

## 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 [party] (the “Discloser”) and is effective [date] (the “Effective Date”). The parties [wish to explore an opportunity of mutual interest [or other purpose]] (the “Purpose”) and anticipate the Discloser providing confidential information to TAMHSC 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 nonpublic information, other than Excluded Information, disclosed by the Discloser to TAMHSC during the Disclosure Period under the procedures in Section 3.
  - (b) “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.
  - (c) “Excluded Information” means information that:
    - (1) Is or becomes publicly known or available other than as a result of a breach of this Agreement by TAMHSC;
    - (2) Was already in the possession of TAMHSC 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) The Discloser had disclosed or discloses to an individual or entity without confidentiality restrictions; or
    - (4) TAMHSC had developed or develops independently before or after the Discloser discloses equivalent information to TAMHSC.
  - (d) “Representative” means, as to either party, any of that party’s directors, regents, officers, employees, agents, consultants, advisors, or other representatives.
  
- 2. Maintaining Confidentiality.** During the Disclosure Period and for [time period] thereafter, TAMHSC may not:
  - (a) Disclose Confidential Information except as permitted under this Agreement; or
  - (b) Use Confidential Information except for the Purpose.
  
- 3. Disclosure Procedures.**
  - (a) If Confidential Information is disclosed in a printed document or otherwise fixed in a tangible medium, the Confidential Information must bear an appropriate and conspicuous marking.
  - (b) If Confidential Information is disclosed orally, visually, or is not otherwise fixed in a tangible medium, the Discloser shall identify the Confidential Information as being such at the time of disclosure and confirm such in writing to TAMHSC within 30 days after disclosure.
  
- 4. Permitted Disclosure.** TAMHSC may disclose Confidential Information only to its Representatives having a need to know the Confidential Information to fulfill the Purpose, provided that TAMHSC remains responsible for its Representatives’ compliance with TAMHSC’s obligations under this Agreement.
  
- 5. Standard of Care.** TAMHSC shall handle Confidential Information with the same care that TAMHSC uses to protect its own information of comparable sensitivity, but not less than reasonable care.

- 6. Notification of Unauthorized Activities.** TAMHSC shall promptly advise the Discloser 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.
- 7. End of Disclosure Period.** TAMHSC shall, within 15 days of the end of the Disclosure Period or upon request of the Discloser, promptly return to the Discloser or destroy all materials embodying Confidential Information other than materials in electronic backup systems or otherwise not reasonably capable of being readily located and segregated without undue burden or expense. TAMHSC may also securely retain one copy of materials embodying Confidential Information in its files solely for record purposes. TAMHSC's obligations under this Agreement survive the end of the Disclosure Period and continue until the end of the period specified in Section 2.
- 8. Required Disclosure.** If TAMHSC is legally required to disclose Confidential Information, TAMHSC shall, to the extent allowed by law, promptly give the Discloser written notice of the requirement so as to provide the Discloser a reasonable opportunity to pursue appropriate process to prevent or limit the disclosure. If TAMHSC complies with the terms of this Section 8, disclosure by TAMHSC of that portion of the Confidential Information which TAMHSC is legally required to disclose will not constitute a breach of this Agreement. TAMHSC is not required to pursue any claim, defense, cause of action, or legal process or proceeding on the Discloser's behalf.
- 9. Export Controlled Information and Restricted Party Screening.**
  - (a) Each party shall comply with U.S. export control regulations. If the Discloser desires to disclose to TAMHSC any information, technology or data that is identified on any U.S. export control list, the Discloser shall advise TAMHSC at or before the time of intended disclosure and may not provide export-controlled information to TAMHSC without the written consent of TAMHSC.
  - (b) The Discloser 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.
- 10. No License.** Confidential Information remains the property of the Discloser and no rights or licenses are granted to TAMHSC except the limited right to use the Confidential Information as provided above.
- 11. 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 this Agreement.
- 12. Injunction.** In the event of breach or threatened breach or intended breach of this Agreement, each party, in addition to any other rights and remedies available to it, may seek injunctive or equitable relief.

**13. Disclaimer of Warranties.** The Discloser 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.

**14. 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 University  
Attn:  
[Address]  
Phone:  
Fax:  
Email:

[Party]  
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 University**

**[Party]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_