



TEXAS TECH UNIVERSITY SYSTEM

Office of Technology Commercialization™

TWO-WAY CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made effective as of the ---- day of ____, 2008-- (“Effective Date”), by and between _____ and _____ to assure the protection and preservation of the confidential and/or proprietary nature of information to be disclosed or made available to each other in connection with certain negotiations or discussions described as “-----” (TTU file D-0----).

In reliance upon and in consideration of the following undertakings, the parties agree as follows:

1. Subject to the limitations set forth in Paragraph 2, all information disclosed to the other party shall be deemed to be "Proprietary Information." In particular, Proprietary Information shall be deemed to include without limitation any trade secret, information, business and financial data, patent disclosures, patent applications, structures, models, techniques, processes, compositions, compounds and apparatus relating to the same, invention, idea, sample, media and/or cell line and procedures and formulations for producing any such sample, media and/or cell line, process, formula, or test data relating to any research project, work in process, future development engineering, manufacturing, marketing, servicing, financing or personnel matter relating to the disclosing party, its present or future products, sales, suppliers, clients, customers, employees, investors or business, whether in oral, written, graphic or electronic form disclosed by the parties or through observation or examination of information or developments, but only to the extent that such information is maintained as confidential by the disclosing party. If Proprietary Information is disclosed in oral form, the disclosing party shall thereafter summarize it in writing, mark it “Confidential,” and transmit it to the other party within thirty (30) days of the oral disclosure.

2. The term "Proprietary Information" shall not be deemed to include information which: (a) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available; (b) is known by the receiving party at the time of receiving such information, as evidenced by its written records; (c) is hereafter furnished to the receiving party by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by the receiving party without any breach of this Agreement; or (e) is the subject of a written permission to disclose provided by the disclosing party.

3. Each party shall maintain all Proprietary Information in trust and confidence and shall not disclose any Proprietary Information disclosed to it by the other party to any third party or use any Proprietary Information disclosed to it by the other party for any unauthorized purpose. Each party may use such Proprietary Information only to the extent required to accomplish the purposes of this Agreement. Proprietary Information shall not be used for any purpose or in any manner that would constitute a violation of any laws or regulations, including without limitation the export control laws of the United States. No rights or licenses to trademarks, inventions, copyrights or patents are implied or granted under this Agreement. Additionally, each party agrees that it will

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not use any Proprietary Information disclosed to it by the other party to advance, further, or otherwise improve its proprietary position, if any.

4. Proprietary Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement.

5. The parties under this Agreement shall advise their employees who might have access to Proprietary Information of the confidential nature thereof and agree that their employees and agents shall be bound by the terms of this Agreement. No Proprietary Information shall be disclosed to any employee who does not have a need for such information. The receiving party shall not disclose any Proprietary Information to any third party without the disclosing party's express, written consent.

6. All Proprietary Information (including all copies thereof) shall remain the property of the disclosing party and shall be returned to the disclosing party after the receiving party's need for it has expired except for a single complete file copy which may be retained by receiving party as a part of receiving party's confidential legal documentation records, or upon request of the disclosing party, and in any event, upon completion or termination of this Agreement.

7. Notwithstanding any other provision of this Agreement, disclosure of Proprietary Information shall not be precluded if such disclosure:

(a) is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; *provided, however*, that the responding party shall first have given notice to the other party hereto and shall have made a reasonable effort to obtain a protective order requiring that the Proprietary Information so disclosed be used only for the purposes for which the order was issued;

(b) is otherwise required by law; or

(c) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

(d) is required by administrative ruling or policy of a government entity

8. Each party's obligations so contained in this Agreement shall expire on the fifth (5th) anniversary of the Effective Date of this Agreement.

9. This Agreement contains the complete and exclusive agreement of the parties relative to the subject matter hereof and supersedes all prior and contemporaneous understandings and agreements relating to its subject matter. This Agreement may not be changed, modified, amended or supplemented except by a written instrument signed by both parties.

10. Each party hereby acknowledges and agrees that in the event of any breach of this Agreement by the other party, including, without limitation, the actual or threatened disclosure or unauthorized use of a disclosing party's Proprietary Information without the prior express written consent of the disclosing party, the disclosing party will suffer an irreparable injury, such that no remedy at law will afford it adequate protection against, or appropriate compensation for, such injury. Accordingly, each party hereby agrees that the other party shall be entitled to specific performance of the receiving

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party's obligations under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

11. The parties' rights and obligations under this Agreement will bind and inure to the benefit of their respective successors, heirs, executors and administrators and permitted assigns.

12. If any provision of this Agreement is found by a proper authority to be unenforceable, that provision shall be severed and the remainder of this Agreement will continue in full force and effect.

13. Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party shall specify in writing. Such notice shall be deemed given upon the personal delivery, or sent by certified or registered mail, postage prepaid, three (3) days after the date of mailing.

AGREED TO:

AGREED TO:

TEXAS TECH
UNIVERSITY SYSTEM

Vice Chancellor
Office of Technology Commercialization

Date _____

Date _____