

MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

This Agreement is by and between **The Regents of the University of California, on behalf of its San Diego Campus**, a California corporation, with an address at 9500 Gilman Drive MC 0934, La Jolla, CA 92093-0934, ("UCSD"), and _____, with an address at _____ ("Collaborator").

1. Background. Collaborator and UCSD intend to engage in discussion and negotiations concerning: _____

In the course of such discussions and negotiations, it is anticipated that either party may disclose or deliver to the other party certain confidential or proprietary information (hereinafter "Confidential Information") for the purpose of enabling the parties to evaluate the feasibility of a collaboration. The parties have entered into this Agreement in order to assure the confidentiality of such Confidential Information in accordance with the terms of this Agreement. As used in this Agreement, the party disclosing Confidential Information (as defined below) is referred to as the "Disclosing Party"; the party receiving such Confidential Information is referred to as the "Receiving Party".

2. Confidential Information. Should the parties deem it necessary to disclose information considered confidential and/or proprietary to each other, it will be clearly marked in writing as "Confidential Information" or the equivalent. If Confidential Information is disclosed orally, electronically or visually, it shall be confirmed as such at the time of such disclosure and reduced to writing, clearly marked "Confidential Information" and delivered to the Receiving Party within thirty (30) days of such disclosure. However, to the extent that such marking is not practicable, then in the absence of written markings, information disclosed that a reasonable person familiar with the purpose would consider to be Confidential Information based on the context or circumstances of disclosure shall be deemed as such.

3. Disclosure of Confidential Information. The Receiving Party shall hold in confidence, and shall not knowingly disclose to any person outside its organization or authorized representatives any Confidential Information. The Receiving Party and its personnel shall use such Confidential Information only for the purpose for which it was disclosed and shall not use or exploit such Confidential Information for its own benefit or the benefit of another without the prior written consent of the Disclosing Party. The Receiving Party shall disclose Confidential Information only to persons within its organization and its authorized representatives who have a need to know such Confidential Information in the course of the performance of their duties and who understand and will comply with the terms of this agreement to protect the confidentiality of such Confidential Information. The Receiving Party will promptly report to the Disclosing Party any actual or suspected violation of the terms of this Agreement and will take all reasonable further steps requested by the Disclosing Party to prevent, control or remedy any such violation.

4. Limitation on Obligations. The obligations of the Receiving Party specified in Section 3 above shall not apply, and the Receiving Party shall have no further obligations, with respect to any Confidential Information to the extent Receiving Party can reasonably demonstrate that such Confidential Information:

(a) is generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the Receiving Party;

(b) is in the Receiving Party's possession at the time of disclosure other than as a result of Receiving Party's breach of any legal obligation;

(c) becomes known to the Receiving Party through disclosure by sources other than the Disclosing Party having the legal right to disclose such Confidential Information; or

(d) is independently developed by the Receiving Party without the use of or reference to such Confidential Information.

In the event of a disputed disclosure, the Receiving Party shall bear the burden of proof of demonstrating that the information falls under one of the above exceptions.

Receiving Party may disclose Confidential Information if and to the extent required by applicable laws, governmental or regulatory regulations, or proper legal or governmental authority; provided that if permitted to do so the Receiving Party provides prior written notice of such disclosure to the Disclosing Party and Receiving Party reasonably assists Disclosing Party in taking reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

5. Ownership of Confidential Information. The Receiving Party agrees that the Disclosing Party is and shall remain the exclusive owner of the Confidential Information. No license or conveyance of any intellectual property rights to the Receiving Party is granted or implied under this Agreement.

6. Return of Documents. The Receiving Party shall, upon the termination of this Agreement and the request of the Disclosing Party, return to the Disclosing Party the disclosed Confidential Information received by the Receiving Party pursuant to this Agreement (and all copies and reproductions thereof), however, the Receiving Party may retain one archival copy to ensure ongoing compliance with confidentiality and other provisions of this Agreement. Notwithstanding the foregoing, nothing in this Agreement shall prevent a Receiving Party from retaining back-up copies of a Disclosing Party's Confidential Information in its computer system to the extent that computer back-up procedures create copies in the Receiving Party's back-up or archival computer storage system; provided that such computer copies shall remain subject

to the provisions of this Agreement and shall only be retained for the period the Receiving Party normally archives its back-up records.

7. Term and Termination.

(a) The Term of this Agreement shall be one (1) year from the Effective Date, which shall be defined as the date of the last authorized signature below. Each Party has a right to terminate the Agreement upon prior written notice to the other Party. Upon termination of the Agreement by any of the Parties, no Party has any further obligation or liability to the other Party other than the continuing obligation of confidentiality hereunder.

(b) The provisions of this Agreement shall continue with respect to confidentiality for a period of five (5) years from the Effective Date.

8. Miscellaneous.

(a) This Agreement supersedes all prior agreements, written or oral, between the Disclosing Party and the Receiving Party relating to the subject matter of this Agreement. This Agreement may not be modified or amended in whole or in part, except by an agreement in writing signed by the Disclosing Party and the Receiving Party.

(b) The Parties agree to remain silent on Governing Law.

(c) The provisions of this Agreement are necessary for the protection of the business and goodwill of the Disclosing Party and are considered by the Receiving Party to be reasonable for such purpose. The Receiving Party agrees that any breach of this Agreement may cause the Disclosing Party substantial and irreparable damages and, therefore, in the event of any such breach, in addition to other remedies which may be available, the Disclosing Party shall have the right to seek specific performance and other injunctive and equitable relief.

(d) A copy of a signature or a scanned e-mailed signature can be used for all purposes as if it were an original.

9. Export Control. Neither Party shall disclose any Information under this Agreement that is subject to the U.S. Department of State International Traffic in Arms Regulations ("ITAR"), U.S. Department of Commerce Export Administration Regulations ("EAR") or any similar laws or regulations regarding the export of goods or technical data without prior notification to the other party. Relating to the engagement covered under this agreement, neither Party shall apply for any export license without the prior consent of the other Party. Confidential Information that is subject to such U.S. Export Control laws and regulations will not be provided without first: (a) providing the Export Control Classification Number, ITAR category

or other legal identifier to the other party, and (b) receiving prior written confirmation from the other party's authorized contract officer that it is prepared to accept such restricted Confidential Information.

EXECUTED as of the day and year last set forth below.

**THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA, on behalf of its San Diego Campus**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____