

BioCAID, Inc. - Confidentiality and Non-Disclosure Agreement

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (the “*Agreement*”), dated and effective as of the day and date the electronic acceptance was submitted, (the “EFFECTIVE DATE”) is entered into by and between BioCAID, Inc. (“BIOCAID”), a Delaware Corporation, and the person and associated firm or organization accepting these terms and condition (“SECOND PARTY”), whose name, location, and phone have been previously provided to BioCAID, Inc through electronic submission into our records.

WHEREAS, BIOCAID has certain confidential and proprietary knowledge, technologies, trade secrets, and associated intellectual properties under various stages of research, development, and/or commercialization (collectively “BIOCAID PROPERTIES”); and desires to protect BIOCAID interests by preventing SECOND PARTY from disclosing the Confidential Information (hereinafter defined) of BIOCAID to third parties or exploiting the Confidential Information of BIOCAID for SECOND PARTY’S own benefit or another’s benefit;

WHEREAS, BIOCAID desires to protect the interests of BIOCAID by preventing SECOND PARTY from disclosing the Confidential Information of BIOCAID (hereinafter defined) to third parties or exploiting the Confidential Information of BIOCAID for SECOND PARTY’s own benefit or another’s benefit;

WHEREAS, BIOCAID and SECOND PARTY desire to conduct business discussions, including the furnishing of information about either party, in anticipation of entering into various business transactions beneficial to both BIOCAID and SECOND PARTY (“Business Transactions”); and

WHEREAS, in connection with such discussions, either party (“*Discloser*”) may disclose to the other party (“*Recipient*”) certain of Discloser’s Confidential Information for the purpose of enabling Recipient to evaluate the Business Transactions and, in the event the parties agree to enter into a Business Transaction, to perform its obligations in connection therewith (“Confidential Information of BIOCAID” when BIOCAID is the Discloser and SECOND PARTY is the Recipient, and “Confidential Information of SECOND PARTY” when SECOND PARTY is the Discloser and BIOCAID is the Recipient).

NOW THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the parties hereto, intending to be legally bound, does hereby agree as follows:

1. **Confidential Information.** In the course of evaluating Business Transactions and, in the event the parties agree to enter into a Business Transaction, performing its obligations in connection therewith, Recipient will have access to, among other things, certain of Discloser’s trade secrets and confidential and proprietary documents and information related to certain confidential and proprietary knowledge, technologies, trade secrets, and associated intellectual properties, which are hereafter defined as:

1.1. **“Confidential” or “Confidential Information”:** As defined under the terms and conditions of this Agreement to be inclusive of, but not limited to the following: ideas, concepts, designs, drawings, prototypes, test results, operation methods, contracts with suppliers or other third parties, copyrights, patents, design rights, components, functions, specifications, techniques, trade secrets and all other intellectual property and other proprietary or intangible rights under any laws, rules, and regulations of any country, and all applications and registrations therefore and any and all applications, renewals, extensions, and restorations thereof, now or hereafter in force and effect worldwide, whether registered, applied for, or granted, or not; and which all of the preceding shall be considered in the definition of Confidential within the terms and conditions of this Agreement.

1.2. **Disclosure Precedence.** The disclosure of the Confidential Information shall be in

BioCAID, Inc. - Confidentiality and Non-Disclosure Agreement

writing and clearly marked “*Confidential*”, or if unlabeled sheets, must be a part of a disclosure package labeled confidential, or if orally disclosed, shall be described as “*Confidential Information*” when disclosed and shall be reduced to writing by the party making the disclosure within thirty days of its disclosure. Such information is referred to herein as “*Confidential Information*” and shall also include any and all other trade secrets and confidential and proprietary information relating to the business conducted by Discloser or with respect to the Business Transactions; *provided, however*, that the following information shall not be deemed Confidential Information: (i) information which is or becomes publicly available other than as a result of a breach hereunder by Recipient or another person, (ii) information which was rightfully received by Recipient from a source not, to Recipient’s knowledge, under obligation of confidentiality to Discloser; (iii) information in the possession of Recipient, in written or other recorded form, prior to disclosure by Discloser, and not previously disclosed by Discloser to Recipient to introduce the possibility of BIOCAID PROPERTIES Transactions, and (iv) information which Discloser has approved in writing for release by Recipient without restriction.

1.3. **Related Confidential Information.** Recipient acknowledges that all documents and information received from Discloser that are clearly related to the subject Business Transactions that have been clearly identified previously as trade secrets and/or confidential and proprietary information are also trade secrets and/or confidential and proprietary information whether or not clearly marked as “Confidential” or “Confidential Information” at the time of receipt by the Recipient and provided the unlabeled Confidential Information is part of a disclosure package which is labeled as Confidential Information, whether received verbally, in other intangible form, or in tangible form. Confidential Information may be preliminary or incomplete and relate to products or services under development or planned for development.

1.4. **“As Is” Provision. Confidential Information is provided “as is.” No warranties are hereby made by Discloser with respect to Confidential Information.** Recipient acquires no intellectual property rights under this Agreement except the limited rights necessary to evaluate Business Transactions and, in the event the parties agree to enter into a Business Transaction, to perform its obligations in connection therewith.

2. **Fiduciary Obligations.** Recipient acknowledges that Discloser has protected the secrecy of the Confidential Information, that the Confidential Information is confidential, valuable, and of critical importance to Discloser, that a violation of this Agreement would seriously and irreparably impair, harm, and damage Discloser’s business, and that Recipient shall keep the Confidential Information in secrecy in a fiduciary capacity for the benefit of Discloser, and will continue to do so until Discloser otherwise.

3. **Nonuse and Nondisclosure.** Recipient shall maintain the Confidential Information in secrecy and confidence in accordance with the provisions of this Agreement and shall use the Confidential Information solely in connection with and for the purpose of evaluating whether to enter into Business Transactions with Discloser and, in the event the parties agree to enter into a Business Transaction, performing its obligations in connection therewith. Recipient shall not copy, disclose, divulge, transfer, sell, license, lease, provide, or otherwise make available any Confidential Information, or any portion or summary thereof, to any person, firm, corporation or other entity other than to Recipient’s and/or its affiliated company’s officers, directors, employees, shareholders, accountants, attorneys and agents on a need-to-know basis, if such persons are provided with a copy of this Agreement and agree to be bound by the terms hereof to the same extent as if they were parties hereto, in order to permit those people to assist Recipient in evaluating Business Transactions and, in the event the parties agree to enter into a Business Transaction, performing Recipient’s obligations in connection therewith. Recipient agrees to take all commercially reasonable measures to restrain such persons from prohibited or unauthorized disclosure or use of the Confidential Information. Any use or disclosure of the Confidential Information for any purpose other than expressly provided for in this Agreement shall be deemed a material breach of this Agreement. Notwithstanding the foregoing, it shall not be a breach of this Agreement for Recipient to disclose Confidential Information of the other party if required to do so under law or in a judicial or other governmental investigation or proceeding, provided Discloser has been given prior notice and opportunity to prevent such disclosure and

BioCAID, Inc. - Confidentiality and Non-Disclosure Agreement

Recipient has sought all available safeguards against widespread dissemination prior to such disclosure.

5. Ownership of Confidential Information. All Confidential Information shall remain the exclusive property of Discloser and nothing in this Agreement or any course of conduct between the parties shall be deemed to grant to Recipient any rights or license in or to the Confidential Information of Discloser, or any part thereof, other than as expressly granted herein. In the event that Discloser so requests in writing, Recipient shall deliver to Discloser all documents and other recordings containing Confidential Information supplied to Recipient and all copies thereof and agrees to destroy all notes, summaries, analyses, and compilations prepared for or by Recipient containing or reflecting any such Confidential Information and any electronic copies of such Confidential Information. Notwithstanding the return or destruction of the Confidential Information, Recipient shall continue to be bound by its obligations under this Agreement.

7. Remedies. It is specifically understood and agreed that any breach of this Agreement is likely to result in irreparable injury to Discloser and that the remedy at law alone will be an inadequate remedy for such breach, and that in addition to any other remedy it may have, Discloser shall be entitled to seek the specific performance of this Agreement by Recipient and to seek both temporary and permanent injunctive relief (to the extent permitted by law) without the necessity of proving actual damages.

8. Governing Law. This Agreement and all matters relating hereto shall be governed by and construed and interpreted in accordance with the laws of the State of Delaware, without regard to the principles of conflicts of laws.

9. Waivers. No waiver of any default or breach by either party hereunder shall be implied from any delay or omission by such party to take action on account of such default or breach, and no express waiver shall effect any default or breach other than the default or breach specified in the waiver, which waiver shall be operative only for the time and to the extent therein stated. Waivers of any provision, term or condition of this Agreement must be in writing and shall not be construed as a waiver of any subsequent breach of the same provision, term or condition. The consent or approval by a party to or of any act by the other party requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent or similar act. No single or partial exercise of any right or remedy of a party hereunder shall preclude any further exercise thereof or the exercise of any other or different right or remedy.

10. Assignment. The terms hereof shall be binding upon and inure to the benefit of the heirs, successors, assigns, and legal representatives of the parties hereto, and no other person or persons shall have any right to action hereon; *provided, however*, that neither party may assign this Agreement or any of its rights, interests, duties or obligations hereunder in whole or in part without the prior written consent of the other party; any such assignment without such consent shall be void.

11. Amendments. This Agreement shall not be amended except by a written instrument signed by the parties hereto.

12. Term. This Agreement shall continue for a period of five (5) years from the Effective Date ("Expiration"). unless extended by mutual agreement by the parties hereto, and such term is expressly established both in association with the trade secret and confidential nature of the information contemplated by this Agreement and non-publication contemplation of patent applications for related inventions.

13. Severability. Illegality, invalidity, or unenforceability of any one or more of the provisions of this Agreement, each of which shall be fully severable and this Agreement construed as if such provisions were not part of this Agreement, shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

14. Execution in Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same instrument, and in

BioCAID, Inc. - Confidentiality and Non-Disclosure Agreement

making proof of this Agreement, it shall not be necessary to produce more than one such counterpart.

15. Notices. All notices, requests and demands to or upon the respective parties to this Agreement shall be deemed to have been made or given (i) at the time hand delivered, or (ii) one business day following the date when deposited for shipment, transmittal charges prepaid, with a recognized delivery service providing overnight delivery service to the appropriate destination to such address as may hereafter be designated in writing by the respective parties.

If to BIOCAID:

Mr. Anthony Prestigiacomo, CEO
BioCAID, Inc.

and to:

Chris Gegg
Alston & Bird, LLP
101 S. Tryon St., Suite 4000
Charlotte, NC 28280-4000

If to SECOND PARTY:

16. Captions. The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provisions hereof.

17. Definitive Agreements. Neither party is obligated to go forward with BIOCAID PROPERTIES Transactions or any other business transaction. Either party may terminate discussions or negotiations with the other party at any time. Either party may engage in discussions or negotiations with third parties, even if such discussions or negotiations relate to possible business transactions similar or identical to the Transaction or that would preclude the Transaction.

BioCAID, Inc. - Confidentiality and Non-Disclosure Agreement

IN WITNESS WHEREOF, the parties hereto have duly executed this Non-Disclosure and Confidentiality Agreement as a binding contract as of the EFFECTIVE DATE first written ABOVE.

BIOCAID, INC

By: Virtual Signature by Nature of Request
(signature)

Name: Anthony Prestigiacomio

Title: Chief Executive Officer

Date: 1/1/19 and forward

SECOND PARTY

By: By digital acceptance through the 'submit' button indicating agreement and concurrence. (electronic signature)

Name: With the account holder within the digital record

Title: With the account holder within the digital record

Date: Upon the date of digital submission of acceptance form