

Message

From: Steven Hatfill [REDACTED]
on behalf of Steven Hatfill [REDACTED]
Sent: 7/21/2020 2:49:23 AM
To: Abbott, Christopher J. EOP/WHO [REDACTED]@who.eop.gov]
Subject: Signed NDA

For your files
My signed NDA
MBX

NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (this “Agreement”) is made as of **July 20, 2020**, by and between **HyperSpectral APD, LLC**, a Delaware limited liability company (the “Company”), and **Steven Hatfill** (“Recipient”).

RECITALS

The parties wish to explore a possible business opportunity of mutual interest (the “Relationship”) in connection with which Company has disclosed and/or may further disclose its Confidential Information (as defined below) to Recipient. This Agreement is intended to allow the parties to continue to discuss and evaluate the Relationship while protecting Company’s Confidential Information (including Confidential Information previously disclosed to Recipient) against unauthorized use or disclosure.

AGREEMENT

In consideration of the premises and mutual covenants herein, the parties hereby agree as follows:

1. **Definition of Confidential Information.** “Confidential Information” means information and physical material not generally known or available outside Company and information and physical material entrusted to Company in confidence by third parties. Confidential Information includes, without limitation: technical data, trade secrets, know-how, research, product or service ideas or plans, software codes and designs, algorithms, developments, inventions, patent applications, laboratory notebooks, processes, formulas, techniques, mask works, engineering designs and drawings, hardware configuration information, agreements with third parties, lists of, or information relating to, suppliers and customers, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information disclosed by Company (whether by oral, written, graphic or machine-readable format), which Confidential Information is designated in writing to be confidential or proprietary, or if given orally, is confirmed in writing as having been disclosed as confidential or proprietary within a reasonable time (not to exceed 30 days) after the oral disclosure, or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary.

2. **Nondisclosure of Confidential Information.** Recipient shall not use any Confidential Information disclosed to it by Company for any purpose other than to carry out discussions concerning the Relationship. Recipient shall not disclose or permit disclosure of any Confidential Information of Company to third parties or to employees of Recipient, other than directors, officers, employees, consultants and agents of Recipient who are required to have the information in order to carry out the discussions regarding the Relationship (each, a “Representative”), provided that each Representative has agreed in writing to be bound by the requirements of this Agreement or is otherwise subject to duties of confidentiality that are at least as protective of Discloser’s Confidential Information as the protections contained in this Agreement. Recipient will remain responsible for any noncompliance with the terms of this Agreement by its Representatives. Recipient shall take reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of Company in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Without limiting the foregoing, Recipient will exercise at least the same degree of care that Recipient utilizes to protect its own Confidential Information of a similar nature. Recipient shall notify Company promptly of any misuse, misappropriation or unauthorized disclosure of Confidential Information of Company which may come to Recipient’s attention.

3. **Exceptions.** Notwithstanding the above, the obligations in Section 2 shall not apply Company with regard to information that the Recipient can prove:

(a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of Recipient;

(b) was already known to Recipient, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;

(c) was independently developed by Recipient without any use of or reference to the Confidential Information, as demonstrated by files created at the time of such independent development;

(d) becomes known to Recipient, without restriction, from a source other than Company without breach of this Agreement by Recipient and otherwise not in violation of Company's rights; or

(e) is disclosed with the prior written approval of Company.

4. **Return of Materials.** Recipient shall, except as otherwise expressly authorized by Company, not make any copies or duplicates of any Confidential Information. Any materials or documents that have been furnished by Company to Recipient in connection with the Relationship shall be promptly returned by Recipient (or with Company's consent, destroyed), accompanied by all copies of such documentation, within ten days after (a) the Relationship has been rejected or concluded or (b) the written request of Company.

5. **No Rights Granted.** Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of Company, nor shall this Agreement grant Recipient any rights in or to Company's Confidential Information other than the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the Relationship. Nothing in this Agreement requires the disclosure of any Confidential Information, which shall be disclosed, if at all, solely at Company's option. Nothing in this Agreement requires the parties hereto to proceed with the Relationship or any transaction in connection with which the Confidential Information may be disclosed.

6. **No Representations Made.** All Confidential Information is provided by Discloser "as is" and Recipient acknowledges that neither Company, nor any of its representatives, in the course of providing the Confidential Information as contemplated hereunder, is making any representation or warranty (express or implied) as to the accuracy or completeness of any such information, and Recipient assumes full responsibility for all conclusions derived from such information.

7. **No Publicity.** Neither party shall, without the prior consent of the other party, disclose to any other person the fact that Confidential Information of Company has been and/or may be disclosed under this Agreement, that discussions or negotiations are taking place between the parties, or any of the terms, conditions, status or other facts with respect thereto, except as required by law and then only with prior notice as soon as possible to the other party.

8. **Notice of Compelled Disclosure.** In the event that Recipient or any person to whom they or their representatives transmit or have transmitted Confidential Information become legally compelled (by oral questions, interrogatories, requests for information or documents, subpoenas, civil investigative demands or otherwise) to disclose any such Confidential Information, the Recipient shall provide the Company with prompt written notice so that the Company may seek a protective order or other appropriate

remedy, or both, or waive compliance with the provisions of this Agreement. In the event that the Company is unable to obtain a protective order or other appropriate remedy, or if it so directs the Recipient, the Recipient shall furnish only that portion of the Confidential Information that the Recipient is advised by written opinion of its counsel is legally required to be furnished by it and shall exercise its reasonable best efforts to obtain reliable assurance that confidential treatment shall be accorded such Confidential Information.

9. **Term.** The foregoing commitments of each party shall survive any termination of the Relationship between the parties.

10. **Independent Contractors.** The parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

11. **Remedies.** Each party's obligations set forth in this Agreement are necessary and reasonable in order to protect Company and its business. Due to the unique nature of Company's Confidential Information, monetary damages may be inadequate to compensate Company for any breach by Recipient of its covenants and agreements set forth in this Agreement. Accordingly, the parties each agree and acknowledge that any such violation or threatened violation may cause irreparable injury to Company and, in addition to any other remedies that may be available, in law, in equity or otherwise, Company shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by Recipient without the need to post a bond or make any other undertaking.

12. **Miscellaneous.**

(a) **Governing Law; Jurisdiction and Venue.** The validity, interpretation, construction and performance of this Agreement, and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the state of California, without giving effect to principles of conflicts of law. Each of the parties hereto irrevocably consents to the exclusive jurisdiction and venue of any federal or state court within Los Angeles County, State of California, United States of America in connection with any matter based upon or arising out of this Agreement, agrees that process may be served upon it in any manner authorized by the laws of the State of California for such persons and waives and covenants not to assert or plead any objection that they might otherwise have to jurisdiction, venue and such process.

(b) **Entire Agreement.** This Agreement sets forth the entire agreement and understanding of the parties relating to the subject matter herein and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written, between them relating to the subject matter hereof.

(c) **Amendments and Waivers.** No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the parties to this Agreement. No delay or failure to require performance of any provision of this Agreement shall constitute a waiver of that provision as to that or any other instance.

(d) **Successors and Assigns.** Except as otherwise provided in this Agreement, this Agreement, and the rights and obligations of the parties hereunder, will be binding upon and inure to the benefit of their respective successors, assigns, heirs, executors, administrators and legal representatives. The Company may assign any of its rights and obligations under this Agreement. Recipient may not assign

any of its rights and obligations under this Agreement, except with the prior written consent of the Company.

(e) **Notices.** Any notice, demand or request required or permitted to be given under this Agreement shall be in writing and shall be deemed sufficient when delivered personally or by overnight courier or sent by email, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address as set forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent address set forth in the Company's books and records.

(f) **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

(g) **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties hereto and their respective counsel, if any; accordingly, this Agreement shall be deemed to be the product of all of the parties hereto, and no ambiguity shall be construed in favor of or against any one of the parties hereto.

(h) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement. Execution of a facsimile copy will have the same force and effect as execution of an original, and a facsimile signature will be deemed an original and valid signature.

[Signature Page Follows]

The parties have executed this Nondisclosure Agreement as of the date first above written.

THE COMPANY:

HyperSpectral APD, LLC

By: _____
(Signature)

Name: _____

Title: Managing Member

Address: Alexandria, VA

RECIPIENT:

Company: _____

Name: Steven Hatfill

Title: _____

DocuSigned by:

(Signature) ABC24346E...

Address: _____

Email: _____