Name: _____

Its: _____

Department Name: _____

Project Name: _____