

MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

This Mutual Confidential Disclosure Agreement (“Agreement”) is entered into as of _____ (“Effective Date”), by and between Utah Valley University, a body politic and corporate of the State of Utah, located at 800 West University Parkway, Orem UT 84058 (“University”) and _____, located at _____ (“Company”), each a “Party” and collectively, the “Parties.”

The Parties wish to exchange Confidential Information (defined below) for the limited purpose of evaluating interest in a possible future research relationship under separate written agreement. Each of the Parties, when it discloses Confidential Information to the other, is a “Discloser” with respect to such Confidential Information, and each of the Parties, when it receives Confidential Information from the other, is a “Recipient” with respect to such Confidential Information. The Parties hereby agree as follows:

1. Confidential Information. As used in this Agreement, the term “Confidential Information” means any information provided by Discloser, whether operational, financial, product, service, or customer information or otherwise, that: (a) if disclosed in writing or other tangible form is clearly labeled as “confidential,” or (b) if disclosed orally, is identified as confidential when disclosed and within 10 business days thereafter, is summarized in writing and confirmed as confidential.
2. Protection of Confidential Information. Recipient shall not disclose Discloser’s Confidential Information. Recipient shall not use and shall not permit to be used any of Discloser’s Confidential Information for any purpose other than as provided by or contemplated in this Agreement. Recipient shall have a duty to protect all Confidential Information it receives from Discloser and shall promptly notify Discloser if it becomes aware of any misuse, misappropriation, or unauthorized disclosure of Discloser’s Confidential Information. Recipient shall not photocopy, transcribe, or otherwise reproduce any of Discloser’s Confidential Information, except as may be necessary for its use of the Confidential Information for the purposes of this Agreement as authorized in writing by Discloser.
3. Permitted Disclosures. Notwithstanding anything herein to the contrary, the obligations of the Parties under Section 2 shall not apply with respect to any Confidential Information that (i) was in the public domain at the time of disclosure or subsequently entered the public domain other than through a breach of Section 2; (ii) was in the possession of Recipient free of any obligation of confidentiality at the time of communication to Recipient; (iii) was rightfully communicated to Recipient free of any obligation of confidentiality subsequent to the time of communication to Recipient; or (iv) Recipient can demonstrate by its records that it independently developed without the use of or reference to the Confidential Information of Discloser.
4. University Subject to GRAMA. Company acknowledges that University is a governmental entity and thus subject to the Government Records Access and Management Act of the Utah Code, Section 63G-2-101 *et seq.*, 1953, as may be amended (“GRAMA”). Pursuant to GRAMA, certain records University’s possession or control, including this Agreement, may be subject to public disclosure. University hereby informs Company that any person or entity that provides University with records that such person or entity believes should be protected from disclosure for business reasons must, pursuant to Section 63G-2-309 of GRAMA, provide to University, with the record, a written claim of business confidentiality and a concise statement of reasons supporting such claim. Notwithstanding any provision to the contrary in the Agreement, University: (a) is not required to provide notice to Company regarding any third party GRAMA request, and (b) may disclose any information or record to the extent required by GRAMA or otherwise required by law.
5. Ownership. Subject to Section 6 below, all Confidential Information will remain the exclusive property of Discloser and the disclosure of Confidential Information will not constitute an express or implied grant to Recipient of any rights to or under Discloser’s patents, copyrights, trade secrets, trademarks, or other intellectual property rights.
6. Independent Development. The terms of this Agreement shall not be construed to limit either Party’s right to develop independently or acquire products without use of the other Party’s Confidential Information. Discloser acknowledges that Recipient may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Nothing in this Agreement will prohibit Recipient from developing or having developed for it products, concepts, systems, or techniques that are similar to or compete with the products, concepts, systems, or techniques contemplated by or embodied in the Confidential Information provided that Recipient does not violate any of its obligations under this Agreement or use the Confidential Information of Discloser in connection with such development.

7. No Warranties. CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." DISCLOSER MAKES NO WARRANTY OR REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BY WAY OF EXAMPLE AND NOT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, SUITABILITY, AND NON-INFRINGEMENT. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES ARISING FROM OR RELATING TO THE AGREEMENT AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
8. Return of Confidential Information. Upon Discloser's written request, which may be made at any time, Recipient shall promptly return to Discloser all materials in Recipient's possession or control that contain or represent Confidential Information, in whatever medium, or provide a signed affidavit that the Confidential Information has been destroyed. Notwithstanding the foregoing, either Party may retain one copy of Confidential Information in its confidential legal files necessary to demonstrate compliance with applicable laws and regulations or in backup tapes made in the ordinary course of its business which are not capable of ready search and deletion. Recipient shall continue to be bound by the obligations of confidentiality set forth in this Agreement with respect to such retained Confidential Information.
9. Governing Law and Venue. This Agreement shall be governed by Utah law, without regard to its principles of conflict of laws. Venue for any lawsuits claims, or other proceedings between the Parties relating to or arising under the Agreement shall be exclusively in the State of Utah.
10. Injunctive Relief. The Parties agree that, 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 at law or in equity, may seek injunctive or equitable relief without the necessity of posting bond or proving that it has no adequate remedy at law.
11. Term of Agreement. Recipient's duty to protect Confidential Information under this Agreement expires three years from the Effective Date.
12. Independent Contractors. The Parties are independent contractors. Neither Party shall be deemed to be an employee, agent, or legal representative of the other for any purpose and neither shall have any right, power or authority to create any obligation of responsibility on behalf of the other.
13. Entire Agreement; Amendment; Waiver; Miscellaneous. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof. Neither Party has relied upon any other promise, representation or warranty, other than those contained herein, in executing this Agreement. Any amendment of this Agreement shall be valid only if in writing and signed by both Parties hereto. Any waiver of any term or condition of this Agreement shall be valid only if in writing and signed by the waiving Party and shall only apply to the limited circumstance for which it is provided. If any provision of this Agreement is found to be inconsistent with or contrary to any applicable law or regulation, that shall control and this Agreement shall be treated as modified accordingly, giving maximum permissible effect to the Parties' intentions expressed herein, and the remainder of this Agreement shall continue in full force and effect. The individuals signing this Agreement represent that they are duly authorized to do so.
14. Counterparts; Signatures. This Agreement may be executed in multiple counterparts or duplicate originals, all of which shall be regarded as one and the same instrument, and which shall be the official and governing version in the interpretation of this Agreement. The signatures of the Parties below indicate their respective acknowledgment of the terms set forth in this Agreement.

UNIVERSITY

COMPANY

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____