

CONFIDENTIAL DISCLOSURE AGREEMENT

THIS AGREEMENT ("Agreement") is entered into and is effective as of _____, 20__ ("Effective Date") by and between Empire EMCO, Inc., having a place of business at 2430 North Forest Road, Suite 125, Getzville, New York 14068 U.S.A. ("Empire") and _____, having a principal place of business at _____ ("Company").

WHEREAS, it is believed that it would be mutually beneficial for Empire and Company to have more detailed discussions to explore the possibility of entering into a mutually satisfactory agreement for the investigation and/or commercialization of one or more products utilizing the information of the parties (the "Intended Purpose"); and

WHEREAS, during the course of such discussions, the parties may find it necessary or desirable to disclose to each other certain proprietary information and/or to provide each other with samples of certain proprietary materials directly relating to or embodying their above-described activities;

NOW, THEREFORE, in consideration of either party's disclosure of Confidential Information (as hereinafter defined) and the mutual covenants contained herein, the parties agree as follows:

- (1) Confidential Information.** "Confidential Information" shall mean any and all data, samples, documentation and other information disclosed by one party (the "Disclosing Party"), or any affiliate of the Disclosing Party, to the other party ("Recipient"), or any affiliate or other person acting on behalf of the Recipient, that is designated in writing as being confidential. Orally disclosed information shall be treated as Confidential Information only if reduced to writing and marked "Confidential", with a copy thereof provided to the Recipient within thirty (30) days of its initial oral disclosure.
- (2) Non-Disclosure, Non-Analysis and Non-Use of Confidential Information.**

 - (a) Recipient shall not disclose, disseminate or publish Confidential Information received hereunder from the Disclosing Party to any person or entity without the prior written consent of the Disclosing Party, except as may be required by governmental agencies to be disclosed for product registration or product commercialization purposes and to officers, employees and professional advisors of Recipient (collectively, "Representatives") who have a need to know for the Intended Purpose, who have been informed of Recipient's obligations hereunder, and who have agreed in writing or are bound by other legal obligation not to use or disclose Confidential Information. Recipient shall be responsible for any use or disclosure of Confidential Information by its Representatives that would constitute a breach of this Agreement.
 - (b) Each party shall maintain the Confidential Information of the other party in confidence by using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case using no less than a reasonable degree of care to prevent the disclosure of said Confidential Information to any third party.

- (c) With respect to all Confidential Information, particularly samples supplied by the Disclosing Party, the Recipient agrees (i) not to analyze or attempt to analyze, either directly or indirectly, any samples to determine the chemical composition thereof and (ii) to use the Confidential Information solely for the Intended Purpose or other purpose agreed to, in advance and in writing, by the Disclosing Party.

(3) Exceptions. Notwithstanding anything contained herein to the contrary, Recipient shall have no obligation under this Agreement to maintain in confidence any information which Recipient can prove:

- (a) is disclosed in a printed publication available to the public at the time of disclosure; or
- (b) is otherwise in the public domain at the time of disclosure or subsequently becomes part of the public domain through no fault of the Recipient or its Representatives; or
- (c) is in the possession of Recipient prior to the time of disclosure by the Disclosing Party and is not subject to any duty of confidentiality; or
- (d) Recipient obtained from a third party not under any obligation to keep such information confidential; or
- (e) was developed by Recipient independent of the Confidential Information provided by the Disclosing Party, and such independent development can be established by competent documentation; or
- (f) is approved for release in writing by the Disclosing Party.

(4) Compelled Disclosure. In the event Recipient is required by law or any legal or regulatory order, regulation or requirement to disclose any Confidential Information, Recipient shall provide the Disclosing Party with immediate written notice of same so that the Disclosing Party may seek an appropriate protective order or other remedy and Recipient shall not disclose any part of the Confidential Information ending conclusion of any legal proceedings regarding such disclosure. In the event that such protective order or other remedy cannot be obtained, Recipient shall disclose only such part of the Confidential Information as is specifically required by the terms of such law, regulatory order, regulation or requirement, and Recipient shall exercise its reasonable best efforts to obtain reliable assurance that confidential treatment shall be accorded the Confidential Information of the Disclosing Party.

(5) Ownership of Confidential Information.

- (a) All Confidential Information of a Disclosing Party shall remain the exclusive property of such Disclosing Party. This Agreement does not give Recipient a license, immunity or any other right, by implication, estoppel or otherwise to any of the Confidential Information of the Disclosing Party, nor to any patent or patent application, now or subsequently owned by the Disclosing Party or its designee.
- (b) Any and all inventions, discoveries, designs and improvements, whether patentable or not, conceived and/or made by a party, and without inventive contribution of the other party, as a result of a disclosure of Confidential Information hereunder shall be the sole property of the Disclosing Party. The non-inventive party does hereby

assign to the party conceiving and/or making the inventions, discoveries, designs and/or improvements, or its designee all right, title and interest in and to such inventions and discoveries. They shall cooperate with such party or its designee, exclusive of costs, to enable them to secure, maintain and enforce its rights in and to such inventions and discoveries. In the event that such invention, discovery, design or improvement is conceived and/or made jointly by Empire and Company, then the parties shall enter into good faith negotiations for an agreement to determine ownership and/or commercialization of such invention. Each party agrees to execute, or have executed, any and all documents or papers necessary to vest title as their interests appear to such inventions, discoveries, designs and improvements, or enable them to apply for, obtain or maintain letters patent for such inventions, discoveries, designs and improvements.

- (6) **Return of Confidential Information.** Recipient will return to the Disclosing Party all Confidential Information provided by the Disclosing Party, including, but not limited to, all documentation, brochures, computer programs, notes, prototypes, models, samples, devices and copies thereof, both in machine readable form and human readable form, within thirty (30) days of the Disclosing Party's written request or the termination of this Agreement. As to any Confidential Information for which return is not practical, Recipient shall provide, within thirty (30) days of the Disclosing Party's written request or the termination of this Agreement, the Disclosing Party with written assurance that all such Confidential Information has been destroyed. However, Recipient shall be permitted to keep one record of the Confidential Information in its legal files to comply with law or regulation or for archival purposes; provided, however, that any Confidential Information so retained will continue to be Confidential Information pursuant to the terms of this Agreement and Recipient will continue to be bound by the terms of this Agreement with respect to such Confidential Information.
- (7) **Discussions.** Neither party shall publicize or disclose beyond those persons to whom Confidential Information may be disclosed hereunder the existence of this Agreement, the relationship formed under this Agreement, the activities or the discussions which may take place pursuant to this Agreement, or the other party's interest in the subject matter to which this Agreement relates, all of which shall be deemed Confidential Information for all purposes hereof.
- (8) **No Business Obligations; No Representations.** Neither party shall be obligated to consummate any transaction or business relationship by virtue of this Agreement or their discussions. The Disclosing Party shall not be deemed to have made any representations or warranties as to the accuracy or completeness of the Confidential Information.
- (9) **Rights and Remedies.**
- (a) Recipient shall notify the Disclosing Party in writing promptly upon discovery by Recipient of any unauthorized use or disclosure of Confidential Information, and will cooperate with the Disclosing Party in every reasonable way to regain possession of the Confidential Information and prevent its further unauthorized use.
- (b) Recipient acknowledges and agrees that, in the event of any breach or threatened breach of this Agreement by Recipient, the Disclosing Party may suffer irreparable harm and injury for which there may not be any adequate remedy at law or for which there may not be any appropriate compensation. Accordingly, Recipient hereby agrees that, in any such event, the Disclosing party shall be entitled to seek specific

performance of Recipient's obligations under this Agreement, as well as such further injunctive relief as may be granted by a court of competent jurisdiction, without the requirement of posting a bond or other security. Nothing herein shall be construed as prohibiting the Disclosing Party from pursuing any other remedies available to it for such breach or threat of breach, including, without limitation, the recovery of damages from Recipient.

(10) Term of Agreement; Survival.

- (a) Notwithstanding anything to the contrary contained herein, the terms of this Agreement shall continue in full force and effect for so long as Recipient receives any Confidential Information from Disclosing Party and for a period of five (5) years thereafter.
- (b) Notwithstanding any such termination, the non-disclosure, non-analysis and non-use obligations under this Agreement with respect to Confidential Information shall continue for a period of five (5) years from the date of the disclosure of the Confidential Information.

(11) General.

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement between both parties regarding the Confidential Information and the Intended Purpose and supersedes all oral or written agreements, either entered into prior to or contemporaneously with this Agreement, concerning the Confidential Information and Intended Purpose. This Agreement shall not be binding upon either party unless signed by both parties.
- (b) **Modification.** This Agreement may not be modified except by written agreement dated subsequent to the date of this Agreement and signed by both parties.
- (c) **Waiver.** No waiver of any obligation under this Agreement shall be effective unless in writing, and shall then be effective only for the specific instance for which such waiver was given and no other.
- (d) **Assignment.** Recipient may not transfer, assign, convey, sublet or delegate any rights or obligations under this Agreement to a third party, without the prior written consent of the Disclosing Party.
- (e) **Governing Law; Venue.** This Agreement shall be governed by the laws of the State of New York. Any action, suit or proceeding relating to or arising out of this Agreement shall be commenced in the state or federal courts of the County of Erie, State of New York and venue for such actions shall lie exclusively in the County of Erie, State of New York. Each of the parties consents to the jurisdiction of such courts and waives any claim of *forum non conveniens*.
- (f) **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be unenforceable, then such provision may be rewritten by such a court with the least modification necessary to render such provision valid, and the remaining provisions of this Agreement shall remain in full force and effect. It is the parties' intention that this Agreement be enforced to the fullest extent permissible under equity of law.

- (g) **Notice.** Any notices required to be given under this Agreement shall be sent registered or certified mail, return receipt requested, to the parties at the addresses first set forth above, or to such other address as a party may indicate by like notice.
- (h) **Headings.** The headings in this Agreement are for convenience only and are not intended to affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement through their authorized representatives as of the Effective Date.

Empire EMCO, Inc.

By: _____

Name: Gary M. Burns

Title: President/CEO

Company Name: _____

By: _____

Name: _____

Title: _____