

## CONFIDENTIAL DISCLOSURE AGREEMENT

This Agreement is made by and between the

*Eunice Kennedy Shriver* **National Institute of Child Health and Development** (NICHD),

an agency of the United States Government, with an address at 6100 Executive Building, Bethesda, MD 20892 (hereinafter referred to as "NICHD"), and

**[Company],**

an entity organized and existing under the laws of **[State or Country]**; having its principle place of business located at **[Address]**, (hereinafter referred to as "Recipient"). Collectively or individually, the NICHD and Recipient shall also be referred to as "Parties" or "Party."

Whereas, this agreement is effective as of the date of the last signature affixed hereto ("Effective Date");

Whereas, NICHD is willing to disclose certain information relating to -----[what's being discussed]-----Topic (*as well as certain technical information relating to NICHD research programs*) (collectively, the "Field") to Recipient to allow Recipient to determine its interest in the proposed project (Activity).

Whereas, Recipient may also disclose to NICHD certain information relating to the Field described above, that is considered to be confidential to Recipient;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the Parties hereto agree as follows:

### 1. Confidential Information

1.1 Definition. Except as specified in Section 1.2 (Exclusions), below, "Confidential Information" is any technical or business information in the Field that is transmitted or exchanged between Parties in writing or other tangible form and marked as CONFIDENTIAL or that is disclosed orally and then summarized and confirmed in writing as CONFIDENTIAL within 30 days after the date of oral disclosure. Confidential Information also includes anything that Recipient observes while on-site at NICHD or that NICHD observes while on site at Recipient's location, whether or not directly related to the Field that would reasonably be characterized as confidential such as patient information.

1.2 Exclusions. Confidential Information does not include information that

- a. is known or open to the public or otherwise in the public domain at the time of disclosure,
- b. becomes part of the public domain after disclosure by any means other than breach of this Agreement by the Parties,
- c. is already known to the Parties at the time of disclosure and is free of any obligations of confidentiality,
- d. is obtained by the Parties, free of any obligations of confidentiality, from a third party who has a lawful right to disclose it or
- e. is required to be disclosed by law, regulation, policy or court order.

2. Obligations of Confidentiality

- 2.1 Obligations. The Parties will only use the Field for the purpose of determining interest in the Activity, and unless prior written consent has been provided to the contrary, the Parties will not
  - a. use Confidential Information for any purpose other than that authorized in this Agreement, or
  - b. disclose any Confidential Information to any third party other than contractors, agents, or affiliates who have a need to know in connection with the purpose of this Agreement and who are bound by obligations of confidentiality substantially similar to those in this Agreement.
- 2.2 Liability. Recipient is liable to NICHD and any parties that NICHD has a Confidentiality Agreement with for any unauthorized use of Confidential Information or any disclosure of Confidential Information to a third party except as allowed under Section 2.1.b, above. Recipient agrees to indemnify, defend, and hold NICHD and its employees, harmless against any and all claims, costs, suits, and damages, including attorney's fees arising out of the performance of this agreement. The NICHD does not have the statutory authority to provide indemnification to any party or entity.
- 2.3 Notification of Unauthorized Disclosure. Either Party will notify the other immediately if it becomes aware of any disclosure in breach of the obligations of this Agreement. The notifying Party will, at the request of the other Party (or any party that has a Confidentiality Agreement with the other Party covering the Field), take all necessary steps to prevent further disclosure.
- 2.4 Disclosure Required by Law. If either Party is required by law to disclose any Confidential Information during the term of this confidentiality obligation, such disclosure will not be considered a breach of this Agreement so long as the disclosing Party
  - a. notifies the non-disclosing Party in writing as far as possible in advance of the disclosure so as to allow the non-disclosing Party and any party that has a Confidentiality Agreement with the non-disclosing Party covering the Field to take legal action to protect the Confidential Information as

- appropriate,
- b. discloses only that information required to comply with the legal requirement, and
- c. continues to maintain the confidentiality of this Confidential Information with respect to all other third parties.

2.5 Survival of Obligations. The obligations of confidentiality in this Agreement will survive termination of the Agreement and will continue for a period of five (5) years after termination.

### 3 Return of Confidential Information

3.1 Return. If requested by either Party in writing, the other Party will return all Confidential Information. To the extent permitted by law or applicable regulation, the other Party will also destroy all documents prepared by the requesting Party containing their Confidential Information or redact all such Confidential Information from those documents. However, the other Party may retain a single archival copy of the Confidential Information for the sole purpose of determining the scope of obligations incurred under this Agreement.

### 4. Term and Termination

4.1 Term. The term during which disclosures may be made and received under this Agreement will be one year from the Effective Date, at the end of which time the Agreement will terminate. The obligations of confidentiality under this agreement shall remain in effect for five (5) years from the Effective Date.

4.2 Effect of Termination. The confidentiality obligations in Section 2 (Obligations of Confidentiality) will survive termination of this Agreement. All other provisions that by their nature and intent remain valid after the term of this Agreement will also survive termination.

5. No Other Rights Granted. This Agreement does not convey or imply a license or any other interest in any intellectual property other than the right to use Confidential Information as authorized in this Agreement, nor does it obligate either Party to enter into any further agreement with the other Party.

6. Amendment. This Agreement may be modified only by written amendment signed by both Parties.

7. Affiliates. As used in this Agreement, the term “affiliate” means any entity that directly or indirectly controls, is controlled by, or is under common control with the named Party.

8. Entire Agreement. This Agreement represents the entire understanding between the Parties relating to this subject matter.

**Signatures begin on the next page.**

Agreed to and Accepted by:

RECIPIENT

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

NICHD

By: \_\_\_\_\_

Printed Name:

Title:

Date: \_\_\_\_\_