

CONFIDENTIAL INFORMATION NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on _____ (“Effective Date”), by and between _____, located at _____ (“**Receiving Party**”), and _____ (“**WEST & ASSOCIATES Client**”), located at _____. In consideration for the disclosure of **WEST & ASSOCIATES Client’s** Confidential Information, the parties agree as follows:

Purpose. **Receiving Party** and **WEST & ASSOCIATES Client** wish to explore a business possibility and consequently **WEST & ASSOCIATES Client** may disclose its Confidential Information to **Receiving Party**.

Definition. "Confidential Information" means any confidential or proprietary information, clinical study protocols, technical data, trade secrets, or know-how of **WEST & ASSOCIATES Client**, including, but not limited to, the information identified in Appendix A of this document, that which relates to research, clinical studies, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, business strategies, operations, plants and facilities, marketing or finances. Confidential Information does not include information, technical data or know-how which:

- i. _____ is generally available to the public prior to its disclosure; or
- ii. _____ is generally known to **Receiving Party** prior to the disclosure thereof as evidenced by written and dated material in its possessions; or
- iii. _____ through no fault of **Receiving Party**, becomes available to the public after the disclosure thereof; or
- iv. _____ is disclosed to **Receiving Party** by a third party having a bona fide right to do so; or
- v. _____ is approved for release by the written authorization of **WEST & ASSOCIATES Client**; or
- vi. _____ is disclosed pursuant to the requirement of a government agency or by operation of law after **WEST & ASSOCIATES Client** has been given at least thirty (30) days notice and an opportunity to object to such disclosures; or
- vii. _____ is developed by **Receiving Party** completely independent of this Agreement.

Confidential Information which is specific as to materials, composition, techniques, articles of manufacture, structure, apparatus, methods or the like shall not be deemed to be in the public domain merely because such information is embraced by more general disclosures in the public domain and any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are in the public domain, if the combination itself and its principles of operation are not in the public domain.

Receiving Party agrees it will not use Confidential Information provided under this Agreement to guide or aid a search and evaluation for purposes of showing information, technical data, trade secrets, or know-how provided hereunder is in the public domain.

Non-Disclosure of Confidential Information. **Receiving Party** agrees not to use the Confidential Information disclosed to it by **WEST & ASSOCIATES Client** for its own use or for any purpose except to

carry out discussions concerning and the undertaking of any business relationship with **WEST & ASSOCIATES Client**. **Receiving Party** will not disclose the Confidential Information to third parties or to **Receiving Party's** employees except employees who are required to have the information in order to carry out the contemplated business. **Receiving Party** agrees that it will take all reasonable steps to protect the secrecy of and avoid disclosure or use of Confidential Information in order to prevent the Confidential Information from falling into the public domain or the possession of unauthorized persons. **Receiving Party** agrees to notify **WEST & ASSOCIATES Client** in writing of any misuse or misappropriation of such Confidential Information which may come to **Receiving Party's** attention

Return of Materials. Any materials or documents which have been furnished by **WEST & ASSOCIATES Client** to **Receiving Party** will be promptly returned, accompanied by all copies of such materials or documents after the business possibility has been rejected or concluded and/or upon request of **WEST & ASSOCIATES Client**.

Patents or Copyrights. Nothing in this Agreement is intended to grant any rights under any patent or copyright of **WEST & ASSOCIATES Client**, nor shall this Agreement grant **Receiving Party** any rights in or to the Confidential Information, except the limited right to review such Confidential Information solely for the purposes of determining whether to enter into any proposed business relationship with **WEST & ASSOCIATES Client**.

Term. The commitments in this Agreement shall terminate five (5) years following the date of disclosure of the Confidential Information.

Miscellaneous. This Agreement shall be binding upon **Receiving Party** and for the benefit of **WEST & ASSOCIATES Client**, its successors and assigns. This Agreement may not be assigned without consent of **WEST & ASSOCIATES Client**. **Receiving Party** shall not through operations of succession or otherwise place Confidential Information in the hands of a competitor of **WEST & ASSOCIATES Client**.

Governing Law and Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of California, without regard to principles of conflict of laws of such state. The federal and state courts within the State of California shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement. All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any term of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining terms of this Agreement shall constitute their agreement with respect to the subject matter hereof, and all of its remaining terms shall remain in full force and effect.

Export Restriction. Recipient agrees it will not in any form export, reexport, resell, ship or divert or cause to be exported, reexported, resold, shipped or diverted, directly or indirectly, any product or technical data or software furnished hereunder or the direct product of such technical data or software to any country for which the United States Government or any agency thereof at the time of export and reexport requires an export license or other governmental approval without first obtaining such license or

approval.

Remedies. **Receiving Party** agrees that its obligations hereunder are necessary and reasonable in order to protect **WEST & ASSOCIATES Client**, **WEST & ASSOCIATES Client's** business, and the Confidential Information, and expressly agrees that monetary damages would be inadequate to compensate **WEST & ASSOCIATES Client** for each breach of any covenant or agreement set forth herein. Accordingly, **Receiving Party** agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to **WEST & ASSOCIATES Client** and that, in addition to any other remedies that may be available, in law, in equity or otherwise, **WEST & ASSOCIATES Client** shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

Entire Agreement. This document contains the entire agreement between the parties with respect to the subject matter hereof. Any failure to enforce any provision of this agreement shall not constitute a waiver thereof or of any other provision hereof. This agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be considered as an original.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives and to become effective as of the Effective Date first written above.

“Receiving Party”

“WEST & ASSOCIATES Client”

By: _____

By: _____

Title: _____

Title: _____

APPENDIX A