

CONFIDENTIAL DISCLOSURE AGREEMENT

This Agreement is made as of the ____ day of _____ by and between

The Board of Regents of the Nevada System of Higher Education,
on behalf of the University of Nevada, Las Vegas
4505 South Maryland Parkway
Las Vegas, Nevada 89154

(hereinafter referred to as UNLV),

and

(hereinafter referred to as Company)

Whereas, UNLV is conducting, or has conducted, proprietary research, and is, or may become, the owner by assignment, of certain proprietary research, inventive, and/or business information, such proprietary information and research generally described as follows (the “UNLV Research”):

Whereas, Company may be conducting, or may have conducted, research, and/or is the owner of certain proprietary research, inventive, and/or business information including marketing, production, distribution, and sales information, such proprietary information and research generally described as follows (the “Company Research”):

Whereas, UNLV and Company wish to exchange Proprietary Information relating to UNLV Research and Company Research (collectively, the “Research”) for the purpose of analyzing and evaluating potential joint endeavors such as joint research, product development, product characterization, licensing, or other commercial use (the “Purpose”).

Now Therefore, in consideration of the promises and mutual covenants contained herein and intending to be legally bound thereby, Company and UNLV agree as follows:

1. For purposes of this Agreement,

Party means either UNLV or Company. UNLV and Company collectively are the “Parties.”

Proprietary Information means any information relating directly or indirectly to the Research supplied by either Party or its assignors/inventors in writing, orally, or by observation, that is nonpublic, proprietary, a trade secret, or confidential in nature, including, but not limited to, scientific knowledge, know-how, processes, inventions, techniques, designs, formulae, blueprints, specifications, products, samples, materials, physical models, prototypes, business operations, business strategies, business plans, business methods, customer requirements, customer lists, business and accounting data or other business, technical or scientific records, biological materials, computer models, data and data bases, algorithms, email, text messages, and other written correspondence, and software, and including the existence and nature of the relationship between the parties.

To be considered Proprietary Information for purposes of this Agreement, disclosed confidential information must be clearly marked "proprietary" or "confidential" or, if oral, or otherwise not so marked, followed up with a written notice transmitted to the other Party within thirty (30) days of disclosure specifying the information regarded as Proprietary Information

Proprietary Information does not include information either Party can demonstrate and document that:

- (a) Was in its knowledge or possession prior to disclosure;
- (b) Was public knowledge or has become public knowledge through no fault of either Party;
- (c) Was properly provided to either Party by an independent third party who has no obligation of secrecy to UNLV, Company or its assignors; or
- (d) Is hereafter independently developed by Company or UNLV.
- (e) Is required to be disclosed, as required by applicable laws or by order of a court or governmental agency. If a Party is required by judicial or administrative process to disclose Proprietary Information of the other Party, the Party so required to disclose shall promptly notify the other Party and shall allow the other Party a reasonable time to oppose such process. The Party required to disclose Proprietary Information shall limit its disclosure to the Proprietary Information required by an appropriate order, and shall continue to preserve the confidentiality of all such Proprietary Information that is not required to be disclosed.

The above exceptions, (a) through (e), shall not be interpreted by the Parties as justification to disregard the obligations of confidence set forth in this agreement merely because individual portions of the Proprietary Information may be found within the exceptions, or because the Proprietary Information is implied by, but not specifically disclosed, in information falling within the exceptions.

2. Proprietary Information of the other Party shall be used solely for the Purpose. Specifically, but without limitation, Parties will not:
 - (a) Use any of the Proprietary Information of the other Party for any commercial purpose or the development of any products or technology;
 - (b) Use or attempt to practice any inventions derived from the Proprietary Information of the other Party, without first entering into an agreement permitting such use or practice; or
 - (c) Refer to or incorporate any part of the Proprietary Information of the other Party, or any patent or patent application claiming the Proprietary Information of the other Party, in patent prosecution.
3. All Proprietary Information disclosed under this Agreement shall be held in confidence. Parties shall employ all reasonable efforts to maintain the Proprietary Information secret and confidential, in the degree and manner used to preserve and safeguard their own highly secret or confidential information. The efforts employed by the Parties shall be at least as restrictive as those set forth herein. With the exception of third parties authorized in writing by the other Party to receive Proprietary Information, the Proprietary Information shall not be disclosed to anyone except employees of Parties who have a need to know the Proprietary Information. Parties shall advise said employees of the confidential nature of the Proprietary Information and that the Proprietary Information must be treated, by employees, as highly secret and confidential and used only for the Purpose. Should such a disclosure to a third party be authorized in writing, then the Party receiving such authorization shall assure that the authorized third party has agreed in writing to hold all such disclosed Confidential Information in a manner fully consistent with this agreement including the requirement to advise the third party's employees of the confidential nature of the Proprietary Information and that the Proprietary Information must be treated, by employees of the third party, as highly secret and confidential and used only for the Purpose.
4. The Party that receives Proprietary Information will not copy or duplicate any materials containing said Proprietary Information except as necessary to accomplish the Purpose.
5. UNLV and Company shall retain all proprietary rights in and to their respective Proprietary Information disclosed under this Agreement. Neither this Agreement nor the disclosure of

Proprietary Information under this Agreement shall be construed to grant either UNLV or Company an implied or expressed license, or any rights to obtain any implied or expressed license, to any Proprietary Information including Research, to patents claiming the Research, or to any other inventions or technology of the other Party. This Agreement imposes no duty to purchase or sell to, or from, either Party or to enter into any other agreement with either Party.

6. Parties do not make any representations with respect to, and do not warrant, any information including both Proprietary Information and non-proprietary information provided under this agreement, but shall furnish such in good faith. Without restricting the generality of the foregoing, Parties do not make any representations or warranties, whether written or oral, statutory, expressed or implied with respect to the information that may be provided under this Agreement, including without limitation, any warranty of merchantability or of fitness for a particular purpose. Parties shall not be liable for any special, incidental or consequential damages of any nature whatsoever resulting from receipt or use of any information.
7. The Parties warrant that they have the legal right to make disclosures of the Proprietary Information as provided under this Agreement.
8. The Agreement shall be binding upon the assigns and successors of each Party.
9. This Agreement may be amended only by a writing executed by the Parties.
10. This Agreement may be terminated by either Party at its sole discretion upon thirty (30) days written notice to the other Party. Unless renewed in writing and signed by both Parties, the term of this agreement is for four (4) years from the Effective date. Regardless of expiration or termination of the Agreement, the obligations of this Agreement with respect to confidentiality and non-use shall continue for a period of four (4) years from the date the Receiving Party receives Confidential Information from the Disclosing Party under this Agreement.
11. Upon termination of this Agreement or upon completion of the Purpose, the Parties shall return within thirty (30) days all documents, samples, specimens, models, and materials in any tangible form containing the Proprietary Information. All Proprietary Information that is electronically stored must be purged from all computers, networks, and other storage media.
12. Company agrees to indemnify, defend and hold harmless UNLV from any loss, damage, liability, cost or expense to the person or property of another which was caused by an act or omission of Company under this Agreement.
13. Nothing contained in this Agreement shall be deemed to constitute either Party a partner, joint venturer or employee of the other Party for any purpose.
14. The Parties agree that the laws of the State of Nevada shall govern the validity, construction, interpretation, and performance of this Agreement. Any and all disputes arising out of or in connection with this Agreement shall be litigated only in a court of appropriate jurisdiction located within the State of Nevada, and the parties hereby expressly consent to the jurisdiction of said court.
15. If any provision of this Agreement should be held to be void or unenforceable, in whole or in part, such provision or part thereof shall be treated as severable, leaving valid the remainder of this Agreement.
16. For purposes of interpretation, the language in this Agreement shall be deemed to be the language of both Parties and neither UNLV nor Company shall be deemed to be the drafting party.
17. This Agreement may not be sold, assigned, or transferred.

18. This Agreement constitutes a complete statement of all of the arrangements between UNLV and Company with respect to the Proprietary Information disclosed hereunder as of the date of signing. This Agreement supersedes all prior agreements and understandings between UNLV and Company with respect to the disclosure of the Proprietary Information. Any amendment to this Agreement must be in writing, both UNLV and Company must sign the amendment, and the amendment must specifically state that it is an amendment to this Agreement.

Therefore, UNLV and Company acknowledge and affirm this Agreement by affixing their signatures below:

Company

By _____
Name: _____
Title: _____

Date _____

The Board of Regents of the Nevada System of Higher Education, on behalf of the University of Nevada,
Las Vegas

By _____
Ronald W. Smith
Vice President Research and Graduate Studies

Date _____