

From: [Bill Rooney](#)
To: ["Rafael Nieves"](#)
Subject: RE: MEDCO Indonesian Project - Terms of Reference
Date: Thursday, August 27, 2009 11:41:00 AM
[REDACTED] [.pdf](#)

Rafael

Sorry for the slow response, I'm attaching the NDA. No problems, just been busy.

Any updates on time line?

regards,

bill

Dr. William L. Rooney
Professor, Sorghum Breeding and Genetics
Chair, Plant Release Committee
Texas A&M University
College Station, Texas 77843-2474
979 845 2151

-----Original Message-----

From: Rafael Nieves [mailto:rafaelnieves@neatechllc.com]
Sent: Monday, August 17, 2009 10:11 AM
To: 'Gharabegian, Areg'; 'Kendrick Wentzel'; 'Bill Rooney'; RVOSGOOD@aol.com; 'Mark McCorkle'
Cc: markyancey@neatechllc.com; 'Brian Duff'
Subject: MEDCO Indonesian Project - Terms of Reference

All,

Please find attached the Terms of Reference for the upcoming work in Indonesia. Below are the members of the NEATech Team.

1. NEATech – Brian Duff (Biochemical engineer - Project Manager), Dr. Rafael Nieves (international biofuels policies), Mark Yancey (chemical engineer)
2. ICM – Mark McCorkle (ethanol plant design engineer)
3. Enertech – Kendrick (Ken) Wentzel, international financing
4. Areg Gharabegian – environmental assessment
5. Dr. Bill Rooney – sweet sorghum agronomy specialist
6. Bob Osgood – plantation specialist

We at NEATech look forward to working with all of you and with some of you, a second time.

Regards,
Rafael

Rafael Nieves, Ph.D., M.B.A.

NEAtech, LLC

Vice President of Business Development

10585 West Beloit Place

Denver, Colorado 80227

rafaelnieves@neatechllc.com

phone 303-895-8180

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NON DISCLOSURE AGREEMENT

THIS NON DISCLOSURE AGREEMENT is entered into this ____ day of _____ 2009 (the "Effective Date") by and between NEAtch, LLC (NEAtch), a corporation organized and existing under the laws of the State of Colorado with its principal office at 10585 W Beloit Place, Denver, Colorado 80227, for the purpose hereof represented by Mark Yancey hereinafter referred to as "NEAtch";

AND

W.L. Rooney an individual located at 15392 I and GN Road, College Station, Texas 77845. NEAtch and W.L. Rooney are hereinafter referred to individually as a "Party" and collectively as the "Parties")

RECITALS

A. The Parties have agreed to a business collaboration regarding tasks to be performed for a feasibility study in development of integrated sweet sorghum-based ethanol industry in Merauke, Papua, Indonesia (hereafter referred to as "the Project").

B The Parties are willing to provide information for such purpose in accordance with the terms hereof.

NOW, therefore, NEAtch and W.L. Rooney have agreed to enter into this Non Disclosure Agreement (hereinafter referred to as the "Agreement" in accordance with the terms and conditions hereinafter set forth:

1. Definitions

a. "Affiliate(s)" of a Party means any Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Party. A Person or entity shall be regarded as being in control of a Party if it owns, directly or indirectly, more than 50 % (fifty percent) of the equity share capital of the Party, or if it possesses, directly or indirectly, the power to determine the composition of the majority of the board of directors or other governing authority of the Party,

b. "Confidential Information" shall mean all confidential or proprietary written, recorded, electronic or oral information or data (including without limitation research, developmental, engineering, manufacturing, technical, marketing, sales, financial, operating, performance, cost, business and process information or data, trade secrets, discoveries, ideas, designs, data, source code, object code, processes, computer programs, developments, flow diagrams, know-how, and computer programming and other software and software techniques) which is (i) provided to a Party (the "Receiving Party") by the other Party (the "Disclosing Party") in the course of the exchange of such information or data between the Parties in connection with the Parties' evaluation of the Project, and (ii) is expressly labeled in writing by the Disclosing Party as being confidential.

c. "NEAtch" shall include any of NEAtch's subsidiaries or Affiliates

d. "W.L. Rooney" shall include any of W.L. Rooney's subsidiaries or Affiliates

e. "Person" shall be broadly interpreted to include, without limitation, any corporation, company, partnership, other entity or individual, which are not part of or act as any Affiliates or Representatives of the Parties. "Representatives" shall mean as to any

Person, such Person's Affiliates and such Person's and its Affiliates' partners, directors, managers, partners, officers, employees, legal, financial and professional advisors and bankers, agents, attorneys, accountants consultant and controlling persons.

2. Confidentiality and Non-Use

In consideration of the Disclosing Party providing such Confidential Information as the Disclosing Party may elect in its sole discretion to provide to the Receiving Party to permit an evaluation of the Project, the Parties agree as follows:

- a. The Receiving Party shall hold confidential the Confidential Information and shall not disclose to any Person, without the prior written consent of the Disclosing Party, all or any part of the Confidential Information, nor the existence and terms of this Agreement provided, however, that the Receiving Party may disclose such Confidential Information to those of its Representatives who are actively and directly participating in the Project or other Representatives who in the course of such examination have a legitimate need to know such portions of the Confidential Information so disclosed to them for the purpose of evaluating the Project.
- b. Each of such Representatives to whom Confidential Information is disclosed shall be under obligations of confidentiality to the Receiving Party at least as strict as those set forth herein. The Receiving Party shall disclose the obligations under this Agreement to each of such Representatives; shall cause all its Representatives to observe the terms of this Agreement; and shall be responsible for any breach of the terms of this Agreement by it or its Representatives; and,
- c. The Receiving Party shall return or destroy all Confidential Information (including all copies thereof) within 30 days of receipt of a written request therefore. Such destruction shall be confirmed in writing by the Receiving Party to the Disclosing Party immediately.

In addition to the above statements, the Receiving Party shall use the Confidential Information solely for purposes of evaluating the Project and for no other purpose whatsoever. In furtherance and not in limitation of the foregoing, the Receiving Party shall not use the Confidential Information at any time or for any purpose following (i) the delivery of a notice delivered pursuant to clause 2(c) above or (ii) any other termination of discussions between the Parties concerning the Project.

3. Exceptions to the Confidentiality and Non-Use Obligations

The Receiving Party may disclose the Confidential Information without the Disclosing Party's prior written consent only to the extent such Confidential Information:

- a. can be demonstrated to be already known to the Receiving Party prior to the receipt of the Confidential Information, so long as such Confidential Information was not acquired directly or indirectly from the Disclosing Party; or
- b. was, or becomes through no breach of the Receiving Party's obligations hereunder, known to the public; or becomes available to the public at the time of disclosure;
- c. is acquired independently from a third party that has the legal right to disseminate such information at the time it is acquired by the Receiving Party:

d. is independently developed by the Receiving Party without the benefit of the Confidential Information or any portion thereof;

e. is required by law or applicable legal process, provided in such case the Receiving Party shall (i) give the earliest notice possible to the Disclosing Party that such disclosure is or may be required and (ii) reasonably cooperate in protecting such confidential or proprietary nature of the Confidential Information which must so be disclosed; disclose to affiliate(s), provided that the Receiving Party guarantees the adherence of such affiliate(s) to the terms of this Agreement; or

g. disclose to such of the following persons who have a clear need to know in order to evaluate the Information, and further agrees that all such persons shall have knowledge of and agree to the terms of this Agreement:

1. employees, officers and directors of the Receiving Party;
2. employees, officers and directors of an Affiliated Company, or
3. any professional consultant or agent retained by the Receiving Party for the purpose of evaluating the Confidential Information. Prior to making any such disclosures to persons under subparagraph (3) above, however, the Receiving Party shall obtain an undertaking of confidentiality, on terms no less onerous than the terms of this Agreement, from each such person.

4. No Representations and Warranties

Each of the Parties make no representation or warranties, express or implied, of any kind to the other Party with respect to the Confidential Information, including without limitation with respect to the accuracy or completeness thereof. Any representations or warranties shall be made thereby, if at all, only in definitive written agreements that may be entered into hereafter.

5. Termination; Duration of Obligations

Unless sooner terminated, upon 14 (fourteen) days written notice by mutual written Agreement of the Parties hereto, this Agreement and the obligations hereunder shall terminate 2 (two) years from the date hereof.

6. Waivers; Amendments; Assignment; Counterparts

This Agreement may not be modified, amended or waived except by a written instrument duly executed by both Parties. No failure or delay by either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder. This Agreement may not be assigned by either Party without the prior written consent of the other and shall be binding on, and inure to the benefit of, the respective successors of the Parties thereto. This Agreement may be signed in two or more counterpart originals, each of which shall constitute an original document. The Parties agree that this Agreement can be executed via facsimile signatures and be binding.

7. Governing Law; Disputes

- a. Any disputes, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof shall be settled by arbitration under the Commercial Arbitration Rules of the American Arbitration Association by three (3) arbitrators appointed in accordance with such Rules. Arbitration shall take place in Denver, Colorado. This Agreement shall be governed by, and interpreted in accordance with, the substantive law of Colorado, exclusive of its choice of law principles.

- b. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof;
- c. A dispute shall be deemed to have arisen when either Party notifies the other Party in writing to that effect.

8. Non-Publicity

All media releases, public announcements and other disclosures by either Party relating to this Agreement or the subject matter hereof, including promotional or marketing material, but excluding announcements intended solely for internal distribution or to meet legal or regulatory requirements (subject to the terms hereof with respect to the recipients of such internal memoranda), shall be coordinated with and approved by the other Party prior to release. In addition, the Parties shall refrain from removing, overprinting or defacing any notices of copyright, trademark, logo or other proprietary identifications or notices of confidentiality, from any originals or copies of the other Party's Confidential Information.

9. Miscellaneous

- a. The Receiving Party shall exercise at least the same degree of care as such Party normally takes to preserve and safeguard its own Confidential Information, and in any event shall take responsible measures to maintain the confidentiality of such information;
- b. Failure to insist upon strict compliance with any of the terms, covenants or conditions of this Agreement shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or more times be deemed a waiver or relinquishment of such right or power at any time or times;
- c. No amendments, changes or modifications to this Agreement shall be valid except if the same are in writing and signed by a duly authorized representative of each of the Parties hereto. The Receiving Party may not assign any of its rights or obligations hereunder without first obtaining the written consent of the Disclosing Party;
- d. This Agreement comprises the full and complete agreement of the Parties hereto with respect to the disclosure of the Confidential Information and supersedes and cancels all prior communications, understandings and agreements between the Parties hereto with respect thereto, whether written or oral, expressed or implied.

NEATECH, LLC

By; _____

Name: _____

Title: _____

By; _____



Name: William L. Rooney

Title: Consultant