

EXAMPLE

CONFIDENTIALITY AGREEMENT example

Basic Information About This Agreement	
Effective Date:	
Pharma Name	Pharma company Name + Address
COMPANY:	Patient Advocacy Group Name + Address
Permitted Purpose:	Mutual consideration of the PAG Name and Pharma company name working together and discussing overarching strategy for Project name
One-way Disclosure	<input type="checkbox"/> If this box is checked, then regardless of any other provisions in this Agreement, Pharma company name does <u>not</u> wish to receive any Confidential Information from PAG name, and this Agreement will <u>not</u> apply to any disclosures that PAG Name may make to Pharma company name. For purposes of one-way disclosure, Pharma Company name shall be considered the "Disclosing Party" and PAG Name shall be considered the "Receiving Party".
Expiration Date:	The two-year anniversary of the Effective Date
Confidentiality Obligation Period:	Until the Expiration Date and for a period of 5 years thereafter

This Confidentiality Agreement (this "Agreement") is entered into on the Effective Date by and between Pharma company name and PAG name.

PRELIMINARY STATEMENTS

A. Each of the parties owns or controls information that they consider confidential and proprietary, defined below as Confidential Information.

B. The parties desire to disclose certain of their Confidential Information to each other solely for the Permitted Purpose indicated above.

The parties agree as follows:

1 Definitions

1.1 "Affiliate(s)" means a business entity which directly or indirectly Controls, is under the Control of or under common Control with the party.

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- 1.2 "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management of such business entity, whether through ownership of voting securities or otherwise.
- 1.3 "Disclosing Party" means the party disclosing Confidential Information to the Receiving Party under this Agreement.
- 1.4 "Receiving Party" means the party receiving Confidential Information from the Disclosing Party under this Agreement.
- 1.5 "Confidential Information" means information that is owned or controlled by the Disclosing Party or its Affiliate(s) and is directly or indirectly disclosed or otherwise made available hereunder, whether written, graphic, oral, visual, tangible or intangible, in any form or format (including machine or computer readable code), including information that may be disclosed in connection with an audit or inspection that is conducted by (or on behalf of) the Receiving Party. Confidential Information includes, without limitation, any and all of the clinical data and research results, technical and non-technical data, formulae, ideas, know-how, materials, methods, operational information, patent applications, plans, procedures, pre-clinical data and results, processes, product information, projections, specifications, standards, strategies, technical information, techniques, trade secrets, tools, or other clinical, technical or business information.

Confidential Information does not include information to the extent that:

- 1.5 (a) it is now in the public domain or subsequently enters the public domain through no breach of this Agreement;
 - 1.5 (b) the Receiving Party lawfully receives it from any third party without restriction as to use or confidentiality as shown by written or other tangible evidence;
 - 1.5 (c) it is independently developed by or for the Receiving Party by persons without access to the Confidential Information; or
 - 1.5 (d) it was already known by the Receiving Party at the time of its disclosure under this Agreement as shown by written or other tangible evidence.
- 2 Required Disclosures. If Receiving Party receives a subpoena or other validly issued administrative or judicial process demanding Confidential Information, Receiving Party will (a) promptly inform the party or entity issuing such subpoena or other government process of the existence of this Agreement; (b) immediately notify the Disclosing Party of the disclosure requirement (which will include a copy of any applicable subpoena or order); (c) afford the Disclosing Party a reasonable opportunity to oppose, limit or secure confidential treatment for the required

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disclosure; and (d) not oppose any effort by the Disclosing Party to quash any such subpoena or other government process. If the Disclosing Party fails to intervene to quash said subpoena or other government process after being given notice and a reasonable opportunity to do so, or if such motion is denied by a court of competent jurisdiction, the Receiving Party will disclose only that portion of the Confidential Information of the Disclosing Party that the Receiving Party is legally required to disclose. In the event that any Confidential Information is ordered produced in an action or proceeding, it will not lose its confidential status through such use, and Receiving Party will take all reasonable and necessary steps to protect its confidentiality.

- 3 Return of Confidential Information. Upon the termination or expiration of this Agreement, or at any other time upon the written request of Disclosing Party, Receiving Party will promptly return to Disclosing Party all Confidential Information in Receiving Party's possession or control, together with all copies, summaries and analyses, regardless of the format in which the information exists or is stored. At the Disclosing Party's request, the Receiving Party will promptly destroy all such information instead of returning it. In case of destruction, Receiving Party will promptly send a written certification that destruction has been accomplished to the Disclosing Party. However, Receiving Party is entitled to retain one copy of Confidential Information for the sole purpose of determining its obligations under this Agreement.
- 4 Permitted Disclosures. Receiving Party agrees that it will not disclose Confidential Information to any third party without prior written consent of Disclosing Party. Notwithstanding the foregoing, Receiving Party may disclose Disclosing Party's Confidential Information to an agent of Receiving Party performing services for Receiving Party related to the Permitted Purpose, provided that such agent is under obligations of confidentiality regarding Disclosing Party's Confidential Information at least as restrictive as those within this Agreement. Receiving Party agrees to disclose Confidential Information only to those of its or its Affiliates' officers and employees whose duties justify the need to know the Confidential Information for the Permitted Purpose. Upon disclosing Confidential Information to its or its Affiliates' officers and employees, Receiving Party will advise said officers and employees of the confidential nature of the Confidential Information and the relevant obligations contained in this Agreement. Receiving Party will be liable for unauthorized disclosure of Confidential Information by its or its Affiliates' officers or employees.

Pharma company name may disclose the Confidential Information of **PAG Name** to any entity with which BMS co-develops, co-promotes or otherwise collaborates on certain unapproved or approved (by regulatory authorities) pharmaceutical and/or biological products (a "Collaboration Partner"), but only to the extent (i) such disclosure is directly related to the Permitted Purpose; and (ii) the Collaboration Partner needs to know such Confidential Information for the Permitted Purpose; and (iii) the Collaboration Partner is under obligations of confidentiality and non-use at least as restrictive as those within this Agreement.

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Receiving Party will be liable for unauthorized disclosure of Confidential Information by its or its Affiliates' officers, employees, agents or Collaboration Partner(s) (as the case may be).

- 5 Use of Confidential Information. Receiving Party shall use Confidential Information solely for the Permitted Purpose.
- 6 Term and Duration of Confidentiality. This Agreement is effective as of the Effective Date and expires on the Expiration Date (as defined above). The obligations of confidentiality survive expiration or earlier termination of this Agreement for the duration of the Confidentiality Obligation Period (as defined above).
- 7 Rights to Confidential Information. Nothing in this Agreement is intended to grant or create any right or license to the Receiving Party or its Affiliates with respect to any patent rights, copyrights, trademarks or other intellectual property rights owned or controlled by the Disclosing Party or its Affiliates, except as necessary for the Permitted Purpose.
- 8 Future Agreements. Nothing in this Agreement is intended to be construed as a commitment by either party or their respective Affiliates to enter into any additional agreement(s) or from preventing either party from entering into similar discussions with any third party.
- 9 Assignment of Agreement. This Agreement may not be assigned in whole or in part by either party without prior written consent of the other party, which consent will not be unreasonably withheld or delayed. Any assignment by either party without such consent shall be null and void and of no force or effect.
- 10 Governing Law. Any claim, controversy or dispute arising from or related to this Agreement will be governed by the laws of the State of _____ and will be governed by and in accordance with the laws of that State without regard to its principles on conflict of laws.
- 11 Entire Agreement. Each party agrees that this Agreement embodies the entire understanding between the parties and supersedes and replaces any and all prior understandings, arrangements, and agreements whether oral or written relating to the subject matter of this Agreement.
- 12 Signatures; Counterparts. This Agreement may be signed in any manner that clearly evidences the parties' intent to be bound, including via faxed, imaged, electronic or digital signatures. If this Agreement is signed electronically, then both parties (i) have agreed to use electronic signatures, and (ii) have agreed to be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (enacted June 30, 2000, and codified at 15 U.S.C. § 7001 et seq)). This Agreement may be signed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall together constitute one and the same Agreement.

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[SIGNATURES ON NEXT PAGE]

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In order to demonstrate their agreement, the parties have executed this Confidentiality Agreement as of the Effective Date.

Pharma COMPANY

By:

Name:

Title:

Date:

ORGANIZATION

By:

Name:

Title:

Date: