

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT (the “**Agreement**”) is made on this _____ day of _____
(month and year) (the “**Effective Date**”)

between:

- (1) **THE NATIONAL KIDNEY FOUNDATION** (“**NKF**” or “**DISCLOSING PARTY**”), a company registered in Singapore with UEN: 200104750M, having its registered address at 9 Raffles Place, #26-01, Republic Plaza, Singapore 048619 and its principal place of business at 81 Kim Keat Road, Singapore 328836;

and

- (2) _____ (**ACRA Registered Name**)
 (“**RECEIVING PARTY**”), a company registered in Singapore with UEN: _____,
having its registered address at: _____.

WHEREAS:

- (A) NKF is conducting a request for proposal for [RFP / PROJECT NAME] (the “**RFP**”), in relation to the Purpose as defined in Clause 1 below.
- (B) The Parties wish to define their rights and obligations with respect to the said information and to protect the confidentiality thereof and proprietary features contained therein.
- (C) The Receiving Party agrees to keep such Confidential Information confidential and to use it solely for the Purpose and in accordance with this Agreement.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1. PURPOSE

In connection with the RFP, NKF may disclose or make available certain Confidential Information (as defined below) to the Receiving Party for the purpose of enabling the Receiving Party to understand, evaluate and respond to the RFP (the “**Purpose**”).

For such Purpose, and in consideration of the Receiving Party’s agreement to keep confidential such Confidential Information, as defined below, the Disclosing Party may disclose Confidential Information to the Receiving Party under the terms and conditions set forth herein. The Confidential Information to be disclosed and the time of such disclosure shall be at the sole discretion of the Disclosing Party.

2. **DEFINITIONS**

2.1 **"Confidential Information"** shall mean all information disclosed or made available by the **Disclosing Party** whether transmitted orally, in writing, electronically or in other form (and in each case, whether or not marked in writing as "confidential"), to the **Receiving Party** relating to or in connection with the Purpose, including:

- (a) All personal data, including patient data and information;
- (b) all commercial, marketing and business information, strategic and development plans, forecasts, intentions, any matter concerning the Disclosing Party, its affairs, business, operations, shareholders, directors, officers, business associates, clients or any other person or entity having dealings with the Disclosing Party;
- (c) information relating to the financial condition of the Disclosing Party, its accounts, audited or otherwise, notes, memoranda, documents and/or records in any form whatsoever, whether electronic or otherwise;
- (d) scientific, technical, intellectual or other information in any form whatsoever, whether electronic or otherwise, relating to methods, processes, formulae, compositions, systems, techniques, product information, inventions, know-how, trade secrets, design rights, machines, computer programs, software, development codes and research projects; business plans, co-developer/collaborator identities, data, business records of every nature, customer lists and client database, pricing data, project records, market reports, sources of supply, employee lists, business manuals, policies and procedures, information relating to technologies or theory and all other information which may be disclosed by the Disclosing Party to the Receiving Party which the Receiving Party may be provided access by the Disclosing Party, whether stored electronically or otherwise; all information which is deemed by the Disclosing Party to be Confidential Information or which is generated as a result of or in connection with the business of the Disclosing Party and which is not generally available to the public; and all copies, reproductions and extracts thereof, in any format or manner of storage, whether in whole or in part, together with any other property of the Disclosing Party made or acquired by the Receiving Party or coming into their possession or control in any manner whatsoever;
- (e) Notwithstanding any other provision to the contrary in this Agreement, any information relating or pertaining to the patients of the Disclosing Party shall be deemed to be Confidential Information of the Disclosing Party.

2.2 **"Permitted Persons"** shall mean directors, officers, employees, servants, agents, representatives, consultants, independent contractors, and professional advisors (including tax, accounting and legal professionals) who are required to have the Confidential Information in relation to the Purpose.

3. **LIMITATIONS OF CONFIDENTIALITY**

Confidential Information does not include information:

- (a) which is or becomes public knowledge and public property through no fault of the Receiving Party or in any way without breach of this Agreement by the Receiving Party;
- (b) which the Receiving Party can show has been known or has been developed by or for the Receiving Party at any time independently of the information disclosed to it by the Disclosing Party;
- (c) which is and/or was disclosed or made available to the Receiving Party from a source other than the Disclosing Party (including through the Receiving Party's own research) without breach by the Receiving Party or such source of any obligation of confidentiality or non-use towards the Disclosing Party;

- (d) which is hereafter made generally available by the Disclosing Party or a third party or is disclosed by the Disclosing Party to a third party without a duty of confidentiality or without restriction on disclosure or use, including without limitation, by way of the publication of a patent specification;
- (e) which is disclosed by the Receiving Party with the prior written approval of the Disclosing Party; or
- (f) in respect of which the confidentiality survival period set out in this Agreement has expired.

provided however that the foregoing exceptions shall not apply to information relating to any combination of features or any combination of items of information merely because information relating to one or more of the relevant individual features or one or more of the relevant items (but not the combination itself) falls within any one or more of such exceptions.

4. HANDLING OF CONFIDENTIAL INFORMATION

4.1 In consideration of the disclosure of Confidential Information, the Receiving Party undertakes in relation to the Disclosing Party's Confidential Information:

- (a) to maintain the same in confidence and to use it only for the Purpose and for no other purpose and in particular, but without prejudice to the generality of the foregoing:
 - (i) not to make any commercial use thereof; and
 - (ii) not to use the same for the benefit of itself or of any third party other than pursuant to a further agreement with the Disclosing Party;
- (b) not to copy, reproduce, or reduce to writing any part thereof except as may be reasonably necessary for the Purpose and that any copies, reproductions or reductions to writing so made shall be the property of the Disclosing Party;
- (c) not to upload any Confidential Information unto any artificial intelligence tools for any evaluation or analysis or advice;
- (d) to immediately notify the Disclosing Party in the event of any known unauthorised, unlawful, and/or unintended access, collection, use, disclosure, disposal, copying, modification, loss, or destruction of Confidential Information received from the Disclosing Party and cooperate with the Disclosing Party's requests to investigate and remediate such incidents and provide appropriate response and redress;
- (e) not to disclose the Confidential Information to any third parties except in confidence to such Permitted Persons, provided that such Permitted Persons are bound to terms no less stringent than this Agreement;
- (f) in relation to patients, the Receiving Party shall ensure that none of the patients of the Disclosing Party can be identified in any reports, submissions and publications of the Receiving Party;
- (g) to be responsible for the performance of sub-clauses (a) to (f) above on the part of such Permitted Persons to whom the same is disclosed pursuant to sub-clause (e) above; and
- (h) to apply thereto no lesser security measures and degree of care than those which the Receiving Party applies to its own confidential or proprietary information of similar nature and which the Receiving Party warrants as providing adequate protection of such information from unauthorised disclosure, copying, or use.

- 4.2 The Receiving Party shall cause such Permitted Persons involved in the Purpose to observe or be similarly bound by the terms of Agreement. The Receiving Party as the principal party shall be responsible and held liable for any breach of this Agreement by any of the Permitted Persons.
- 4.3 Notwithstanding the foregoing, the Receiving Party shall be entitled to make any disclosure required by law of the Disclosing Party's Confidential Information but shall give the Disclosing Party not less than two (2) business days' notice of such disclosure and shall consult with the Disclosing Party prior to such disclosure with a view to avoiding such disclosure if legally possible. Where possible, the Receiving Party shall also assist the Disclosing Party to obtain, a protective order requiring the Confidential Information so disclosed to be kept in confidence and use only for the purpose for which such order was issued.

5. RETURN OF CONFIDENTIAL INFORMATION

- 5.1 The Receiving Party shall:
- (a) within one (1) month of completion of the Purpose destroy or upon receipt of a written request from the Disclosing Party, return to the Disclosing Party all documents and materials (and all copies thereof) containing the Disclosing Party's Confidential Information and certify in writing to the Disclosing Party that it has complied with the requirements of this sub-clause; and
 - (b) notwithstanding the completion of the Purpose or return of the documents and materials as aforesaid, continue to be bound by the undertakings set out in Clause 4.
- 5.2 Any Confidential Information which the Receiving Party is mandatorily required by laws or by any governmental or other regulatory authority to retain custody of shall continue to be bound by the terms of this Agreement for the period such Confidential Information is retained.

6. DATA PROTECTION

- 6.1 The Receiving Party shall comply with all the obligations under the Personal Data Protection Act 2012 and all subsidiary legislation including any re-enactments, supplements and amendments etc. ("PDPA") at its own cost including but not limited to the following,
- (a) only process, use or disclose personal data in accordance with the Disclosing Party's instructions and the purposes for which the personal data was disclosed, or when required by law or an order of court, but shall notify the Disclosing Party as soon as practicable before complying with such law or order of court at its own costs;
 - (b) protect the personal data in its possession or under its control by making reasonable security arrangements to prevent any accidental loss or unauthorised access, collection, use, disclosure, destruction, disposal, copying and modification of the personal data, and the loss of any storage device or medium on which personal data is stored;
 - (c) provide to the Disclosing Party access to the personal data that the Receiving Party has in its possession or control, as soon as practicable upon the Disclosing Party's written request;
 - (d) not transfer the personal data to outside Singapore without the Disclosing Party's prior written consent. If the Disclosing Party provides consent, the Receiving Party shall provide a written undertaking to the Disclosing Party that the personal data transferred outside Singapore will be protected at a standard that is comparable to the PDPA. If the Receiving Party transfers the personal data to any third party overseas, the Receiving Party shall procure the same written undertaking from such third party.
- 6.2 The Receiving Party shall permit the Disclosing Party to conduct audits on its premises and systems to ensure that the collection, use and disclosure of the personal data are in accordance with the above requirements. The Receiving Party shall render all necessary assistance to the Disclosing Party for the purpose of such audits.

7. DISCLAIMER AND WARRANTY

- 7.1 The Disclosing Party warrants that it has the right to disclose Confidential Information to the Receiving Party and to authorise the Receiving Party to use the same for the Purpose.
- 7.2 The Receiving Party agrees that any Confidential Information is made available "as is" and that no representation or warranties of any kind are granted or implied with respect to the quality of Confidential Information, including but not limited to, its fitness for any purpose, accuracy, completeness or correctness. The Confidential Information does not constitute, nor should the Confidential Information be taken as, a recommendation or inducement, or form part of any offer or invitation to sell or issue, or any solicitation of any offer to purchase any assets, nor shall it or any part of it form the basis of, or be relied on in connection with, any contract or investment decision.

For the avoidance of doubt, nothing in this Agreement shall oblige the Disclosing Party to proceed with the RFP, accept any proposal or quotation submitted by the Receiving Party, award any contract to the Receiving Party, or enter into any further agreement with the Receiving Party.

8. CONFIDENTIALITY OF THIS AGREEMENT

The Receiving Party agrees to keep the existence and nature of this Agreement confidential and not to use the same or the name of the Disclosing Party or of any other company in the Group of Companies of which the Disclosing Party may form a part in any publicity, advertisement or other disclosure with regard to this Agreement without the prior written consent of the Disclosing Party, such consent not to be unreasonably withheld.

9. DAMAGES NOT AN ADEQUATE REMEDY

The Receiving Party acknowledges that the Confidential Information has been developed or obtained by the Disclosing Party through the investment of significant time, effort and expense, and that such Confidential Information provides the Receiving Party with a significant competitive advantage over its competitors. The Receiving Party understands and agrees that any breach of this Agreement will result in irreparable harm to the Disclosing Party and because of the unique nature of the Confidential Information, monetary damages may not be an adequate remedy in the event of such a breach or threatened breach of this Agreement. Accordingly, the Disclosing Party and Receiving Party agree that the Disclosing Party shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of a breach or threatened breach of this Agreement in addition to all other remedies available to the Disclosing Party at law or in equity, without the necessity of proving actual damages and without the need to post bond or other security.

10. NO GRANT OF INTELLECTUAL PROPERTY RIGHTS

- 10.1 All Confidential Information remains the property of the Disclosing Party.
- 10.2 The Disclosing Party reserves all rights in the Confidential Information and no rights or obligations other than those expressly recited herein are granted or to be implied from this Agreement. In particular, no license is hereby granted directly or indirectly under any patent, invention, discovery, copyright or other industrial property right now or in the future held, made, obtained or licensable by the Disclosing Party.
- 10.3 The Receiving Party shall not file any copyright registrations, patent applications or similar registrations of ownership on the Confidential Information. In the event that the Receiving Party does so in breach of this Agreement, the Receiving Party shall assign absolutely to the Disclosing Party such registrations and applications without any cost to the Disclosing Party.

11. LIMITATION OF LIABILITY

In carrying out its obligations under this Agreement, the Receiving Party shall comply with all laws and regulations applicable thereto, and save for wilful acts, default, or gross negligence on the part of the Disclosing Party, the Disclosing Party shall not be liable to the Receiving Party for any indirect, incidental, special, punitive or consequential damages however caused, including any loss of profits or business interruption costs and under any theory of liability, including but not limited to contract, strict liability and negligence; whether or not the Receiving Party has been advised of the possibility of such damage.

12. NOTICES

- 12.1 All notices, communications, demands, requests, approvals or consents required to be given or made under this Agreement by either Party must be in writing and shall be effective only if either personally delivered, sent by registered mail, sent by facsimile, or sent by electronic mail to the address and persons indicated below:

For NKF

Address: 81 Kim Keat Road, Singapore 328836

Fax : +65-63569002

Email : [insert email]

Attention : [insert name and title]

For Receiving Party

The address and contact details of the Receiving Party shall be as set out in the signature block of this Agreement.

- 12.2 Every notice or communication so sent shall be deemed to have been properly served and validly made, if by hand when delivered to the recipient's address, if sent by registered post, two (2) days after posting, notwithstanding the fact that the letter may be returned by the Post Office undelivered, or if sent by electronic mail, immediately when the notice is sent without any notification that the delivery had failed.

13. DURATION AND TERMINATION

This Agreement shall come into effect on the **Effective Date** and shall continue in full force and effect for a period of **5 (FIVE) years** with an option for the Parties to renew the term mutually in writing, unless terminated by the Parties with a thirty (30) days written notice.

Notwithstanding the expiration or termination of this Agreement, Clauses 1 to 12, 15 to 22, and 24 shall continue to be effective for a period of [insert] from the date of expiration or termination of this Agreement, provided that any obligations relating to personal data shall continue for so long as required by applicable law.

14. NON-ASSIGNMENT

Subject to the other provisions of this Agreement, all the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective permitted assigns and successors-in-title except that:-

- (i) the Receiving Party shall not transfer or assign all or any of its rights, obligations or benefits hereunder in whole or in part to any third party, without the prior written consent of the Disclosing Party, which consent shall not be unreasonably withheld;

(ii) any permitted assignee or transferee shall agree in writing to comply with all terms and conditions of this Agreement; and

(iii) any assignment shall not exceed the existing scope of this Agreement.

15. SEVERABILITY

15.1 In the event that any term, condition or provision contained in this Agreement or the application of any such term, condition or provision shall be held by a court of competent jurisdiction to be wholly or partly illegal, invalid, unenforceable or a violation of any applicable law, statute or regulation of any jurisdiction, the same shall be deemed to be deleted from this Agreement and shall be of no force and effect; whereas the remaining terms and provisions of this Agreement shall remain in full force and effect as if such term, condition and provision had not originally been contained in this Agreement, unless the severed provisions render the continuing performance of this Agreement impossible, or materially change either party's rights or obligations under this Agreement; in which event such Party may give written notice of its intent to terminate this Agreement to the other Party.

15.2 Notwithstanding the aforesaid, in the event of such deletion, the Parties hereto shall negotiate in good faith in order to agree to terms of mutually acceptable and satisfactory alternative provisions in place of the provision(s) so deleted.

16. WAIVER

16.1 No waiver of any breach of any covenant, condition, stipulation, obligation or provision contained or implied in this Agreement shall operate or be interpreted as a waiver of another breach of the same or of any covenant, condition, stipulation, obligation or provision in this Agreement.

16.2 Any time or other indulgence granted by a Party under this Agreement shall be without prejudice to and shall not be taken as a waiver of any of that Party's rights under this Agreement nor shall it prejudice or in any way limit or affect any statutory rights or powers from time to time vested in or exercisable by that Party.

17. DISPUTE RESOLUTION

17.1 In the event of any dispute or difference arising out of or in connection with or in relation to this Agreement or the existence, validity, termination, application or interpretation of this Agreement or any of its provisions, both Parties shall use their best endeavours to settle the dispute informally by agreement between them. Both Parties shall always act in good faith and co-operate with each other to resolve any disputes.

17.2 If the dispute is not settled in accordance with Clause 17.1 above within fourteen (14) days of the dispute arising, then Parties may commence legal proceedings in the Singapore Courts. Parties agree that the Singapore Courts are the most appropriate and convenient forum to settle any such disputes, and no Party shall argue to the contrary.

18. PROFESSIONAL FEES

In any suit or other proceeding relating to the subject matter of the Agreement, the prevailing Party shall be entitled to recover from the other Party all reasonable costs, fees and expenses by accountants, solicitors and other professionals for services rendered to the prevailing Party in connection with the suit or other proceeding, including costs, fees and expenses of preparation and appeal.

19. ENTIRE AGREEMENT

The Parties expressly acknowledge that they have read this Agreement and understood its provisions. The Parties agree that this Agreement and all Schedules annexed to the same constitute the entire agreement between them with respect to the subject matter of this Agreement and that it supersedes all prior or contemporaneous proposals, agreements, negotiations, representations, warranties, understandings, correspondence and all other communications (whether written or oral, express or implied) or arrangements entered into between the Parties prior to this Agreement in

respect of the matters dealt with in it. No promise, inducement, representation or agreement other than as expressly set forth in this Agreement has been made to or by the Parties.

20. NO PARTNERSHIP

Nothing contained in or relating to this Agreement shall be deemed to constitute a partnership or agency relationship between the parties and no party shall have any authority to act for or assume any obligation or responsibility of any kind, express or implied on behalf of the other party or bind or commit the other party for any purpose in any way whatsoever.

21. GOVERNING LAW

This Agreement shall be deemed to be made in Singapore and subject to, governed by, and construed in all respects in accordance with the laws of the Republic of Singapore (without reference to principles of conflicts of laws).

22. THIRD PARTY RIGHTS

A person who is not a party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 2001 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from the said Act.

23. COUNTERPARTS

- 23.1 This Agreement may be executed in one (1) or more counterparts by the duly authorised representatives of the Parties, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement provided that this Agreement shall be of no force and effect until the counterparts are exchanged.
- 23.2 This Agreement and any counterparts may be executed and delivered electronically by emailed portable document format (PDF) document (or other mutually agreeable document format) and such electronic version shall be treated as an original.

24. MISCELLANEOUS

- 24.1 Words incorporating the masculine gender only shall include the feminine and/or neuter genders and vice versa, and words incorporating the singular meaning shall include the plural meaning and vice versa and words denoting natural persons shall include bodies corporate, incorporate, associated partnerships, firms, trusts, associations, joint ventures, governments, governmental agencies or departments or any other entity, and all such words shall be construed interchangeably in that manner.
- 24.2 References to clauses, schedules and annexes shall be references to Clauses of and the Schedules and Annexes to this Agreement. The Schedules and Annexes are to have effect and be construed as an integral part of, and shall be deemed to be incorporated into, this Agreement.
- 24.3 References to statutory provisions shall be construed as references to those provisions as respectively amended, consolidated, extended or re-enacted from time to time and all statutory instruments or orders made pursuant to them.
- 24.4 References in this Agreement to anything which any party is required to do or not to do shall include its acts, defaults and omissions, whether direct or indirect, on its own account, or for or through any other person and those which it permits or suffers to be done or not done by any other person.
- 24.5 In the event of a conflict between any of the terms of this Agreement, including any Schedules and Annexes, the conflict will be resolved in the following order of priority: (1) the Clauses of this Agreement; (2) the Schedules and Annexes.

- 24.6 In the event the Parties enter into a substantive agreement in relation to, or arising out of, the Purpose of this Agreement, the Parties may elect to incorporate the terms of this Agreement into such subsequent agreement, notwithstanding the duration and survival provisions set out herein.

IN WITNESS WHEREOF the duly authorised representatives of the Parties hereto have executed this Agreement as of the day and year first abovewritten.

Signed for and on behalf of

THE NATIONAL KIDNEY FOUNDATION

Signature: _____

Name: _____

Designation: _____

Date: _____

Signed for and on behalf of

_____ (Receiving Party's ACRA Registered Name)

Signature: _____

Name: _____

Designation: _____

Date: _____

Address: _____

Tel : _____

Fax : _____

Email: _____

Attention: _____