

## MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement is made and entered into as of \_\_\_\_\_, 2020, by and between **KAI MEDICAL LABORATORY, LLC** and \_\_\_\_\_.

- Purpose.** The parties wish to explore a business opportunity of mutual interest and in connection with such potential transaction, each party may disclose to the other certain confidential technical and business information which the disclosing party desires the receiving party to treat as confidential.
- Confidential Information.** means any information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects (including, without limitation, documents, prototypes, samples and equipment), which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally shall be considered Confidential Information if such information is confirmed in writing as being Confidential Information within a reasonable time after the initial disclosure. Confidential Information may also include information disclosed to a disclosing party by third parties. Confidential Information shall not, however, include any information which: (a) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (b) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (c) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (d) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (e) is independently developed by the receiving party without use of, or reference to, the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession; or (f) is required by law to be disclosed by the receiving party, provided that the receiving party gives the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order protecting the information from public disclosure.
- Non-use and Non-disclosure.** Each party agrees not to use any Confidential Information of the other party for any purpose except to evaluate and engage in discussions concerning a potential business relationship between the parties. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees or agents, except to those employees or agents of the receiving party who are required to have the information in order to evaluate or engage in discussions concerning the potential transaction. Neither party shall reverse engineer, disassemble or decompile any prototypes, software, reports or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder. Each party, for itself and its successors and assigns, agrees that it will not use the Confidential Information disclosed hereunder, or the fact of such disclosure, as evidence in any current, ongoing or future legal or administrative proceeding, including, without limitation, to establish (i) the existence of a justiciable controversy, (ii) knowledge, (iii) intent or (iv) wilfullness.

4. **Maintenance of Confidentiality.** Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own most highly-confidential information and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-use and non-disclosure agreement similar in content to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Neither party shall make any copies or modifications of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies or modifications, in the same manner in which such notices were set forth in or on the original.
5. **No Obligation.** Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.
6. **No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, QUALITY COMPLETENESS OR PERFORMANCE.
7. **Return of Materials.** Except for any back-up copies of electronic data as may be maintained in the ordinary course of a receiving party's IT practices or procedures, all documents and other tangible objects containing or representing Confidential Information which have been disclosed by either party to the other party, and all copies thereof which are in the possession of the other party, shall be and remain the property of the disclosing party and shall be promptly returned to the disclosing party upon the disclosing party's written request.
8. **No License.** Nothing in this Agreement is intended to grant any rights to either party under any trademark, trade secret, patent, mask work right or copyright of the other party, nor shall this Agreement grant any party any rights in or to the Confidential Information of the other party except as expressly set forth herein.
9. **Term.** The obligations of each receiving party hereunder shall survive until such time as all Confidential Information of the other party disclosed hereunder becomes publicly known and made generally available through no action or inaction of the receiving party.
10. **Remedies.** If it appears that the Recipient has disclosed (or threatened to disclose) Confidential Information in violation of this Agreement, the Company shall be entitled to an injunction to restrain the Recipient from disclosing the Confidential Information in whole or in part. The Company shall not be prohibited by this provision from pursuing other remedies, including a claim for loss and damages.

11. **Non-Circumvention.** During the term of this Agreement, Recipient will not attempt to do business with, or otherwise solicit any business contacts found or otherwise referred by Company to Recipient for the purpose of circumventing, the result of which shall be to prevent the Company from realizing or recognizing a profit, fees, or otherwise, without the specific written approval of the Company. If such circumvention shall occur the Company shall be entitled to any commissions due pursuant to this Agreement or relating to such transaction.
  
12. **Indemnity.** Each party agrees to defend, indemnify, and hold harmless the other party and its officers, directors, agents, affiliates, distributors, representatives, and employees from any and all third party claims, demands, liabilities, costs and expenses, including reasonable attorney's fees, costs and expenses resulting from the indemnifying party's material breach of any duty, representation, or warranty under this Agreement.
  
13. **Attorney's Fees.** In any legal action between the parties concerning this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs.
  
14. **General.** This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. This Agreement shall be governed by the laws of the State of Texas, without reference to conflict of laws principles. This document contains the entire agreement between the parties with respect to the subject matter hereof, and neither party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other party except as set forth herein. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto.

**IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date(s) written below:**

**KAI MEDICAL LABORATORY, LLC**  
 8230 Elmbrook Dr. - Suite 200  
 Dallas, TX 75247

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

By: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_