

MUTUAL CONFIDENTIALITY AGREEMENT

THIS MUTUAL CONFIDENTIALITY AGREEMENT ("Agreement"), effective as of the ____ day of _____, 20____ (the "**Effective Date**") is by and between _____ ("XXX"), a corporation with an address at _____, and University Hospitals of Cleveland ("UHC"), with an address at 11100 Euclid Avenue, Cleveland, Ohio 44106. XXX and UHC are individually referred to herein as a "**Party**" and collectively the "**Parties.**"

WHEREAS, the parties are contemplating entering into a transaction whereby each of the Parties will disclose certain confidential information, technology and records to each other in connection with business discussions between the parties centered around _____; and

WHEREAS, in connection with those discussions it may be necessary or desirable for one party to disclose to an other certain confidential information;

NOW, THEREFORE, the parties agree as follows:

1. **Definition of Confidential Information.** "**Confidential Information**" means any information or data (whether oral, written, electronic or otherwise) conveyed or communicated by one party (the "**Disclosing Party**") to the other party (the "**Receiving Party**") that is valuable and not generally known or readily available to third parties. To the extent practicable, written, electronic and other tangible Confidential Information shall be identified as such at the time of transmittal in order to be protected as Confidential Information hereunder. Information orally conveyed by one party to the other party shall, to the extent practicable, be identified as such at the time of disclosure and shall, within thirty (30) days after such oral disclosure, be summarized in a writing sent to the Receiving Party reaffirming the confidential nature of the orally disclosed information. Confidential Information includes, by way of example, but without limitation, the existence and terms of this Agreement and any writings, verbal communications, recordings, drawings, digital, magnetic or optical media or information or data in any other form, which relates to, memorializes or is derived from the businesses, assets, facilities, contractual relationships, activities, research, plans, products, services, developments, inventions, processes, formulas, designs, historical use of same or related medical treatments, alternative and conceptual designs and related methods of treatment, know-how, reports, technical specifications, and related information, inventions and ideas. However, Confidential Information shall not include information which can be clearly demonstrated to be:

- (a) already known to the Receiving Party at the time of disclosure by the Disclosing Party from any person or entity not acting in an improper, unauthorized, disloyal or illegal manner;
- (b) in the public domain other than through a breach of this Agreement by the Receiving Party or any action or inaction of Recipient, and other than as a

result of any improper, unauthorized, disloyal or illegal action or inaction of any person or entity;

- (c) provided to the Receiving Party by a third party without any restriction on disclosure and without breach of any obligation of confidentiality to a party to this Agreement;
- (d) independently developed by the Receiving Party without reference to, or reliance upon, the Confidential Information provided by the Disclosing Party under this Agreement; or
- (e) approved for release by written authorization of the Disclosing Party.

Notwithstanding anything to the contrary in this Agreement, the Parties represent and warrant that no information of any kind shall be disclosed which the disclosing Party does not have a valid legal right to disclose or which would otherwise cause the receiving Party to infringe upon or violate any intellectual property right of any third party.

2. **Mutual Obligations of Confidentiality.** Disclosures that may constitute Confidential Information hereunder shall terminate one (1) year after the Effective Date, unless extended in writing by mutual agreement, or terminated earlier in writing by one of the parties ("**Disclosure Period**"). Throughout the Disclosure Period and for five (5) years thereafter, a Receiving Party shall not (i) disclose the Confidential Information of Disclosing Party to anyone other than those permitted under Paragraph 4 herein or (ii) use the Confidential Information of Disclosing Party other than as permitted under Paragraph 3. Receiving Party shall take all necessary measures to protect the secrecy, access to, and use and disclosure of Confidential Information of Disclosing Party as it would Receiving Party's own most sensitive confidential information, but in no event shall Receiving Party exercise less than a reasonable degree of care.

3. **Mutual Obligations of Nonuse.** A Receiving Party shall use Confidential Information disclosed by a Disclosing Party only for the strictly limited purposes of the evaluation or subsequent performance of a business relationship with the Disclosing Party and UHC. A Receiving Party shall not use Confidential Information disclosed by a Disclosing Party for any other purpose whatsoever, including without limitation, incorporation into any research, study, protocol, database, test article, development, education or training design or program, method of diagnosis or treatment, or other product or service of any kind without the prior written consent of the Disclosing Party and UHC.

4. **Permitted Disclosures.** The Receiving Party may disclose the Confidential Information to officers, employees, affiliates and outside consultants, accountants and attorneys ("**Internal Personnel**") who have a need to know the Confidential Information for the purposes set forth in Paragraph 3, but only after such Internal Personnel have been apprised of this Agreement and the Receiving Party's

obligations hereunder and agree to abide by them. The Receiving Party may not disclose the Confidential Information to anyone other than Internal Personnel without the prior written permission from the Disclosing Party and UHC.

5. **Returning of Confidential Information.** All Confidential Information disclosed by a party under this Agreement is and shall remain the property of the Disclosing Party or UHC as the case may be. Upon a written request by the Disclosing Party or UHC at any time, the Receiving Party shall promptly return to the Disclosing Party or UHC (as requested) all items furnished by Disclosing Party and all copies, descriptions, extracts, derivations, compilations or summaries thereof.

6. **Legally Compelled Disclosures.** If the Receiving Party receives a court order, subpoena or other valid legally enforceable mandatory request by a governmental agency to disclose any of the Confidential Information, the fact that such information has been made available to the Receiving Party or the fact that discussions or negotiations between the parties are taking place, the Receiving Party shall provide the Disclosing Party and UHC with prompt written notice of same, refrain from responding to such request for the maximum possible period of time, and cooperate so that the Disclosing Party may investigate, intervene and object to or resist the request, seek a protective order or other appropriate remedy or waive, to the extent necessary compliance with the provisions of this Agreement.

7. **Equitable Relief.** The parties recognize that any breach or threatened breach of this Agreement will cause irreparable injury and that money damages would not be an adequate remedy. In addition to any remedies available in law, equity or otherwise, each party shall be entitled to seek injunctive and other equitable relief in the event of any actual or threatened breach of this Agreement by the other party, and such other party shall not plead in defense thereto that there would be an adequate remedy at law.

8. **No Representation or Warranty.** The Receiving Party understands that the Disclosing Party and UHC, as the case may be, make no representation or warranty as to the adequacy, completeness or contents of the Confidential Information. The Disclosing Party and UHC shall not have any liability to the Receiving Party resulting from the Receiving Party's use of the Confidential Information.

9. **No Right or License.** Except for the limited right to use granted in Paragraph 3 thereof, no right to use the Confidential Information is granted hereunder or shall arise in any way in connection with this Agreement. No license, either express or implied, under any patent, copyright, trade secret or other intellectual property right in or to the Confidential Information or otherwise is granted hereunder.

10. **Relationship of the Parties.** No agency, partnership, fiduciary relationship, joint venture or other joint relation is created between the parties by this Agreement. Neither party has the authority to bind the other party or to incur any obligation on its behalf. UHC is an intended third party beneficiary to this Agreement.

11. **No Obligation to Purchase or Sell.** No party has an obligation under this Agreement to purchase any service or item from the other party, or to offer any service or item for sale to the other party, nor shall any agreement to enter into a business relationship between the parties exist unless and until such agreement is in writing and duly executed by the parties.

12. **No Publicity.** Except as authorized by all parties in writing, no party shall publicly announce or disclose the existence of this Agreement or its terms or conditions, or advertise or release any publicity regarding this Agreement.

13. **HIPAA.** XXX shall comply with all policies of UHC or its parent, University Hospitals Health System ("UHHS") which may reasonably be imposed with respect to Confidential Information pertaining to patient-specific and/or healthcare provider specific content including, without limitation, all UHHS policies promulgated under the Health Insurance Portability and Accountability Act of 1996 and applicable regulations thereto, all as amended from time to time ("HIPAA"). If reasonably requested by an Investigator or UHC, Recipient will enter into a business associate agreement with the Investigator(s) and UHC containing terms required by HIPAA.

14. **Obligations Cumulative.** The obligations hereunder are in addition to, and not in substitution for, any obligations of confidentiality or nonuse owed by the Receiving Party under applicable law.

15. **Governing Law and Forum.** This Agreement shall be governed by and enforced in accordance with the laws of the State of Ohio of the United States of America, without giving effect to choice of law principles of that or any other jurisdiction. This Agreement has been entered into in the State of Ohio.

16. **Notices.** All notices or other communications that are required or permitted hereunder shall be in writing and delivered personally, sent by facsimile, sent by nationally-recognized overnight courier or sent by registered or certified mail, postage prepaid, return receipt requested, to the addresses listed above. In addition, a copy shall also be addressed to University Hospitals of Cleveland, Attention: General Counsel, 3605 Warrensville Center Road, Shaker Heights, Ohio 44122. Any such communication shall be deemed to have been given (i) when delivered, if personally delivered or sent by facsimile on a business day, (ii) on the business day after dispatch, if sent by nationally-recognized overnight courier, and (iii) on the fifth business day following the date of mailing, if sent by mail.

17. **General.** The headings in this Agreement are inserted for convenience only and shall not be used in the interpretation hereof. This Agreement may only be amended by, and no waiver of any provision or breach shall be effective unless made in, a written document signed by both parties. Failure by any party or third party beneficiary to enforce any provision of this Agreement shall not constitute a waiver by such party or beneficiary of any term hereof. No waiver of a breach of this Agreement (whether express or implied) shall constitute a waiver of a subsequent breach. All

provisions of this Agreement are severable, and the unenforceability or invalidity of any of them shall not affect the validity or enforceability of the remaining provisions of this Agreement. This Agreement constitutes the entire understanding between the parties and supersedes all previous understandings, agreements, communications and representations, whether written or oral, concerning the subject matter hereof. This Agreement may be signed in one or more counterparts, each of which will be deemed an original, but all of which will be deemed one instrument. This Agreement may be executed via facsimile transmission.

IN WITNESS WHEREOF, the parties have caused and duly authorized their representatives to execute and deliver this Agreement as of the Effective Date.

XXX INC.

University Hospitals of Cleveland.

By: _____

By: _____

Name: _____

Philip A. Cola, M.A.

Title: _____

Vice President, Research and Technology
Management

Date: _____

Date: _____