

NONDISCLOSURE AGREEMENT
Filovirus Program VLP Technical Data Package
(TDP) Only

THIS AGREEMENT is made by and between the Chemical Biological Medical Systems Joint Vaccine Acquisition Program (CBMS-JVAP), part of the United States Department of Defense Joint Program Executive Office for Chemical and Biological Defense, located at 1564 Freedman Drive Fort Detrick, MD 21701-4501, and (an individual or entity) whose principal address is located at (hereinafter referred to individually as a Party or collectively as the Parties) to facilitate the following described "Stated Purpose" by protecting non-public and privileged (FOUO) the information in the Technical Data Package (TDP) from misuse and unauthorized disclosure. This Agreement shall become effective upon the date of last signature by the authorized representatives of each of the Parties.

SUBJECT MATTER AND STATED PURPOSE:

a. The general subject of information is the Filovirus Program VLP Technical Data Package (TDP) in the Bidder's Library.

b. The Stated Purpose of this Agreement is to view the Filovirus Program VLP Technical Data Package (TDP) contained in the Filovirus Program VLP Bidder's Library for use in the Request for Proposal (RFP) solicitation response without disclosing any of the TDP information to any other Parties.

THE PARTIES AGREE AS FOLLOWS:

1. **DEFINITIONS AND SPECIFIC REQUIREMENTS.** As used in this Agreement, the following terms shall have the meanings as defined.

1.1. **Information.** As used in this Agreement, the term information shall mean the information in the TDP.

1.2. **Disclosure of Information.** As used in this Agreement, "Disclosure of Information" in the Filovirus Program VLP Technical Data Package (TDP) shall mean the orally, visually, or on any human or machine readable medium including, but not limited to, oral and visual expressions, demonstrations, audio tapes, video tapes, drawings, computer memory devices, models, prototypes and samples.

1.3. **Disclosing Party.** As used in this Agreement, "Disclosing Party" shall mean the US Government.

1.4. **Receiving Party.** As used in this Agreement, "Receiving Party" shall mean the Party receiving a "Disclosure of Information."

1.5. **Protected Information.** As used in this Agreement, "Protected Information" shall mean information in the Filovirus Program VLP Technical Data Package (TDP) provided by a Disclosing Party to a Receiving Party under this Agreement that has been clearly identified through the use of an appropriate marking that puts the Receiving Party on notice that the Disclosing Party considers the Information to be Protected Information under the terms of this Agreement.

1.6. **APPROPRIATE MARKINGS.** As used in this Agreement, "Appropriate Markings" shall mean any reasonable method by which a Disclosing Party clearly identifies to a Receiving Party that Information is being disclosed under this Agreement, and is considered by the Disclosing Party to be

Protected Information. The Government has marked the Filovirus Program VLP Technical Data Package (TDP) as shown below:

**FOUO - Do Not Disclose outside of the Government
except as authorized by NDA**

2. AUTHORIZED ACCESS AND DISCLOSURE.

2.1. A Receiving Party shall not use or disclose Protected Information other than in accordance with the terms and conditions of this Agreement.

2.2. A Receiving Party shall take reasonable and appropriate measures to safeguard Protected Information from misuse, theft, loss, destruction, and unauthorized disclosure. Such measures shall be no less than that degree of care the Receiving Party normally takes to preserve and safeguard its own proprietary Information. The Parties shall not be liable for the use or disclosure of Protected Information used or disclosed despite the exercise of reasonable care provided that, upon discovery of any unauthorized use or disclosure, it promptly notifies the Disclosing Party in writing and takes action to prevent further disclosure and to recover any Protected Information already disclosed.

2.3. If Protected Information is included in any analyses, reports, or other documents or physical embodiments prepared by the Receiving Party, all such documents and embodiments shall be appropriately protected by the Receiving Party in the same manner as the Disclosing Party protected the source Protected Information.

2.4. A Receiving Party may provide access to Protected Information to its own employees who reasonably require such access in order to accomplish the Stated Purpose of this Agreement. Prior to being granted access to Protected Information, all employees of a Receiving Party shall be advised concerning the requirements and restrictions of this Agreement, directed to use and protect the Protected Information properly, and not to disclose Protected Information without proper authorization. The Receiving Party will document which of its employees have been granted access to Protected Information and so advise the Disclosing Party upon request.

2.5. A Receiving Party may provide access to Protected Information to its agents, service contractor employees, collaborators and other non-Parties to this Agreement who reasonably require such access in order to accomplish the Stated Purpose of this Agreement. Before any such non-Party organizations or individuals are granted access to Protected Information, the Receiving Party shall notify and obtain the concurrence of the Disclosing Party. The Receiving Party shall also require non-Party organizations and individuals (other than U.S. Government officers and employees) to execute the Supplemental Agreement at Appendix A prior to disclosing any Protected Information.

2.6. A Receiving Party shall not disclose Protected Information to any person (including its own employees), nor shall a Receiving Party export any Protected Information from the United States, if such disclosure or export would violate the Arms Export Control Act, the International Traffic in Arms Regulation (22 C.F.R. Part 121 et seq.), the Export Administration Act, the Department of Commerce Export Regulation (15 C.F.R. Part 770 et seq.), the DoD Industrial Security Regulation (DOD 5220.22-R), or any other law or regulation of the United States. A Receiving Party shall first obtain the written consent of the Disclosing Party before requesting authority to export Protected Information from the United States.

2.7. The following individuals are designated as the principal points of contact for the transmittal of Protected Information under this Agreement.

ACC-APG NATICK CONTRACTING DIVISION

Attn: Mr. Nathan Jordan

Contract Specialist

Telephone: 508-233-6169

Fax: 508-422-9673

Email: nathan.c.jordan.civ@mail.mil

3. GENERAL PROVISIONS.

3.1. All Protected Information owned by or to which unlimited rights are held by, a Disclosing Party shall remain as such to the Disclosing Party. Protected Information in tangible form may be retained in the possession of the Receiving Party after termination or expiration of this Agreement only to the extent expressly authorized by the Disclosing Party. Within thirty (30) days after termination or expiration of this Agreement, or upon receipt of a written demand from the Disclosing Party for the return of Protected Information, the Receiving Party shall promptly return (or destroy, if so requested) all tangible forms of Protected Information received from the Disclosing Party. If destruction is requested, the Receiving Party will provide written notification to the Disclosing Party certifying that the destruction has been accomplished.

3.2. Each Party shall bear its own costs and expenses incurred under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract, or other business relationship with the other Party.

3.3. This Agreement shall not be construed as a Teaming Agreement, Joint Venture, or any other such agreement nor shall it be construed as a commitment to procure or provide any specific products or services. Nothing contained herein shall be construed to grant or confer any rights other than to use the Protected Information for the Stated Purpose under the terms of this Agreement, nor shall anything herein be construed to grant license or other rights to any patents, trademarks, copyrights or other intellectual property whatsoever. The Parties expressly agree that this is an Agreement for protecting Information only.

3.4. A RECEIVING PARTY SHALL ACCEPT ALL PROTECTED INFORMATION AND EMBODIMENTS THEREOF ON AN "AS IS" BASIS. THE DISCLOSING PARTY MAKES NO WARRANTY OR REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.

3.5. Either Party, upon thirty (30) days written notice to the other Party, may terminate this Agreement.
a. Duration. Unless sooner terminated, this Agreement shall expire three (3) years from its effective date.

3.6. Effective Period. Notwithstanding the termination or expiration of this Agreement, all obligations incurred by a Receiving Party with respect to protection, use, disclosure and return or destruction of Protected Information shall survive and remain in effect for five (5) years from the date the Protected Information was received.

3.7. This Agreement may not be assigned by either Party without the prior express written

authorization of the other Party. All obligations incurred by a Receiving Party under this Agreement with respect to Protected Information shall be binding on its authorized successors and assigns.

3.8. This Agreement shall be governed by the Federal laws of the United States.

3.9. In the event a Receiving Party is subjected to any legal process that seeks to require it to produce Protected Information for inspection or review in a judicial or administrative proceeding, the Receiving Party shall promptly provide notice and a copy of the legal process to the Disclosing Party in order that the Disclosing Party may have an opportunity to challenge the legal process or seek a protective order. If, in the absence of a protective order, a Receiving Party is compelled to produce Protected Information to a tribunal or be found liable in contempt and subjected to a penalty, the Receiving Party may disclose such Protected Information to the tribunal provided the Protected Information so disclosed is clearly marked as Protected Information.

4. This Agreement constitutes the entire agreement between the Parties, and supersedes any prior or contemporaneous agreements, representations and understandings of the Parties with respect to the disclosure of Information covered by this Agreement. It shall not be suspended, modified, or amended except by written agreement of the Parties. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any other provision may be found invalid or unenforceable.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their duly authorized representatives who also warrant their authority to enter into the Agreement on behalf of their respective Parties:

For:
Signature:
Name:
Title:
Dated:

For:
Signature:
Name:
Title:
Dated:

Appendix A

All individuals who are authorized access to Protected Information through the Organization will sign and enter into this Supplemental Non-Disclosure Agreement before being granted access to Protected Information.

IN WITNESS WHEREOF, the Undersigned has hereto subscribed individually and/or as representatives of the named Organization.

Signature

Name (Print or Type)

Name and Address of Organization

Date