

NON-DISCLOSURE AGREEMENT (University Disclosing)

This non-disclosure agreement (“Agreement”) entered into as of the date of the last signature (the “Effective Date”) between The University of Texas – Pan American located at 1201 West University Drive, Edinburg, Texas 78541, a member institution of The University of Texas System (“University”) and Hidalgo County Health Department (“Receiving Party”), a local government having a business address at 1304 S. 25th Avenue, Edinburg, Texas 78539. University and Receiving Party may each be referred to as “Party” or collectively as the “Parties”.

RECITALS

- A. The University desires to engage in general discussions and to share certain Confidential Information with Receiving Party pertaining to data collected during Operation Lone Star (August 4-8, 2014). This exchange includes all communication of Confidential Information between the Parties in any form whatsoever, including oral, written and machine readable form, pertaining to the above.
- B. The University wishes to exchange the Confidential Information with Receiving Party for the sole purpose of Receiving Party’s internal program evaluation and assessment (the “Purpose”), and regards certain parts of the Confidential Information it possesses to be secret and desires to protect those parts from unauthorized disclosure or use (such secret parts being hereafter collectively referred to as “Confidential Information”).
- C. University is willing to disclose Confidential Information (as “Owning Party”) and Receiving Party is willing to receive Confidential Information on the terms and conditions set forth herein.

AGREEMENTS

Therefore, the Parties agree as follows:

- 1. “Confidential Information” is proprietary and/or secret information owned or controlled by the University and which is discussed or disclosed during any meeting or discussions regarding the Purpose or otherwise disclosed in connection with the Purpose. Confidential Information includes, but is not limited to, all communications by University with the Receiving Party in any form whatsoever including oral, written and machine-readable form, video, audio, phonorecord, recorded media, drawings, schematics, samples, devices, software, formulas, biological materials, applications for intellectual property protection, services, processes, procedures, trade secrets, intellectual property, pricing, costs, business or strategic plans, and marketing or advertising strategies.
- 2. The Receiving Party shall only use Confidential Information for the Purpose. Specifically, but without limitation, the Receiving Party will not use any of the Confidential Information for any commercial purpose or development of any products or technology and shall not use or attempt to practice any invention arising from or disclosed in the Confidential Information, or any part thereof, without first entering into an agreement with the University permitting such use or practice.

3. The Confidential Information shall remain the sole property of University.
4. Since the disclosure of Confidential Information by University is in strictest confidence, Receiving Party covenants and agrees to:
 - a. Not disclose to any other person the Confidential Information, and use at least the same degree of care and discretion to maintain the Confidential Information secret as the Receiving Party uses in maintaining as secret its own Confidential Information, but always at least a reasonable degree of care and discretion;
 - b. Not disclose such Confidential Information to any third parties or to use, duplicate, reproduce, copy, distribute, or otherwise disseminate such Confidential Information, except as permitted pursuant to this Agreement;
 - c. Restrict disclosure of the Confidential Information solely to those employees of Receiving Party having a need to know such Confidential Information in order to accomplish the Purpose, provided that such employees shall have agreed in writing to be bound by the Terms of this Agreement or are automatically bound thereby as employees of the Receiving Party;
 - d. Within thirty (30) days following request of University, return to University all documentation, copies, notes, diagrams, computer memory media and other materials containing any portion of the Confidential Information, or confirm to University, in writing, the destruction of such materials; and
 - e. Immediately upon sale of Receiving Party or merger of Receiving Party with a third party, return to University all documentation, copies, notes, diagrams, computer memory media and other materials containing any portion of the Confidential Information, or confirm to University, in writing, the destruction of such materials.
5. Nothing in this Agreement shall be interpreted as placing any obligation or expectation of confidentiality or non-use on the part of the Receiving Party with respect to any of the Confidential Information that:
 - a. can be demonstrated to have been in the public domain as of the date of this Agreement, or comes into the public domain during the term of this Agreement through no fault of the Receiving Party;
 - b. can be demonstrated by tangible evidence to have been known to the Receiving Party prior to disclosure by University and as to which the Receiving Party has no obligation not to disclose or use it;
 - c. is lawfully obtained by Receiving Party from a third party under no obligation of confidentiality, and who did not acquire it, directly or indirectly, from the University under a continuing obligation of confidentiality;

- d. can be demonstrated by tangible evidence to have been independently developed by Receiving Party without a violation of this Agreement and without use of or reference to University's Confidential Information;
- e. is generally disclosed by University to third parties without any confidentiality obligation on the third parties; or
- f. is disclosed as required by law.

In the event any Confidential Information is required to be disclosed pursuant to governmental law, regulation, or judicial or administrative proceeding, Receiving Party shall provide prompt notice of such request to the University and shall cooperate fully in seeking a protective order or other assurance that confidential treatment will be accorded to the Confidential Information required to be disclosed, should University seek such order or assurance. In the event that such protective order or other remedy is not obtained, or that University waives compliance with the provisions hereof, Receiving Party and its employees and agents agree to furnish only that portion of the Confidential Information of University which is legally required to be furnished. Furthermore, such Confidential Information shall continue to be considered and treated by the Receiving Party as Confidential Information for all other purposes. Confidential Information required to be so disclosed shall not be deemed part of the public domain by virtue of such disclosure.

- 6. This Agreement imposes no obligation on Receiving Party with respect to any portion of the Confidential Information disclosed by University, unless such portion is:
 - a. disclosed in a written document or machine readable media marked "CONFIDENTIAL" at the time of disclosure, or
 - b. disclosed in any other manner and summarized in a memorandum mailed to the Receiving Party within thirty (30) days of the disclosure.
- 7. UNIVERSITY DOES NOT MAKE ANY REPRESENTATION WITH RESPECT TO AND DOES NOT WARRANT ANY INFORMATION PROVIDED UNDER THIS AGREEMENT, BUT SHALL FURNISH SUCH IN GOOD FAITH. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, UNIVERSITY DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED WITH RESPECT TO THE INFORMATION WHICH MAY BE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. UNIVERSITY SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM RECEIPT OR USE OF THE INFORMATION BY THE RECEIVING PARTY.
- 8. The Receiving Party shall comply with all applicable federal, state and local laws and regulations in connection with its activities pursuant to this Agreement, including United States laws and regulations controlling the export of materials and information including technical data, plans, drawings, know-how, computer software, laboratory prototypes and other items.

9. In the event of a breach or threatened breach or intended breach of this Agreement by Receiving Party, University, in addition to any other rights and remedies available to it at law or in equity, shall be entitled to seek preliminary and final injunctions, enjoining and restraining such breach or threatened breach or intended breach, or requiring specific performance of the Receiving Party's obligations hereunder, even if monetary damages are available and readily quantifiable and without proof of actual damage.
10. The validity, construction, and performance of this Agreement are governed by the laws of the State of Texas. The Texas state courts of Hidalgo County, Texas (or, if there is exclusive federal jurisdiction, the United States District Court for the Southern District of Texas) shall have exclusive jurisdiction and venue over any dispute arising out of this Agreement, and Receiving Party hereby consents to jurisdiction in such courts.
11. If any mediation, litigation or other legal proceeding relating to this Agreement occurs, the prevailing party shall be entitled to recover from the other party (in addition to any other relief awarded or granted) its reasonable costs and expenses, including attorney's fees, incurred in the proceeding.
12. The rights and obligations of the Parties under this Agreement may not be sold, assigned or otherwise transferred. This Agreement shall not be amended or modified without mutual consent of the Parties to such amendment or modification.
13. Neither Party may use the other Party's name without prior written consent.
14. Either party may terminate this Agreement at any time without cause upon thirty (30) days written notice to the other Party, or for cause effective upon written notice to the other Party.
15. LIMITATIONS. RECEIVING PARTY AND UNIVERSITY AGREE THAT THERE ARE CONSTITUTIONAL AND STATUTORY LIMITATIONS ON THE AUTHORITY OF UNIVERSITY (A TEXAS STATE AGENCY) TO ENTER INTO CERTAIN TERMS AND CONDITIONS THAT MAY BE A PART OF THIS AGREEMENT, INCLUDING THE TEXAS PUBLIC INFORMATION ACT AS SET FORTH IN CHAPTER 552 OF THE TEXAS GOVERNMENT CODE. ACCORDINGLY, THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE ONLY BINDING ON UNIVERSITY TO THE EXTENT AUTHORIZED BY THE LAWS AND CONSTITUTION OF THE STATE OF TEXAS. Receiving Party and University specifically agree that (i) neither the execution of this Agreement by University nor any other conduct, action or inaction of any representative of University relating to this Agreement constitutes or is intended to constitute a waiver of University's or the state's sovereign immunity to suit and (ii) University has not waived its right to seek redress in the courts.
16. This Agreement is binding upon University and Receiving Party, and upon the directors, officers, employees and agents of each. This Agreement is effective as of the Effective Date and will continue for a period of three (3) years, unless earlier terminated as provided herein. However, Receiving Party's obligations of confidentiality and restrictions on use of the Confidential Information disclosed by University, and all related remedies of the University for breach thereof, shall survive expiration or termination of this Agreement.

