

CONFIDENTIAL DISCLOSURE AGREEMENT

This Confidential Disclosure Agreement (the “CDA”) is made as of _____, 202 (the “Effective Date”) by and between the Regents of the University of Colorado, a body corporate, for and on behalf of the University of Colorado Boulder, a public institution of higher education created under the Constitution and the Law of the State of Colorado (“Institution”) and _____ (“Discloser”).

The parties desire to enter into discussions solely to evaluate a potential business relationship or generate a joint proposal (hereinafter the “Purpose”). In furtherance of the Purpose, Discloser may elect to disclose to Institution certain technical, business and financial information, including third party information, that is made available or disclosed, in whatever form or medium, to Institution, on or after the Effective Date, including, any protocols, investigator brochures, or other documents, data, drawings, software, records, files, content, research, or intellectual property related thereto (“Information”).

The parties agree that it is in their mutual interest and to their mutual benefit to protect the confidentiality of the Information and to prevent its further disclosure, except as specifically permitted by this CDA. In consideration of the promises and assurances contained herein, the Parties agree to as follows:

Discloser shall endeavor to mark tangible Information as "confidential" and to confirm verbally disclosed Information as confidential in writing, given the understanding that failure to do so does not constitute a designation of non-confidentiality, particularly when the confidential nature is apparent from context and subject matter.

Institution shall use Information solely for the Purpose and disclose Information only to its employees, staff, contractors, affiliated third parties, directors, and professional advisers, who have a “need to know” the information for the Purpose and who are bound by confidentiality obligations at least as restrictive as those contained herein (collectively, “Personnel”). Institution shall use at least the same degree of care to maintain the confidentiality of Information as it uses to maintain the confidentiality of its own private information, but always at least a reasonable degree of care under the circumstances. Institution shall promptly notify Discloser upon discovery of any loss or unauthorized disclosure of Information. Institution shall be liable for any breach of the obligations set forth herein by its Personnel.

This CDA imposes no obligation of confidentiality on Institution with respect to any portion of Information received from Discloser that: (a) Institution can establish by written record was already known to Institution or Personnel on a non-confidential basis prior to receipt hereunder; (b) is or becomes publicly available through no breach of this CDA by Institution; (c) is independently developed by Institution without use of or reference to Information; or (d) is obtained by Institution from a third person without breach by such third person of an obligation of confidence with respect to such Information. Institution may disclose Information to the extent that such disclosure is required by law, authorized governmental body or court order, including, but not limited to, the Colorado Open Records Act (C.R.S. § 24-72-201, et Seq.) ("CORA"), provided, however, that Institution promptly provides Discloser prior written notice of such disclosure and provides reasonable assistance in obtaining an order or other remedy protecting Information from public disclosure.

Upon written request, Institution will promptly return or destroy, at Discloser’s election, all documents and other tangible materials representing Discloser’s Information and all copies thereof and to certify the return or destruction of all such documents and other tangible materials. Notwithstanding the foregoing, Institution: (i) may retain a single copy of Information for the sole purpose of ascertaining its ongoing rights and responsibilities in respect thereof; and (ii) shall not be required to destroy any securely stored computer files that are created during automatic system back up.

All proprietary rights to the Information shall remain the property of Discloser. Nothing herein will be construed as granting any property rights, by license or otherwise, to any such Information or to any intellectual property right that has issued or that may issue, based on such Information.

This CDA will commence on the Effective Date and continue for one (1) year thereafter. This CDA may be terminated by either party at any time upon thirty (30) days written notice. The obligations of confidentiality and non-use contained herein shall survive for a period of five (5) years after termination or expiration hereof.

Discloser certifies that it has the right to make the disclosures under this CDA. NO OTHER WARRANTY IS MADE BY EITHER PARTY UNDER THIS CDA. ANY INFORMATION EXCHANGED UNDER THIS CDA IS PROVIDED "AS IS."

Institution acknowledges that its breach of this CDA may cause irreparable damage and hereby agrees that Discloser will be entitled to seek injunctive relief under this CDA for any actual or threatened breach, as well as such further relief as may be granted by a court of competent jurisdiction. Nothing contained in this CDA shall be construed as an express or implied waiver by Institution of its governmental immunity or of the governmental immunity of the State of Colorado, as an express or implied acceptance by Institution of liabilities arising as a result of actions which lied in tort or could lie in tort in excess of the liabilities allowable under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et. seq., as a pledge of the full faith and credit of the State of Colorado, or as the assumption by Institution of a debt, contract or liability in violation of Article XI, Section 1 of the Constitution of the State of Colorado.

This CDA constitutes the entire agreement between the parties with respect to the subject matter of this CDA. Institution may not assign any of its obligations hereunder. No provision of this CDA will be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is made in writing and signed by each. Any waiver of any rights or failure to act in a specific instance will relate only to such instance and will not be construed as an agreement to waive any rights or fail to act in any other instance. If any provision hereof is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity will not render this CDA unenforceable or invalid, and such provision will be changed and interpreted so as to accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions. The signatory of this document is signing and acting on behalf of the party identified and holds full authority to execute such agreements and legally obligate such party.

The parties have executed this CDA as of the Effective Date. Any communication or notice to be given shall be forwarded to the respective addresses listed below.

For Discloser

By: _____

Printed Name: _____

Date: _____

Address:

For Regents of the University of Colorado:

By: Danell E. Thompson

Date: Per Agreement Effective Date

University of Colorado Boulder, Office of Contracts and Grants
3100 Marine St. Rm 481, 572 UCB
Boulder, CO 80309

**Institution's Principal Investigator
(Read and Understood Only)**

By: _____

Printed Name: _____

Date: _____