

SRX 2002

MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (this "**Agreement**") is entered into as of April 1, 2009, by and between BrighTex Bio-Photonics, LLC, a limited liability company having a place of business at 359 Piercy Road, San Jose, CA 95138 (hereinafter ("**CONTRACTOR**") and L'Oréal USA, Inc., a Delaware corporation having a place of business at 575 Fifth Ave., New York, NY 10017 (L'Oréal USA, Inc., together with its parent, subsidiaries and affiliates are hereinafter referred to as "**L'ORÉAL**").

WHEREAS, L'Oréal USA, Inc. or one of its subsidiaries or affiliates is considering engaging or has engaged CONTRACTOR to perform certain services or supply certain goods (the "**Purpose**"); and accordingly wish to disclose to and receive from each other, from time to time, certain confidential and proprietary information regarding their respective current and future scientific, creative, technical and business affairs;

NOW, THEREFORE, in consideration of such disclosures and the agreements and covenants herein contained, each of CONTRACTOR and L'Oréal USA, Inc. agree as follows:

1. **Definition of Confidential Information.** Confidential Information shall mean all information disclosed, directly or indirectly, through any means of communication or observation, by or on behalf of one party hereto (including by, on behalf or through a parent, subsidiary or affiliate) (the "**Disclosing Party**") to or for the benefit of the other party hereto (including such party's parents, subsidiaries and affiliates) (the "**Receiving Party**"), that relates to or is derived from a party's scientific, technical, business, strategic, marketing or creative affairs, including (a) in the case of **L'ORÉAL** such information of L'Oréal USA, Inc. its parent, subsidiaries or affiliates, and (b) any other matter that the Receiving Party is advised or has reason to know is the confidential or proprietary information of the Disclosing Party.
2. **Protection of Confidential Information.** Each party agrees that after the date of receipt of any Confidential Information, it will:
 - (a) not use, or authorize the use of, such Confidential Information for any purpose other than for the Purpose;
 - (b) hold such Confidential Information in strict confidence and protect such Confidential Information with the same degree of care normally used to protect its own similar Confidential Information (but no less than a reasonable degree of care);
 - (c) not disclose such Confidential Information to any person other than those of its employees, agents, parents, subsidiaries or affiliates who (i) need to know such Confidential Information to effectuate the Purpose, and (ii) are advised of the confidential and proprietary nature of such Confidential Information and bound by written confidentiality obligations prohibiting the further use and disclosure of such Confidential Information;

- (d) not copy or reproduce all or any part of such Confidential Information in any medium, except as may be strictly necessary to effectuate the Purpose; and
- (e) not decompile, disassemble or reverse engineer all or any part of such Confidential Information without the written permission of the Disclosing Party.

3. **Disclosure Compelled by Law or Judicial Proceeding.** In the event that the Receiving Party is directed to disclose any portion of any Confidential Information of the Disclosing Party by operation of law or in connection with a judicial or governmental proceeding or arbitration, such disclosure will be permissible only if the Receiving Party (a) immediately notifies the Disclosing Party of such request or directive; and (b) prior to any such disclosure, assists the Disclosing Party in seeking a suitable protective order or assurance of confidential treatment and in taking any other steps deemed reasonably necessary by the Disclosing Party to preserve the confidentiality of any such Confidential Information.

4. **Exceptions to Confidential Information.** Notwithstanding any other provision of this Agreement, "Confidential Information" does not include information which:

- (a) is or becomes generally known or available to the public through no act or failure to act by the Receiving Party or its employees or agents;
- (b) is or becomes known to the Receiving Party from a third party in rightful possession thereof and owing no obligation of confidentiality to the Disclosing Party; or
- (c) is or was developed independently by or for the Receiving Party, without use of or reference to any Confidential Information of the Disclosing Party and without violation of any obligation contained herein, by individuals who had no access to such Confidential Information; or
- (d) was in the possession of the Receiving Party or any of its Affiliates prior to the time of disclosure.

The burden of proof to establish that one of the above exceptions applies will be upon the Receiving Party.

5. **Ownership of Confidential Information.** All rights in and title to the Confidential Information supplied by one party to the other party remain in the Disclosing Party. Neither this Agreement nor the furnishing of any Confidential Information will be construed as granting to the Receiving Party (either expressly, by implication or estoppel, or otherwise) any license or immunity under any copyright, patent, trade secret, trademark, or other intellectual property right now or hereafter owned or controlled by the Disclosing Party, except solely to effectuate the Purpose.

6. **Publicity Restrictions.** Without the other party's prior written approval, neither party will (a) make or provide any public statement or disclosure concerning the existence of or any aspect of this Agreement or the discussions between the parties, including any mention of the Purpose; or (b) use the name, likeness or trademarks of

the other party or its employees or affiliates to express or imply any relationship or affiliation between the parties, or any endorsement of any product or service.

7. **Return of Documents.** Each Receiving Party will upon the Disclosing Party's request, (a) promptly return any and all materials containing Confidential Information to the Disclosing Party; or (b) destroy such materials and certify their destruction in writing to the Disclosing Party.

8. **Notices.** Notices required to be given by one party to the other in connection with this Agreement will be given in writing and delivered via first class, postage paid, return receipt mail to the other party's address set forth in the introductory paragraph of this Agreement; in the case of notices to L'ORÉAL, with a copy also to the attention of "L'Oréal USA, Inc. 575 Fifth Avenue, New York, NY 10017, (Attention: General Counsel) or such other address as a party may substitute by giving notice to the other in accordance with this Section.

9. **Injunctive Relief.** The parties acknowledge that the unauthorized use or disclosure of the Disclosing Party's Confidential Information could cause the Disclosing Party irreparable harm and that money damages may be inadequate to compensate the Disclosing Party for such harm. Accordingly, in addition to any other available remedies, the Disclosing Party will be entitled to seek equitable relief, including injunctive relief and/or specific performance, the granting of which will not be subject to or conditioned upon any requirement of posting a bond or other security; provided that the foregoing will not permit the Disclosing Party to enjoin or restrict in any way any product, project or production of the Receiving Party that neither is based upon, nor incorporates or otherwise discloses, any Confidential Information of the Disclosing Party.

10. **Miscellaneous.**

- (a) This Agreement contains the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements, representations and understandings, whether oral or written.
- (b) This Agreement may not be amended, waived or modified except by a single instrument in writing executed by duly authorized representatives of the parties. Failure to enforce any provision of this Agreement does not constitute a waiver of any term hereof.
- (c) This Agreement will be fairly interpreted and construed in accordance with its terms and without strict interpretation or construction in favor of or against either party.
- (d) In the event that any provision of this Agreement is held by a court of competent jurisdiction to be void, voidable, unlawful or for any reason unenforceable, in whole or in part, such provision will be deemed and construed to extend only to the maximum permitted by law so as to effectuate the intent of the parties, and the remainder of this Agreement will continue in full force and effect and enforceable according to its terms.

- (e) The obligations of this Agreement shall continue for (5) five years following the completion of all projects and services contracted between the parties.
- (f) This Agreement may be executed by manual or facsimile signatures and in any number of counterparts, each of which will be deemed an original and all of which together will constitute one and the same instrument.
- (g) This Agreement shall inure to the benefit of and be binding upon all parents, subsidiaries and affiliates of the parties who provide or receive Confidential Information hereunder. The parties hereto shall insure compliance with and shall be liable for any breach of this Agreement by such related parents, subsidiaries and affiliates.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed as of the date first written above.

BRIGHTEX BIO-PHOTONICS, LLC

By: R. C. Chisler
(Signature)

Name: RAJ CHHIBBER
(Print or Type)

Title: CEO
(Print or Type)

L'ORÉAL USA, INC.

By: [Signature]
(Signature)

Name: Eric Bone

Title: Vice President
Research & Development