



MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Agreement is made and entered into this (date) _____ by and between _____ having its principal place of business at _____ and **Deseret Laboratories, Inc.**, having its principal place of business at 1414 East 3850 South, St. George, Utah 84790.

WHEREAS, the parties are interested in entering into a business relationship pursuant to which they may disclose to each other certain confidential information, in both written and oral form, including without limitation information relating to company management, corporate and financial records, proprietary ideas, methodologies, creative processes, products, services, databases, intellectual property, and certain other information that the parties believe to be proprietary and confidential, and the parties are not willing to proceed with the business relationship without an agreement restricting further disclosure or use of this information;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. **Definition of Confidential Information.** The term “Confidential Information” shall include (i) the names, addresses or other identifying information of Disclosing Party’s customers, marketing executives, vendors, suppliers, business associates and consultants; (ii) all scientific, technical, business, financial, or marketing data and information; (iii) all information relating to product research and development, product formulation, product manufacturing or product testing; (iv) all information regarding shipping volumes, package contents or similar information; (v) all information relating to computer systems, hardware, software and source codes; (vi) all information relating to telecommunications systems, hardware and software; and (vii) all information relating to trade secrets, “know-how,” or other information which is considered to be of a proprietary or confidential nature and/or which may constitute a trade secret of the party (a “Disclosing Party”) that discloses the information to the other party (a “Receiving Party”) in connection with their discussions, including any information learned by a Receiving Party during any visit to the Disclosing Party’s facilities. It is presumed that any information or documentation provided to the Receiving Party is to be treated as Confidential Information and is subject to this Agreement unless the Disclosing Party states in writing the information provided is not subject to this Agreement. The parties agree that this Agreement is not intended to restrict use or disclosure of any portion of such information which:

(a) is now or later made known to the public through no default by the Receiving Party of its obligations under this Agreement;

(b) the Receiving Party can show was in its possession prior to the earliest disclosure by the Disclosing Party, as evidenced by written documents in its files;

(c) is rightfully received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;

(d) is independently developed by the Receiving Party by persons who did not have access to Confidential Information of the Disclosing Party; or

(e) is disclosed by the Receiving Party after receipt of written permission

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from the Disclosing Party, but disclosure and/or use of such information shall be limited to the purposes set forth in the document granting such permission.

2. **Obligation of Confidentiality.** The Receiving Party agrees to hold in confidence and not use for its own purposes or publish or disclose to any third parties any of the Confidential Information of the Disclosing Party without the prior written consent of the Disclosing Party. Each party agrees to use the same degree of care (and in any event not less than reasonable care) to safeguard the confidentiality of the Confidential Information that it uses to protect its own confidential information. The Receiving Party agrees to limit disclosure of the Confidential Information only to those of its employees and outside professional advisors who have a need to know and who agree to be bound by the confidentiality obligations contained herein, and to advise such persons of the Receiving Party's obligations under this Agreement.

3. **Use of Confidential Information.** Each party agrees to use Confidential Information received from the other party only in furtherance of the fulfillment of its business relationship and contractual obligations with the other party, and not for any other purpose. The Receiving Party agrees that it will not analyze for chemical composition or structure or preparation procedure, or reengineer or attempt to reengineer (or permit or facilitate such analysis or reengineering) any sample or product provided by the Disclosing Party hereunder without prior express written permission.

4. **Return of Information.** All tangible materials received from the Disclosing Party or generated by the Receiving Party and containing Confidential Information shall remain the property of the Disclosing Party, and the Receiving Party shall destroy or deliver all such materials to the Disclosing Party upon the earlier of termination of the Agreement or the request of the Disclosing Party.

5. **Required Disclosure.** If the Receiving Party is required by law, regulation, government agency or court order, discovery request, subpoena, or civil investigative demand to disclose any Confidential Information, the Receiving Party i) shall provide the Disclosing Party with prompt written notice, and shall fully cooperate with Disclosing Party's efforts to seek an appropriate protective order to limit the disclosure to the greatest extent possible consistent with legal obligations, ii) may furnish only that portion of the Confidential Information which, in the opinion of Receiving Party's legal counsel, it is legally required to disclose, and iii) shall use its best efforts to minimize such disclosure and to obtain an assurance that the recipient shall accord confidential treatment to the Confidential Information.

6. **Term.** The parties' obligations concerning nondisclosure of Confidential Information shall apply to all information and exchanges between the parties prior to or after the execution of this Agreement and shall remain in effect for so long as the Confidential Information is deemed by the Disclosing Party to be confidential (which term shall in no event be less than five (5) years after the termination of all contractual relationships between the parties).

7. **No Violation.** Each party represents that its compliance with the terms of this Agreement will not violate any duty which such party may have to any other person or entity, including obligations concerning providing services to others, confidentiality of proprietary information and assignment of inventions, ideas, patents or copyrights.

8. **No Disclosure of Relationship.** Unless otherwise required by law, the parties agree to not disclose their participation in this undertaking, the existence or terms of this

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Agreement, or the fact that the parties have or may have a business or contractual relationship, without prior consent of the other party.

9. **Not Contract for Sale or Purchase.** This Agreement and the disclosure of Confidential Information hereunder shall not constitute or imply any promise or intention to make any purchase or use of products, facilities, or services by either party or any commitment by either party with respect to any present or future transaction. If the parties enter into binding commitments, such commitments shall be contained in a separate agreement. The parties affirm that any discussions, correspondence, and other activities hereunder shall not be construed as forming a contract relating to any other transaction without execution of such separate agreement.

10. **Warranties.** Each party acknowledges that neither party makes any representation or warranty (express or implied) as to the accuracy or completeness of any Confidential Information, and agrees to assume full responsibility for all conclusions it may derive from the Confidential Information disclosed to it. Each party expressly disclaims any and all liability that may be based, in whole or in part, on any Confidential Information disclosed by it, errors therein, or omissions therefrom.

11. **Damages and Injunctive Relief.** The parties understand and acknowledge that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement would cause irreparable harm to the business, reputation and goodwill of the Disclosing Party. Any breach of the confidentiality provisions of this Agreement shall entitle the Disclosing Party to injunctive relief to prevent breaches of this Agreement and to specifically enforce the terms hereof, in addition to any other remedy that the Disclosing Party may otherwise be entitled to at law or in equity, including damages which arise from the breach.

12. **No License.** The parties do not acquire any rights in Confidential Information except the limited right to use Confidential Information as described herein. Nothing herein shall convey or be deemed to convey any right or license from one party to the other party under any patent, trademark or copyright.

13. **General.**

(a) This Agreement is personal in nature and shall not be assigned by either party without the express written consent of the other. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors, heirs and permitted assigns of the parties.

(b) This Agreement shall be construed and interpreted in accordance with the laws of the State of Utah, without regard to its principles concerning the application of laws of other jurisdictions. The parties consent to venue in the United States District Court for the District of Utah or in the state courts of Utah, and expressly waive all defenses to the jurisdiction of said courts over them.

(c) This Agreement is the entire agreement between the parties concerning the disclosure of Confidential Information and supersedes all prior oral and written agreements between them. No waiver, alteration, modification, or cancellation of any of the provisions of the Agreement shall be binding unless made in writing and signed by the party to be bound.



(d) The waiver by either party of a breach of any provision of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by the other party.

(e) If any portion of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect without the invalid or unenforceable provisions.

(f) The parties hereby represent and warrant that the officials signing this agreement have the power to do so on behalf of the parties.

(g) This Agreement may be executed in one or more counterparts and/or by facsimile signature, each of which shall be adequate and binding for the purpose of executing this Agreement.

(h) Should either party bring an action to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and expenses, to be paid by the non-prevailing party, as fixed by a court of competent jurisdiction.

IN WITNESS WHEREOF, the parties have executed this Mutual Confidentiality and Nondisclosure Agreement as of the date first written above.

DESERET LABORATORIES, Inc.

(Company)

Signature: _____
Name: _____
Date: _____
Title: _____

Signature: _____
Name: _____
Date: _____
Title: _____