

Nondisclosure Agreement

This Nondisclosure Agreement (“Agreement”) is between the Texas A&M Health Science Center (“TAMHSC), a health-related institution under the administration of Texas A&M University, and [Recipient] (the “Recipient”) and is effective [date] (the “Effective Date”). The parties [wish to explore an opportunity of mutual interest [or other purpose]] (the “Purpose”) and anticipate TAMHSC providing confidential information to the Recipient in the course of doing so. The parties therefore agree as follows:

- 1. Definitions.** For purposes of this Agreement, the following definitions apply:
 - (a) “Confidential Information” means:
 - (1) Information, other than Excluded Information, disclosed by TAMHSC to the Recipient during the Disclosure Period, which TAMHSC has designated as confidential or which by its nature the Recipient should reasonably know is confidential; and
 - (2) Derived Information.
 - (b) “Derived Information” means all information (including notes, analyses, compilations, and summaries) that is in writing or embodied in any electronic medium and that the Recipient or any of its Representatives derive, in whole or in part, from information described in Section 1(a)(1).
 - (c) “Disclosure Period” means either [time period] from the Effective Date or until either party gives written notice of termination of the Disclosure Period, whichever occurs first.
 - (d) “Excluded Information” means information which:
 - (1) Is or becomes publicly known or available other than as a result of a breach of this Agreement by the Recipient;
 - (2) Was already in the possession of the Recipient or any of its Representatives as the result of disclosure by an individual or entity that was not then obligated to keep that information confidential;
 - (3) TAMHSC had disclosed or discloses to an individual or entity without confidentiality restrictions; or
 - (4) The Recipient had developed or develops independently before or after TAMHSC discloses equivalent information to the Recipient.
 - (e) “Representative” means any of the Recipient’s directors, officers, employees, agents, consultants, advisors, or other representatives.
- 2. Maintaining Confidentiality.** During the Disclosure Period and for [time period] thereafter, the Recipient may not:
 - (a) Disclose Confidential Information except as permitted under this Agreement; or
 - (b) Use Confidential Information except for the Purpose.
- 3. Permitted Disclosure.** The Recipient may disclose Confidential Information only to its Representatives having a need to know the Confidential Information to fulfill the Purpose, provided that the Recipient remains responsible for its Representatives’ compliance with the Recipient’s obligations under this Agreement.
- 4. Standard of Care.** The Recipient shall handle Confidential Information with the same care that the Recipient uses to protect its own information of comparable sensitivity, but not less than reasonable care.

- 5. Notification of Unauthorized Activities.** The Recipient shall promptly advise TAMHSC of any known unauthorized disclosure, misappropriation, or misuse of Confidential Information and shall take prompt and effective steps to prevent a recurrence of such misappropriation or misuse.
- 6. End of Disclosure Period.** The Recipient shall, within 15 days of the end of the Disclosure Period or upon request of TAMHSC, promptly return to TAMHSC or destroy all materials embodying Confidential Information, except that the Recipient may securely retain one copy in its files solely for record purposes. The Recipient's obligations under this Agreement survive the end of the Disclosure Period and continue until the end of the period specified in Section 2.
- 7. Required Disclosure.** If the Recipient is legally required to disclose Confidential Information, the Recipient shall, to the extent allowed by law, promptly give TAMHSC written notice of the requirement so as to provide TAMHSC a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If the Recipient complies with the terms of this Section 7, disclosure by the Recipient of that portion of the Confidential Information which the Recipient is legally required to disclose will not constitute a breach of this Agreement. The Recipient is not required to pursue any claim, defense, cause of action, or legal process or proceeding on TAMHSC's behalf.
- 8. Export Controlled Information.**
 - (a) Each party shall comply with U.S. export control regulations.
 - (b) The Recipient certifies that none of its Representatives participating in the Purpose is a "restricted party" as listed on the Denied Persons List, Entity List, and Unverified List (U.S. Department of Commerce), the Debarred Parties Lists (U.S. Department of State), the Specially Designated Nationals and Blocked Persons List (U.S. Department of Treasury), or any similar governmental lists.
- 9. No License.** Confidential Information remains the property of TAMHSC and no rights or licenses are granted to the Recipient except the limited right to use the Confidential Information as provided above.
- 10. Relationship of the Parties.** This Agreement does not obligate either party to enter into any transaction with the other except as specifically provided in this Agreement. This Agreement does not create an agency, partnership, joint venture, or exclusive relationship and each party may pursue other opportunities similar to those contemplated under the Agreement.
- 11. Injunction.** In the event of breach or threatened breach or intended breach of this Agreement, TAMHSC, in addition to any other rights and remedies available to it, may seek injunctive or equitable relief.
- 12. Disclaimer of Warranties.** TAMHSC makes no representations or warranties, written or oral, express or implied, as to Confidential Information, including without limitation, any warranty of merchantability or of fitness for a particular purpose.
- 13. General Provisions.**
 - (a) TAMHSC is an agency of the State of Texas and nothing in this Agreement waives or relinquishes TAMHSC's right to claim any exemptions, privileges, and immunities as may be provided by law.

- (b) The substantive laws of the State of Texas (and not its conflicts of law principles) govern all matters arising out of or relating to this Agreement. Venue for any claim arising out of or related to this Agreement must be in Brazos County, Texas.
- (c) Any notices required or permitted under this Agreement will be deemed given (a) three business days after it is sent by certified or registered mail, return receipt requested, (b) the next business day after it is sent by overnight carrier, (c) on the date sent by email transmission with confirmation of transmission and receipt, if sent during the recipient's normal business hours and if not, on the next business day, or (d) on the date of delivery if delivered personally, and in each case, addressed to the intended recipient at the address below or such other address as the intended recipient may specify in writing:

Texas A&M Health Science Center
 Attn: _____
 [Address] _____
 College Station, TX 77843
 Phone: _____
 Fax: _____
 Email: _____

[Recipient]
 Attn: _____
 [Address] _____
 Phone: _____
 Fax: _____
 Email: _____

- (d) Neither party waives a provision of this Agreement by failing to enforce that provision. Each provision of this Agreement is severable. If any provision is rendered invalid or unenforceable by statute or regulations or declared null and void by any court of competent jurisdiction, the remaining provisions will remain in full force and effect if the essential terms of this Agreement remain valid, legal, and enforceable.
- (e) This Agreement is the entire agreement of the parties relating to this subject matter and supersedes all prior and contemporaneous agreements and understandings relating to this subject matter. This Agreement may only be amended or superseded by a written agreement signed by authorized representatives of both parties.

The parties have executed this Agreement on the date(s) written below.

Texas A&M Health Science Center

[Recipient]

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____