

## NON-DISCLOSURE AGREEMENT

This is a Non-Disclosure Agreement, effective \_\_\_\_\_, between (**company**) (hereinafter referred to as "\_\_\_\_\_"), with an address of \_\_\_\_\_, a \_\_\_\_\_ corporation and **Lyophilization Technology, Inc.** (hereinafter referred to as "**LTI**"), a Pennsylvania corporation, with an address of 30 Indian Drive, Ivyland, PA 18974. It is recognized that it may be necessary or desirable to exchange information between \_\_\_\_\_ and LTI for the purpose of a potential business relationship (the "**Purpose**").

It may be necessary for either Party to provide confidential and/or proprietary information to the other. With respect to such information, the Parties agree as follows:

- 1) "Proprietary Information" shall include, but not be limited to, information regarding business matters, know-how, data (technical or non-technical), product samples and specifications, customer information, as well as performance, sales, financial, contractual and special marketing information, ideas, technical data and concepts not previously published or otherwise disclosed to the general public, not previously available without restriction to the receiving Party or others, and which the disclosing Party desires to protect pursuant to this Non-Disclosure Agreement.
- 2) Proprietary Information must be: (a) in writing; (b) clearly identified as Proprietary Information at the time of its disclosure by each page thereof being marked with an appropriate legend indicating that the information is deemed proprietary by the disclosing Party; and (c) delivered by letter of transmittal to the receiving Party. Where the Proprietary Information has not been or cannot be reduced to written form at the time of disclosure and such disclosure is made orally or visually, complete written summaries of all proprietary aspects of any such oral or visual disclosures shall have been delivered to the receiving Party within 20 calendar days of said oral or visual disclosures; provided, however, that Proprietary Information that is not marked or reduced to writing is protected under this Non-Disclosure Agreement if the context and manner in which such Proprietary Information is disclosed would indicate to a reasonable person familiar with the pharmaceutical industry that such Proprietary Information can be reasonably expected to be treated as confidential. Neither Party shall identify information as proprietary which is not in good faith believed to be confidential, privileged, a trade secret, or otherwise entitled to such markings or proprietary claims.
- 3) Each Party covenants and agrees that it will, during the term of this Non-Disclosure Agreement, keep in confidence, and prevent the disclosure of Proprietary Information to any third party other than those of receiving Party's (i) employees, agents, representatives, directors or officers (collectively, "Representatives") who need to know such Proprietary Information for the Purpose. Each Party shall be responsible for any breach of this Non-Disclosure Agreement by itself or its Representatives. A receiving Party shall not be liable for disclosure of any Proprietary Information if the same:
  - A. Was in the public domain at the time it was disclosed, or
  - B. Becomes part of the public domain without breach of this Non-Disclosure Agreement, or
  - C. Is disclosed with the written approval of the other Party, or
  - D. Was already in the receiving Party's possession at the time it was disclosed, or

- E. Was independently developed by the receiving Party, or
- F. Is or was disclosed by the disclosing Party to a third Party without restriction, or
- G. Is disclosed to the receiving Party by a third party with no confidentiality obligations to the disclosing Party.

If receiving Party is required by applicable law, or by process issued in connection with a judicial or administrative proceeding, to disclose any of disclosing Party's Proprietary Information, receiving Party shall immediately notify disclosing Party of such legal requirement or the issuance of such process so disclosing Party has the opportunity to seek a protective order. If disclosing Party fails to obtain a protective order, receiving Party may disclose only those pieces of Proprietary Information that it is legally required to disclose.

Any Proprietary Information provided by one Party to the other shall be used only in furtherance of the Purpose. Proprietary Information shall be, upon request at any time, destroyed or returned to the disclosing Party, provided that receiving Party may retain one (1) copy of such Proprietary Information for purposes of monitoring compliance with its obligations under this Non-Disclosure Agreement. If either Party loses or makes unauthorized disclosure of the other Party's Proprietary Information, it shall notify such other Party immediately and take all steps reasonable and necessary to retrieve the lost or improperly disclosed Proprietary Information.

- 4) The standard of care for protecting Proprietary Information imposed on the Party receiving such information, will be that degree of care the receiving Party uses to prevent disclosure, publication or dissemination of its own proprietary information, but not less than a reasonable standard of care.
- 5) In addition to all other rights and remedies, disclosing Party has the right to seek an injunction to prevent receiving Party's actual or threatened breach of this Non-Disclosure Agreement, without having to prove actual damages or post a bond.
- 6) In providing any information hereunder, each disclosing Party makes no representations, either express or implied, as to the information's adequacy, sufficiency, or freedom from defect of any kind, including freedom from any patent infringement that may result from the use of such information.
- 7) Notwithstanding the termination or expiration of any other agreement executed in conjunction with this Agreement, the obligations of the Parties with respect to Proprietary Information shall continue to be governed by this Non-Disclosure Agreement.
- 8) This Non-Disclosure Agreement contains the entire agreement relative to the protection of information to be exchanged hereunder, and supersedes all prior or contemporaneous oral or written understandings and agreements regarding this issue. A Party's failure to exercise a right under this Non-Disclosure Agreement or failure to insist upon compliance with any term of this Non-Disclosure Agreement shall not be a waiver of that right or term. If any provision of this Non-Disclosure Agreement is invalid or unenforceable, that provision shall be severed from this Non-Disclosure Agreement and the other provisions shall remain in force. This Non-Disclosure Agreement shall not be modified or amended, except in a written instrument executed by the Parties.

- 9) Nothing contained in this Non-Disclosure Agreement shall, by express grant, implication, estoppel or otherwise, create in either Party any right, title, interest, or license in or to the Proprietary Information, inventions, patents, technical data, computer software, or software documentation of the other Party.
- 10) Nothing contained in this Non-Disclosure Agreement shall grant to either Party the right to make commitments of any kind for or on behalf of any other Party without the prior written consent of that other Party.
- 11) This Non-Disclosure Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- 12) Receiving Party's confidentiality and non-use obligations under this Non-Disclosure Agreement will be in effect for a period of **five (5) years**, starting on the effective date. The effective date of this Non-Disclosure Agreement shall be the date stipulated at the beginning of this Non-Disclosure Agreement.
- 13) This Non-Disclosure Agreement shall be governed and construed in accordance with the laws of the State of Delaware. The Parties consent to the exclusive jurisdiction of the courts of Delaware to resolve any disputes arising under or relating to this Non-Disclosure Agreement. The prevailing Party in a dispute shall be entitled to recover its reasonable attorneys' fees and costs from the other Party.
- 14) This Non-Disclosure Agreement may be executed in one or more counterparts, each of which is an original, and all of which constitute only one agreement. Counterparts of this Non-Disclosure Agreement delivered electronically (in ".pdf" format) or by facsimile shall have the same legal force as counterparts delivered by hand.

IN WITNESS WHEREOF, the Parties represent and warrant that this Non-Disclosure Agreement is executed by duly authorized representatives of each Party as set forth below on the date first stated above.

<b>Company</b>	<b>Lyophilization Technology, Inc.</b>
By: _____	By: _____
Name: _____	Name: <u>Edward H. Trappler</u>
Title: _____	Title: <u>President</u>
Address: _____ _____	Address: <u>30 Indian Drive</u> <u>Ivyland, PA 18974</u>
Telephone No.: _____	Telephone No.: <u>215-396-8373</u>