

MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Mutual Confidentiality and Nondisclosure Agreement (“Agreement”) is entered into [Effective Date] (“Effective Date”) by University of Miami (“University”), a Florida not-for-profit corporation, and [Company Name], a [State] [Type of Entity] (“Company”), with its principal place of business located at [Address Line 1], [Address Line 2], [City], [State/Province] [Postal Code]. University and Company are each individually referred to herein as “Party”, and collectively as “Parties.”

Company is [Description of Company]. The Parties intend to enter into discussions regarding [Potential Transaction] (“Potential Transaction”). During such discussions regarding the Potential Transaction, the Parties may be exposed to or come into possession of certain information which is confidential and proprietary to the other Party (“Protected Information”), as further defined below. For purposes of this Agreement, the Party receiving Protected Information is referred to as the “Recipient” and the Party disclosing such information is referred to as the “Disclosing Party.”

In consideration of the mutual promises set forth in this Agreement, the Parties agree as follows:

1. **Scope of Agreement.** This Agreement is not a commitment by either Party to enter into a business relationship or pursue the Potential Transaction; any such business relationship shall only be evidenced by a separate, definitive agreement. No title or interest in or to any Protected Information of Disclosing Party is granted to Recipient by this Agreement and the Disclosing Party reserves all intellectual property rights, including rights in any patent, trade secret, know-how and any other proprietary rights it may have in such Protected Information. This Agreement is not intended to preclude the Parties from disclosing their own Protected Information to any other entity outside of this Agreement and does not create an exclusive relationship between the Parties in reference to their own Protected Information. Further, University reserves the right to use any and all information needed to define criteria for implementing the Potential Transaction for its own purposes including issuing a Request for Proposal.

2. **Protected Information Defined; Exclusions; Use and Obligations.**

(a) “Protected Information” shall mean (subject to the limitations of Section 2(b)(i)) all proprietary information of the Disclosing Party and its affiliated and related companies and (ii) all information provided to the Disclosing Party by third parties which the Disclosing Party is obligated to keep confidential pursuant to a written agreement, whether provided before or after the parties execute this Agreement and in whatever form and format Unless excluded in writing by a Party, the Parties shall assume that any and all information disclosed is Protected Information, regardless of how such Protected Information is communicated or transmitted and regardless of whether such Protected Information is designated as confidential or unmarked. Without limiting the foregoing, Protected Information includes, but is not limited to, pending patent applications, inventions, discoveries, trade secrets, techniques, models, data, programs, processes, designs,

know-how, agreements with third parties, customer lists and information, marketing plans, financial information, products, business plans, sales positioning strategies, sales reports, business information, and communication strategies.

(b) Notwithstanding Section 2(a), Protected Information shall exclude any of the following information;

(i) That is or becomes generally known to the public other than as a result of a breach of this Agreement;

(ii) Which has been independently developed by Recipient (as evidenced by Recipient's written records), before or after the Effective Date, without violation of any rights which Disclosing Party may have in such information;

(iii) That is rightfully furnished or made known to Recipient by a third party who has a lawful right to disclose such information;

(iv) Is disclosed with the prior written approval of the Disclosing Party; or

(v) Is disclosed pursuant to the order or requirement of a court, administrative agency or other government or professional oversight body; provided however that, if permitted by law, the Recipient will promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may contest the order or requirement.

(c) Except as expressly permitted by this Agreement, the Recipient shall not disclose the Protected Information to any third party without the consent of Disclosing Party. Recipient will maintain the confidentiality of such Protected Information by using reasonable care and at least the same degree of care that it takes to hold in confidence its own proprietary information of a similar nature. Each Recipient hereby agrees that any Protected Information received by such Party will be used solely in connection with the evaluation of the Potential Transaction by the Parties, and that such information will be kept confidential; provided, however, that any of such information may be disclosed by a Recipient to its directors, officers, employees, shareholders, partners, agents or advisors, including, without limitation, attorneys and consultants (collectively, "Representatives") who need to know such information for the purpose of furthering the Potential Transaction. All such Representatives shall; be informed by a Recipient of the confidential nature of such information, be instructed to keep such information strictly confidential, be advised of the terms of this Agreement and of their obligation in their capacity as a Recipient's Representatives to abide by the terms hereof to the same extent as if they were parties hereto, if such a Representative is not a direct employee of such Party such Representative shall be required to agree in writing to abide by the terms of this Agreement, such acknowledgement shall be provided to the other Party at a Party's request. Each Recipient agrees to be responsible for any breaches of any of the provisions of this Agreement by any of its Representatives (it being understood that such responsibility shall be in addition to and not by way of limitation of any right or remedy the Disclosing Party may have against such Representatives with respect to such breach).

(d) All Protected Information shall remain the sole property of the Disclosing Party. Upon the conclusion of discussions related to the Potential Transaction, or upon written request of the Disclosing Party, the Recipient shall promptly return to the Disclosing Party or destroy all items and material in Recipient's possession or control which contain any Protected Information, including any copies of such items or material.

3. **Term; Survival.** This Agreement will terminate upon the earlier of the execution by the Parties of a definitive agreement relating to the Potential Transaction; the final determination of the Parties not to proceed with the Potential Transaction; or one (1) year after the date of execution hereof. As of the Effective Date, the obligation of the Parties and their Representatives to keep Protected Information confidential shall remain in effect for three (3) years after the termination of this Agreement; regardless of whether the Parties enter into a business relationship (including a relationship evidenced by a contract containing an integration clause) or ultimately pursue separate interests or return or destroy the Protected Information in accordance with Section 2(d) above.

4. **Publicity.** Each Party agrees not to use any trade name, trademark, service mark or logo or any other information that identifies the other Party in sales, marketing or publicity activities and/or materials. Media releases or publications of any kind, and interviews with representatives of any written publication, radio or television station or network, or Internet site or outlet are included within the foregoing prohibition.

5. **Remedies for Breach.** Each Party acknowledges and agrees that the release or use of Protected Information, publication of information regarding the business relationship of the Parties, and or use of the other Party's trademarks, trade name, service mark or logo in violation of this Agreement may cause irreparable harm for which the injured Party may not be fully or adequately compensated by recovery of monetary damages. Accordingly, the Party harmed by any such violation or threatened violation shall be entitled to seek injunctive relief from a court of competent jurisdiction in addition to any other remedy available at law or in equity.

6. **Assignability.** Neither Party may assign or otherwise transfer this Agreement in whole or in part without the prior written consent of the other Party, except to an affiliate or subsidiary in which case notice must be provided to the other Party.

7. **General.** Each Party represents and warrants that it has the right to disclose any information provided to the other Party pursuant to this Agreement, without violating or infringing any agreement with any other person or entity. The terms of this Agreement shall be binding on both Parties and on any Affiliate or Successor to whom the rights and obligations under this Agreement may be transferred. Any modifications to this Agreement must be in writing and signed by the Parties hereto.

8. **Severability.** Each provision herein shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein. Failure to enforce any provision of this Agreement by a Party shall not constitute a waiver of any term hereof by that Party.

9. **Governing Law.** This Agreement shall be construed and enforced pursuant to the laws of the State of Florida, without regard to conflict of laws principles. Any disputes arising under this Agreement shall be subject to the jurisdiction and venue of the courts residing in Miami-Dade County, Florida. Any suit or proceeding pursuant to this Agreement shall be brought in the state or federal courts in Miami- Dade County, Florida. Each Party consents to the personal jurisdiction of such courts.

10. **Counterparts.** This Agreement may be executed in two or more counterparts, and may be executed by electronic signature. Each counterpart shall be deemed an original, all of which taken together shall constitute a single instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective authorized representatives as follows:

UNIVERSITY OF MIAMI:

[COMPANY NAME]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____