CONFIDENTIALITY & NONDISCLOSURE AGREEMENT

This Confidentiality & Nondisclosure Agreement, dated and effective as of _____, 202_, is by and between _____ ("[Name 1]") and _____ ("[Name 2]") (each of [Name 1] and [Name 2] is herein a "Party" and together, are the "Parties").

The Party disclosing its Confidential Information (as the term is later defined) is the "Disclosing Party" and the Parties receiving such information are each, a "Receiving Party."

RECITALS

WHEREAS, [Name 1] and [Name 2] intend to discuss various matters in connection with a potential collaborative relationship ("Proposed Relationship"); and

WHEREAS, in connection with discussing the Proposed Relationship, certain Confidential Information, as herein defined, of either Party may be disclosed to the other Party.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties hereby agree as follows:

1. Confidential Information

1.1 The term "Confidential Information" shall mean all information, whether in written or oral form, electronically-stored or otherwise, that is not generally available to the public and that the Disclosing Party wishes to protect against unrestricted disclosure or competitive use, which may be disclosed or made available by the Disclosing Party to the Receiving Party, including, but not limited to: (a) test results, test methods, product claims, technical, financial, commercial or other information which relates to the business, financial affairs, methods of operation, accounts, transactions or products, marketing strategies, methods, processes, projections, donor relationships, donor profiles, donor lists, sponsor relationships, sponsor lists, borrower information, guarantor information, loan information, business results, proposed transactions, proposed events or proposed activities, security procedures, internal controls or computer or data processing programs, intellectual property, software code and documentation, techniques or systems of the Disclosing Party or its vendors; (b) information or data relating to the Disclosing Party's systems, operations, policies, procedures, techniques, business plans, accounts or personnel; (c) information or data which is confidential or proprietary to a third party and which is in the possession, custody or control of the Disclosing Party; and (d) all data, notes, summaries or other material derived from the information specified in subsections (a), (b) and (c) above.

1.2 Notwithstanding the foregoing, "Confidential Information" shall not include any information that: (a) is already in the public domain or is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party in violation of this Agreement; (b) was available to a Receiving Party on a non-confidential basis prior to the effective date of this Agreement and was not subject to any existing confidentiality agreement; (c) becomes available to a Receiving Party on a non-confidential basis from a source other than the Disclosing Party or its agents, advisors, or representatives, which such source is entitled, to the best of the Receiving Party's knowledge, to make the

disclosure; or (d) is independently developed by employees of a Receiving Party without reference to or use of such Confidential Information, as evidenced by its contemporaneous written records.

2. Confidentiality

Each Party agrees:

(a) to use the same care and discretion to limit disclosure of Confidential Information received from the other Party as it uses with respect to similar Confidential Information of its own that it does not desire to disclose or disseminate;

(b) that the Confidential Information shall remain solely the property of the Disclosing Party;

(c) not to publish, disclose or allow disclosure to others of any Confidential Information, in whole or in part, or in the fact that the Confidential Information has been made available to the Receiving Party, or that the Parties have entered into an arrangement regarding the subject matter hereof;

(d) to restrict internal access to the Confidential Information to those of the Receiving Party's employees and contractors with a "need to know" who have either agreed in writing to be bound by a corporate non-disclosure policy established that encompasses protection of Confidential Information to a substantially similar extent as set forth in this Agreement or have executed a non-disclosure agreement reasonably designed to maintain the Disclosing Party's proprietary rights and to protection of the Confidential Information to the same extent as set forth in this Agreement;

(e) to use the Confidential Information solely in connection with the Proposed Relationship, as set forth in this Agreement;

(f) not to make copies of Confidential Information (other than as set forth below in Section 2(g)) unless those copies are strictly required for purposes of the Proposed Relationship; and

(g) that, except as otherwise provided in any other agreement between the Parties, upon request by the Disclosing Party at any time, the Receiving Party shall promptly return or destroy all Confidential Information of the Disclosing Party in tangible form then in its possession or under its control, and expunge from its systems and records all Confidential Information of the Disclosing Party in any other form, provided, however, that the Receiving Party shall have the right to retain one copy of all such Confidential Information in its Legal Department files for archival purposes.

If the Receiving Party is requested or required (by deposition, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information of the Disclosing Party, the Receiving Party shall provide the Disclosing Party with prompt notice of such request(s) in accordance with Section 4.7, so that the Disclosing Party may seek an appropriate protective order.

3. Disclaimer of Warranties and Representations; No License

3.1 Any Confidential Information provided by Disclosing Party hereunder is provided "AS IS" and "WHERE IS." Disclosing Party makes NO WARRANTIES OR REPRESENTATIONS WHATSOEVER in relation to its Confidential Information. This disclaimer of warranties and representations supersedes all past, present and future warranties and representations made by Disclosing Party, either orally or in writing, in relation to Disclosing Party's Confidential Information, except those made in a separate license or agreement.

3.2 Nothing contained herein shall be construed as Disclosing Party's granting or conferring any rights, by license or otherwise, to Receiving Party in any of Disclosing Party's Confidential Information.

4. General

4.1 This Agreement shall be governed by the laws of the State of [STATE], without reference to any choice of law principles.

4.2 The obligations imposed by Section 2 shall continue for a period of three (3) years from and after the date of this Agreement; provided, however, that termination of this Agreement will not in any manner terminate the obligations of the Parties under any applicable trade secret laws, and any Confidential Information that is also a trade secret will be entitled to the full benefits and protections of such laws.

4.3 The Section headings used herein are for information only and shall not affect the interpretation of any provision of this Agreement.

4.4 In the event any of the terms and conditions of this Agreement shall be held to be illegal or unenforceable, the validity of the remaining provisions shall not be affected.

4.5 This Agreement constitutes the entire agreement and understanding between the Parties and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

4.6 Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by the Parties.

4.7 Except as otherwise specified herein, any notice or other communication is to be addressed as set forth below or to such other address as may be specified by the Parties in writing. Unless otherwise specified herein, notices shall be effective when received.

4.8 Receiving Party hereby agrees and acknowledges that the provisions of this Agreement are reasonable and necessary to the protection of Disclosing Party's business, that Receiving Party's breach of any provision in this Agreement may result in irreparable injury to Disclosing Party's business, and that Disclosing Party's remedies at law for damages in the event of such breach may be inadequate. Accordingly, Receiving Party agrees that, in addition to any other remedies to which Disclosing Party may be entitled, Disclosing Party shall be entitled to seek and to obtain – but only upon entitlement to such relief having been proven to the appropriate Court - both preliminary and permanent injunctive relief (and temporary restraints) to prevent and/or halt a breach or threatened breach of any covenant contained in this Agreement.

4.9 This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their parents and/or subsidiaries and their respective successors and assigns; provided, however, that no Party shall assign this Agreement or any other duty, obligation, interest or right hereunder without the prior written consent of the other Parties.

Also available as part of the eCourse
2025 Nonprofit Organizations eConference (audio only)

First appeared as part of the conference materials for the
42nd Annual Nonprofit Organizations Institute session
"Nonprofit Transactions: When to Merge, Acquire or Dissolve"