

CONFIDENTIAL DISCLOSURE AGREEMENT

between

Max-Planck-Institute for,
Department,
(Address)
represented by the Director,,
- hereinafter called "MPI"-

and

(Name of company)
(Address)
represented by the,
-hereinafter called "COMPANY"-.

Preamble

At the MPI, Department, an institute of the Max-Planck-Gesellschaft zur Foerderung der Wissenschaften e.V. ("MPG"), a German non-profit scientific research organisation, is working in the field of Scientists have developed a method/device/substances to (possibly: MPG has filed a priority claiming patent application thereon on (date)..., (application number)....., (title).....). The aforementioned development (possibly: and patent application) is hereinafter called "MPG Technology".

COMPANY is (short description of COMPANY) and is working in the field of

MPI and COMPANY each have certain Confidential Information (as later defined herein) in their respective field of work which they consider to be confidential. MPI and COMPANY are willing to exchange the Confidential Information only for the purpose of evaluation and determination of COMPANY's possible interest in a scientific collaboration and/or a commercial license.

Now, therefore, the parties agree as follows:

1. "Confidential Information" shall mean the MPG-Technology and any technical and business information related thereto, which will be disclosed in writing (i.e. by letter, fax or e-mail), or orally and reduced to writing within 30 days after oral disclosure, by one party (hereinafter the "Disclosing Party") to the other party (hereinafter the "Receiving Party"), including but not limited to business plans, technical and financial data, drawings, materials, samples, trade secrets, software, know-how, inventions and patent applications not yet disclosed.

Excluded shall be such information which:

- (a) was in the public domain prior to such disclosure; or
- (b) becomes part of the public domain through no breach of an obligation by the Receiving Party; or
- (c) was known by the Receiving Party prior to the disclosure by the Disclosing Party, or
- (d) is independently developed by the Receiving Party without reference to the Confidential Information disclosed under this Agreement; or

(e) the Receiving Party notifies the Disclosing Party is required to be disclosed by the Receiving Party pursuant to a legally enforceable order, direction or other regulation, but any disclosure shall only be so far as necessary to give effect thereto.

However, the burden of proving that any information disclosed by one party to the other should not be considered as Confidential Information shall be the Receiving Party's.

2. Each party agrees that the sole purpose for disclosing Confidential Information to the other is to allow each party to evaluate the scientific and commercial potential of the other party's Confidential Information and to allow the parties to consider whether they should enter into future business relationships, in particular regarding a collaboration and/or license agreement. However, the parties shall have no obligation to enter into such business relationship.
3. Each party agrees that it shall keep confidential the other party's Confidential Information, and that the Receiving Party shall use the Confidential Information solely for the authorised purpose mentioned in Section 2. Any disclosure to a third party and any other use, in particular any commercial use or any use to file intellectual property rights thereon, is prohibited, unless the parties enter into a future business relationship authorising such disclosure or use. The parties shall use the same level of care and protection for the other party's Confidential Information as is used to prevent unauthorised use and unauthorised disclosure of its own Confidential Information.
4. Each party acknowledges that it will be necessary to disclose the other party's Confidential Information on a need to know-basis to employees and that it may be necessary to disclose the other party's Confidential Information on a need to know-basis to third parties (e.g. agents, consultants, attorneys) with whom it is evaluating such Confidential Information. However, each party warrants that it has sufficient procedures and protections in place in order to enforce and maintain the confidentiality, and prevent unauthorised use and unauthorised disclosure, of the other party's Confidential Information, by its employees and by third parties (e.g. agents, consultants, attorneys) to whom they may disclose such Confidential Information.
5. Each party agrees that the Disclosing Party is and remains the owner of its own Confidential Information. Each party agrees that if, as a result of receiving disclosures of the other party's Confidential Information, any inventions are made by the Receiving Party, such inventions shall be disclosed to the Disclosing Party. If the parties mutually decide that joint inventions have been made, they shall negotiate in good faith the administration and exploitation of such joint inventions.
6. Neither this Agreement nor the disclosure of any Confidential Information by one party to the other shall be construed as granting to either party any licence, option or other rights relating to the Confidential Information.
7. The parties make no representations or warranties of any kind, express or implied, concerning the Confidential Information, and the absence of any actual or legal defects, whether or not discoverable. Specifically, and not to limit the foregoing, the parties make no warranty or representations (i) regarding the correctness, completeness or fitness for a particular purpose of the Confidential Information, and (ii) that the use of the Confidential Information will not infringe any patents or other intellectual property rights or copyrights of a third party, and (iii) that the use of the Confidential Information will not cause any damages of any kind to the Receiving

Party or a third party.

8. This Agreement shall be construed in accordance with and be governed by the laws of the Federal Republic of Germany and the parties hereby submit to the jurisdiction of the Courts of Munich, Germany.
This Agreement shall inure to the benefit of the parties and shall be binding upon their total legal successors. It is personal to the parties and no rights or obligations may be assigned by one party to a third party without the prior written approval of the other party.
9. This Agreement shall come into effect with countersignature of the parties, and shall continue in full force until five years thereafter. Either party may terminate this Agreement for cause by not less than one month prior notice in writing to all others. The termination of this Agreement shall not affect each party's obligation of non-disclosure and non-use according to this Agreement. After termination of this Agreement, each party shall return or destroy all copies of the Confidential Information received from the Disclosing Party at the discretion of the Disclosing Party.
10. No modifications or supplementations of this Agreement shall be effective unless in writing and signed by all parties. Should one of the provisions of this Agreement be held void, invalid or unenforceable, the remaining provisions of this Agreement will not cease to be effective. The parties shall negotiate in good faith to replace such void, invalid or unenforceable provision by a new provision which reflects, to the extent possible, the original intent of the parties.

Max-Planck-Institute for
Department of

By: _____
Name:
Title:
Date:

Name of COMPANY

By: _____
Name:
Title:
Date: