

CONFIDENTIAL DISCLOSURE AGREEMENT

for the Nanotechnology Characterization Laboratory, NCI-Frederick

This Agreement is made by and between the National Cancer Institute, an agency of the United States Government (hereinafter referred to as “**NCI**”), and _____, an entity organized and existing under the laws of _____ (hereinafter referred to as “**Entity**”). Collectively or individually, the **NCI** and Entity shall also be referred to as “**Parties**” or “**Party**.”

WHEREAS, The Nanotechnology Characterization Laboratory (NCL) is a laboratory funded by the National Cancer Institute (NCI) and operated by NCI’s Operations and Technical Support Contractor, SAIC-Frederick, Inc.

WHEREAS, The NCL’s mission is to perform pre-clinical efficacy and toxicity testing of nanoparticles and facilitates regulatory review of nanotechnology intended for cancer therapies and diagnostics; and the NCL is a resource that enables researchers in academia, industry, and government to transition their nanotechnology strategies to clinical applications; and,

WHEREAS, Entity has certain confidential information relating to _____ (hereinafter referred to as the “**Confidential Information**” belonging to Entity); and

WHEREAS, the **NCI** has certain confidential information relating to methods for nanomaterial characterization (hereinafter referred to as the “**Confidential Information**” belonging to the **NCI**); and

WHEREAS, each Party is interested in examining the Confidential Information of the other Party in order to evaluate opportunities for collaboration. Should the Entity desire to have its candidate strategies/nanomaterials submitted to the NCL for characterization, a set of evaluation criteria will be applied to proposed nanotechnology strategies to aid in their selection and prioritization (<http://ncl.cancer.gov/>). A panel consisting of scientists from NCL, NCI, NIST, and the FDA will review and evaluate the proposals. In either case, the review of the Confidential Information is referred to herein as “**Evaluation**.”

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

1. Each Party shall disclose and transmit Confidential Information to the other Party in sufficient detail to enable such other Party to make the determinations set forth above.
2. Each Party agrees to accept the Confidential Information and employ all reasonable efforts to maintain the Confidential Information of the other Party secret and confidential, such efforts to be no less than the degree of care employed by each Party to preserve and safeguard its own confidential information. The Confidential Information of the disclosing Party shall not be disclosed, revealed, or given to anyone by the receiving Party except employees, contract employees and volunteers who are under an obligation

of confidentiality to the receiving Party and who have a need to review the Confidential Information in connection with the receiving Party's Evaluation. Such individuals shall be advised by the receiving Party of the confidential nature of the Confidential Information and that the Confidential Information shall be treated accordingly.

3. Each Party hereby acknowledges that the other Party shall not incur any liability merely for examining and considering the Confidential Information; however, each Party agrees that it will not use the Confidential Information of the other Party for any purpose except as set forth herein.
4. The obligations of a Party under Paragraph 2 and 3 above shall not extend to any part of the Confidential Information of the other Party:
 - (a) that can be demonstrated to have been in the public domain or publicly known at the time of disclosure; or
 - (b) that can be demonstrated to have been in the possession of or that can be demonstrated to have been readily available to such Party from another source prior to the disclosure; or
 - (c) that becomes part of the public domain or publicly known by publication or otherwise, not due to any unauthorized act by such Party; or
 - (d) that can be demonstrated as independently developed or acquired by such Party without reference to or reliance upon such Confidential Information; or
 - (e) that is required to be disclosed by law.
5. Each Party's obligations under Paragraphs 2 and 3 shall extend for a period of five (5) years from the date of this Agreement.
6. All information to be deemed confidential under this Agreement shall be clearly marked "**CONFIDENTIAL**" by the disclosing Party. Any Confidential Information which is orally disclosed must be reduced to writing and marked "**CONFIDENTIAL**" by the disclosing Party and such notice must be provided to the other Party within thirty (30) days of such disclosure.
7. It is understood that nothing herein shall be deemed to constitute, by implication or otherwise, the grant to either Party by the other of any license or other rights under any patent, patent application, or other intellectual property right or interest.
8. It is understood and agreed by both Parties that each represents and warrants to the other Party that each Official signing this Agreement has authority to do so.
9. The illegality or invalidity of any provision of this Agreement shall not impair, affect or invalidate the other provisions of this Agreement.

10. The construction, validity, performance, and effect of this Agreement shall be governed by Federal law, as applied by the Federal Courts in the District of Columbia.
11. The term of this Agreement is one (1) year from the date of the last signature to this Agreement. The Agreement may be terminated at any time by either Party, with thirty (30) days written notice. The term may be extended and the provisions of this Agreement may be modified only by written amendment signed by the duly authorized signatory for each Party.

SIGNATURES BEGIN ON THE FOLLOWING PAGE

ACCEPTED AND AGREED

The undersigned expressly certify or affirm that the contents of any statements made or reflected in this document are truthful and accurate. The undersigned further agree to examine and consider the subject matter of the Confidential Information on the foregoing basis.

FOR THE National Cancer Institute

(Authorized Signatory for NCI) _____
Date

Kathleen Higinbotham, MS, MBA
Technology Transfer Center
National Cancer Institute
Technology Transfer Center
8490 Progress Drive #400
Frederick, MD 21701

FOR THE ENTITY

(Authorized Signatory for Entity) _____
Date

(Printed Name)

(Title of Signatory)

Address:

