

CONFIDENTIAL DISCLOSURE AGREEMENT

THIS CONFIDENTIAL DISCLOSURE AGREEMENT (the “Agreement”), dated and effective as of the ___ day of _____, 20__ (the “Effective Date”), is entered by and between _____, with its principle place of business at _____, in the state of _____ (“DISCLOSER”), and _____ (“Recipient”) having a principle place of business at _____, in the state of _____.

Background

WHEREAS, DISCLOSER, is in the possession of certain proprietary and confidential information relating to _____; (collectively defined below “Confidential Information”)

WHEREAS, each party is desirous to disclose Confidential Information hereto for the purposes of discussing a potentially mutually beneficial business arrangement around _____ (“Purpose”)

NOW, THEREFORE, in consideration of disclosing such information, Recipient and DISCLOSER agree as follows:

1. **Confidential Information.** “Confidential Information” means all information related to the business or activities of both parties, whether or not reduced to writing and whether or not patentable or protectable by copyright or the law of trade secrets, which is not generally known to others who are engaged in similar businesses and activities and are under no obligation of confidentiality to either party with respect to such information. “Confidential Information” includes, but is not limited to, cell lines, protocols, algorithms, information such as either party’s trade secrets, technical know-how, concepts, ideas, product development activities, strategic partners, collaborators, business plans and marketing plans. Notwithstanding the foregoing, “Confidential Information” shall not include information which:
 - (a) at the time of disclosure is or thereafter becomes part of the public domain through no act or omission of the recipient or the recipient’s employees, agents or representatives;
 - (b) was in the recipient’s lawful possession prior to the disclosure to the recipient, as shown by written records in existence prior to such disclosure;
 - (c) is hereafter lawfully disclosed to the recipient by a person under no obligation of confidentiality to the disclosing party with respect to such information; or
 - (d) is hereafter independently developed by the recipient, as shown by written records maintained contemporaneously with such developments.

The recipient shall have the burden of demonstrating that information which would otherwise constitute Confidential Information is within the scope of the previous sentence. Failure to mark or designate any Confidential Information as confidential or proprietary shall not affect its status as Confidential Information under this Agreement.

2. **Permitted Use.** The parties will use the Confidential Information solely for the Purpose.
3. **Confidentiality.** The receiving party will hold the Confidential Information in strict trust and confidence and will take all steps necessary to prevent the unauthorized disclosure, reproduction or use of any Confidential Information by recipient, recipient's employees, agents and representatives. Without the disclosing party's prior written authorization, the recipient will not, and will not permit the recipient's employees, agents or representatives to:
 - (a) disclose or otherwise make available any Confidential Information to any persons other than the recipient's employees, agents or representatives who (i) have a need to use such Confidential Information for the Purpose and (ii) are contractually bound to maintain the confidentiality of Confidential Information on terms at least as restrictive as those of this Agreement;
 - (b) copy, recreate or otherwise reproduce any Confidential Information in whole or in part, except as necessary to use such Confidential Information for the Purpose; or
 - (c) use any Confidential Information for any purposes not expressly permitted by this Agreement.

Notwithstanding the foregoing, disclosure of Confidential Information shall not be prohibited to the extent such disclosure is required by law, provided that (i) the receiving party has given the disclosing party prior written notice of such disclosure prior thereto and takes all available steps to maintain the confidentiality of the information disclosed and (ii) the disclosing party has been afforded a reasonable opportunity to contest the necessity and scope of such disclosure.

4. **Terms of Obligations.** The obligations of confidentiality hereunder shall automatically terminate five (5) years from the Effective Date of this Agreement, unless earlier termination is provided in writing by both parties; provided that the obligation of confidentiality for Confidential Information (i) designated as a trade secret, or (ii) that the receiving party has reason to believe is a trade secret, shall not terminate for so long as such information retains its status as a trade secret.
5. **Ownership; No License.** All DISCLOSER Confidential Information is and shall remain the property of DISCLOSER. All _____ Confidential Information is and shall remain the property of _____. Neither this Agreement nor any disclosure hereunder shall be deemed, by implication, or otherwise, to vest in the recipient any license or other ownership rights to the Confidential Information or

under any Confidential Information or inventions, patents, know-how, trade secrets, trademarks or copyrights owned or controlled by the disclosing party.

6. **Return of Materials.** Upon the disclosing party's request, the receiving party will promptly deliver to the disclosing party: (a) all materials, whether or not containing Confidential Information, furnished by the disclosing party including, without limitation, business plans, marketing plans and product samples, designs, drawings and specifications, and all copies, notes, summaries, abstracts, drawings, sketches, reproduction, models and other materials produced from such materials or from Confidential Information; and (b) all materials containing the disclosing party's Confidential Information which are in the possession or under the control of the recipient. The receiving party's obligations under this Agreement will survive compliance with any such request.
7. **Injunctive Relief.** Both parties acknowledge that the Confidential Information constitutes and contains confidential and proprietary information of a special and unique nature and values. Both parties also acknowledges that the disclosing party will suffer irreparable harm in the event the recipient breaches any of the recipient's obligations under this Agreement and that monetary damages will be inadequate to compensate the disclosing party fully for such breach. Both parties accordingly agree that, in the event of a breach or threatened breach of any of the recipient's obligations under this Agreement the disclosing party will be entitled to injunctive relief to prevent such breach by the recipient and by all persons acting for, on behalf of or with the recipient. Such injunctive relief will be in addition to any other rights and remedies to which the disclosing party is or may be entitled at law or in equity or otherwise under this Agreement.
8. **Scope of Obligations.** Nothing in this Agreement shall be construed to obligate either party to negotiate or enter into any business arrangement with the other party or any other person or to obligate to disclose or otherwise make available any information to either party.
9. **Accuracy of Information.** Both parties understand that while the disclosing party believes that the Confidential Information provided to the recipient is accurate, the disclosing party expressly disclaims any and all liability for express or implied representations or warranties contained in, or for omissions from, the Confidential Information or any other written or oral communication transmitted or made available by the disclosing party. Accordingly, it is intended by either party that only those particular representations and warranties which may be subsequently contained in a definitive, binding agreement between both parties, when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in any such agreement, shall have any legal and binding effect, except for the covenants of confidentiality contained herein.
10. **Severability.** The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the remaining provisions.

11. Binding Effect; Benefits. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and assigns, provided that Confidential Information may not be assigned without the prior written consent of the disclosing party. As used in this Agreement, the term “party” shall also include any affiliate of either party.

12. Notices. All notices and other communications under this Agreement shall be deemed to have been duly given if delivered or sent by certified mail, postage prepaid, and addressed. All notices and other communications directed to _____ shall be sent to _____. All notices and other communications directed to DISCLOSER shall be sent to _____, NC _____, Attention: President, or to such other address as a party designates by written notice to the other.

13. Entire Agreement; Modification and Waiver. This Agreement contains the entire agreement of the parties with respect to its subject matter and no modification or waiver of the provisions hereof will be binding unless in writing and signed by the party against whom such modification or waiver is sought to be enforced. No waiver of any provision of this Agreement at any time will preclude enforcement of such provision at any other time or of any other provision of this Agreement.

14. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of North Carolina, excluding that body of law known as choice law, and shall be binding upon the parties hereto in the United States and worldwide. All disputes with respect to this Agreement shall be brought and heard either in the North Carolina state courts located in Wake County, North Carolina, or the federal district court for the Eastern District of North Carolina located in Wake County, North Carolina. The parties to this Agreement each consent to the *in personam* jurisdiction and venue of such courts. The parties agree that service of process upon them in any such action may be made if delivered in person, by courier service, by telegram or by first class mail, and shall be deemed effectively given upon delivery.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____