

“CDA Today” Instructions

1. Print this document.
2. Complete the Cover Sheet.
3. Fill in the blanks and sign the agreement (example below).
4. Scan and email the signed document to smccrystal2@unl.edu (preferred) or fax it to 402-472-0398, attention Shelly McCrystal, Agreements Coordinator.
5. Receive a copy of the fully executed agreement in your email.
6. Start collaborating!

UNIVERSITY OF NEBRASKA-LINCOLN MUTUAL CONFIDENTIALITY AGREEMENT

This MUTUAL CONFIDENTIALITY AGREEMENT (“Agreement”) is entered into this 21st day of August, 2008 (“Effective Date”) by and between the Board of Regents of the University of Nebraska on behalf of the **University of Nebraska-Lincoln**, a non-profit, public educational institution of the State of Nebraska, having a mailing address of 1320 Q Street, Lincoln, Nebraska 68588-0467 (“UNL”), and Legal Name of Person or Organization, having a mailing address of Full Mailing Address, City, ST 12345 (“Company”).

The Board of Regents of the University of Nebraska	Authorized Agent for Company
By: _____	By: <u>First M. Lastname</u>
Name: <u>Dr. John J. Brasch</u>	Name: <u>First M. Lastname</u>
Title: <u>Assoc. Vice Chancellor for Tech. Dev.</u>	Title: <u>Person’s Title</u>
Date: _____	Date: <u>08-21-08</u>

CONFIDENTIALITY AGREEMENT REQUEST COVER SHEET

Return this sheet with the completed and signed agreement.

“Company”* Information

“Company” Name: _____

Contact Person: _____

Phone: _____

Email: _____

University Collaborator(s)

Collaborator Name

Department

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

General Description of Confidential Information to be Shared

** “Company” as set forth in the agreement, which could be a company, association, any other type of organization, or an individual.*

UNIVERSITY OF NEBRASKA-LINCOLN MUTUAL CONFIDENTIALITY AGREEMENT

This MUTUAL CONFIDENTIALITY AGREEMENT (“**Agreement**”) is entered into this _____ day of _____, 20__ (“**Effective Date**”) by and between the Board of Regents of the University of Nebraska on behalf of the **University of Nebraska-Lincoln**, a non-profit, public educational institution of the State of Nebraska, having a mailing address of 1320 Q Street, Lincoln, Nebraska 68588-0467 (“**UNL**”), and _____, having a mailing address of _____ (“**Company**”).

RECITALS

A. UNL and COMPANY (collectively the “**Parties**” and each a “**Party**”) have initiated or intend to initiate discussions concerning the possibility of entering into one or more negotiations with regard to the suitability of licensing certain UNL technology, and/or of establishing a research collaboration between Company and UNL (the “**Limited Purpose**”).

B. Such discussions between the Parties may require one or both Parties to disclose certain information to the other which is confidential and proprietary in nature and both Parties desire to agree in writing to maintain all such Confidential Information in the strictest confidence.

AGREEMENT

Now therefore, in consideration of the foregoing recitals, which are hereby incorporated into this Agreement by reference, the mutual covenants and agreements contained herein, and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth below:

(a) “**Confidential Information**” shall mean any non-public information, whether oral, written, verbal, photographic, or in any other tangible form, which prior to the Effective Date has been, or after the Effective Date hereof will be, furnished or disclosed by a Party, or any of its Related Parties and which has been designated as being confidential, or which is otherwise disclosed in such a manner or is of such a character as would put a reasonable person on notice as to the confidential and proprietary nature of the information, including, but not limited to, (i) the existence of this Agreement, (ii) all technical and non-technical information of any nature whatsoever and all inventions, trade secrets, know-how, formulations, methodologies, concepts, techniques, discoveries, processes, designs, research, plans or specifications relating thereto and (iii) any information pertaining to or regarding the business, sales, pricing, strategies, plans, customers, suppliers, properties or operations of such Party (including such information visually available to the Receiving Party at the Disclosing Party’s premises).

(b) “**Disclosing Party**” shall mean the Party disclosing Confidential Information.

(c) “**Receiving Party**” shall mean the Party receiving Confidential Information.

(d) “**Related Party**” or “**Related Parties**” shall mean the officers, employees, agents, legal, tax and other consultants, advisors or representatives of a Party to the extent such entities or

persons receive Confidential Information of the other Party.

2. Non-Disclosure and Restrictions on Use of Confidential Information.

(a) The Receiving Party shall, and shall cause its Related Parties to, keep in strictest confidence and trust all Confidential Information of the Disclosing Party and shall not (i) disclose any such Confidential Information to any other entity or person, except to its Related Parties who need to know such information in connection with the Limited Purpose or (ii) except in connection with and to the extent necessary to the accomplishment of the Limited Purpose, use such Confidential Information for its own commercial or other benefit or for the benefit of another, without the express written consent of the Disclosing Party. In particular, the Receiving Party shall not file any patent application containing any claim the subject matter of which contains, is based upon, or is derived from the Disclosing Party's Confidential Information. The Receiving Party shall take all reasonable safeguards to prevent the disclosure or misuse of Confidential Information of the Disclosing Party, including without limitation such measures as the Receiving Party takes to safeguard its own Confidential Information, and shall not photocopy, transcribe or otherwise reproduce or modify any of the Confidential Information, except with the express written consent of the Disclosing Party.

(b) The obligations of the Receiving Party under this Agreement shall apply to all Confidential Information of the Disclosing Party which the Disclosing Party considers to be confidential and proprietary in nature, and which has been or may hereafter be disclosed, directly or indirectly, to the Receiving Party by the Disclosing Party, either orally or in writing, or delivered to the Receiving Party whether it is marked confidential or not. However, this Section 2 shall not apply to information that: (i) is or becomes generally known or available to the public through no wrongful act of the Receiving Party; (ii) was in the Receiving Party's possession at the time of disclosure or receipt, as evidenced and verified by prior tangible evidence, and was not acquired under an obligation of confidence; (iii) the Receiving Party demonstrates was rightfully received by it from a third party after the time it was disclosed or obtained hereunder, provided that such third party was not under an obligation of confidence with the Disclosing Party at the time of the third party's disclosure to the Receiving Party; or (iv) is independently developed by the Receiving Party without use of or reference to the Confidential Information and without breach of this Agreement, as evidenced and verified by prior tangible evidence.

(c) In the event that a Disclosing Party is required by law or legal process to disclose any of the Confidential Information of the Disclosing Party, the Party required to disclose such information shall provide the Disclosing Party with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement so that the Disclosing Party may seek a protective order or other appropriate remedy. Each Party agrees to reasonably cooperate with the other Party to obtain such remedies, but this provision shall not be construed to require either Party to expend monies or undertake litigation or other legal proceedings on its own behalf with regard to the Confidential Information of the other Party. In the event that a protective order or other remedy is not obtained, the Party required to make such disclosure shall disclose only that portion of the Confidential Information of the Disclosing Party which its counsel advises that it is legally required to disclose.

3. Term of Agreement. This Agreement shall be effective as of the Effective Date and shall continue in effect for a period of three (3) years thereafter unless terminated by either Party, without cause, with respect to future disclosures, upon thirty (30) days prior written notice to the other Party; provided however, that all rights and obligations accrued prior to such termination shall survive the termination of this Agreement. Notwithstanding anything herein to the contrary, the nondisclosure obligations and restrictions on use with respect to any Confidential Information shall continue and bind the Parties for a period of five (5) years following termination of this Agreement, except that the nondisclosure obligations and restrictions on use with respect to any Confidential Information that constitutes a trade secret of a Party shall continue in effect for so long as such Confidential Information

remains a trade secret under applicable law. Any termination of this Agreement shall be without prejudice to the rights of either Party against the other in respect of any claim or breach of any of the provisions of this Agreement arising or occurring prior to the date of such termination.

4. Return of Confidential Information. The Receiving Party shall return to the Disclosing Party, or at the Disclosing Party's request, destroy, and shall cause its Related Parties to return or destroy, all Confidential Information of the Disclosing Party and all copies, transcriptions or other reproductions of, and any notes relating to, the Confidential Information of the Disclosing Party, including without limitation, any memoranda, photocopies, computer files and libraries, computer-generated data or other similar repositories or archives, upon either (a) the accomplishment of the Limited Purpose or (b) receipt of a written notice from the Disclosing Party requesting return or destruction of the Confidential Information, and upon request, shall provide to the Disclosing Party written certification signed by an officer of the Receiving Party that it has complied with the foregoing.

5. Cooperation and Enforcement. The Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by the Receiving Party or its Related Parties and will reasonably cooperate with the Disclosing Party to help the Disclosing Party regain possession of such Confidential Information and prevent its further unauthorized use or disclosure.

6. Ownership; No License or Other Rights. As between the Parties, all Confidential Information of the Disclosing Party is and shall remain the sole and exclusive property of the Disclosing Party. By disclosing Confidential Information to the Receiving Party, the Disclosing Party does not grant any express or implied right or license to the Receiving Party with respect to the Confidential Information (including any rights or licenses to any patent, patent application or other proprietary information), except use for the Limited Purpose according to this Agreement.

7. Accuracy and Completeness of Confidential Information. The disclosure of any Confidential Information of the Disclosing Party to the Receiving Party shall be solely in the Disclosing Party's discretion. The Receiving Party may in its sole discretion refuse any information or materials offered to be disclosed or delivered by the Disclosing Party. This Agreement shall not require the Disclosing Party to disclose any information or to require the consummation of any transaction in connection with which such Confidential Information is disclosed. Notwithstanding anything to the contrary, the Disclosing Party shall not be deemed to have made any representation or warranty, express or implied, to the Receiving Party, concerning the accuracy, completeness, merchantability or fitness for a particular purpose, of any Confidential Information of the Disclosing Party.

8. Remedies. The Receiving Party acknowledges and agrees that the Disclosing Party would be irreparably harmed if any of Confidential Information of the Disclosing Party were to be disclosed to a third party, or if any use were to be made of such Confidential Information other than as authorized under this Agreement, and further agrees that the Disclosing Party shall have the right to seek to obtain injunctive relief upon any violation or threatened violation of the terms of this Agreement without the necessity of posting bond or other security, in addition to all other rights and remedies available to the Disclosing Party at law or in equity.

9. Amendments. No amendment or waiver of any term of this Agreement shall be effective unless such amendment or waiver is in writing and is signed by each of the Parties hereto.

10. Assignment. Neither Party may assign this Agreement, or any rights or obligations hereunder, whether by contract or by operation of law, except with the express written consent of the other Party. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, the Parties and their respective representatives, successors and assigns.

11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska, without reference to conflicts of law principles.

12. No Partnership. Neither this Agreement, nor any terms and conditions contained herein, will be construed as creating a partnership, joint venture, or agency relationship or as granting a franchise. The Parties are independent contractors each acting for its own account and neither is authorized to make any commitment or representation, express or implied, on the other's behalf. This Agreement does not obligate either Party to enter into a contract, subcontract or other business relationship with the other Party.

13. Notice. Except as otherwise specifically provided in this Agreement, whenever a Party hereto gives or serves any notice, request, or other communication with respect to this Agreement, each such notice, request, or other communication shall be in writing and personally delivered or deposited with a reputable overnight carrier or mailed by first class U. S. mail, postage prepaid, and addressed to the other Party at the address set forth above. Such notice shall be effective immediately upon personal delivery, or twenty four (24) hours after deposit with an overnight carrier, or seventy two (72) hours after deposit in the U. S. mail, in the manner set forth above. Either Party may at any time change its address for such notices by delivering or mailing to the other Party, in the manner set forth herein, a notice of such change.

14. Severability. If any provision of the Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the Parties hereby authorize the court to modify such provision to the minimum extent necessary to effectuate the Parties' intentions and the remaining provisions shall remain in full force and effect.

15. Entire Agreement; Counterparts. This Agreement sets forth the complete and exclusive understanding of the Parties regarding the subject matter of this Agreement and supersedes all prior agreements, understandings, and communications, oral or written, between the Parties regarding the subject matter of this Agreement. This Agreement may be executed by facsimile or in counterparts and all such executed documents when taken together shall have the same force and effect as a single document.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties have executed this Agreement as of the date first set forth above.

**The Board of Regents of the University
of Nebraska**

Authorized Agent for Company

By: _____

By: _____

Name: Dr. John J. Brasch

Name: _____

Title: Assoc. Vice Chancellor for Tech. Dev.

Title: _____

Date: _____

Date: _____