Confidentiality and Non-disclosure Agreement

THIS AGREEMENT is made as of the \_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_, 20\_\_\_\_, by and among Eastern Virginia Medical School (“EVMS”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, including its subsidiaries and affiliates.

WHEREAS, each party represents that it has developed and possesses certain information including technical and/or business information, some of which it considers to be confidential (“Confidential Information”);

WHEREAS, the parties desire to evaluate the possibility of entering into a business arrangement relating to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, for the sole purpose of evaluating \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_for the mutual benefit of the parties to this agreement; and

WHEREAS during the course of their dealings with each other in connection with such activities, the parties may periodically disclose to one another Confidential Information only in support and furtherance of such activities,

NOW, THEREFORE, in consideration of the covenants herein and other good and valuable consideration, the receipt and sufficiency of which each party acknowledges, the parties mutually agree as follows:

1. **Confidential Information**
	1. **Definition**. All information to be treated as Confidential Information shall be marked by the disclosing party as “Confidential”. Information disclosed in oral or visual form that is to be treated as Confidential Information shall be identified as “Confidential” at the time of disclosure and shall be confirmed as Confidential Information by written notice within twenty (20) days after disclosure.
	2. **No Obligation to Receive.** Nothing in this Agreement shall require a party to receive or accept disclosure of Confidential Information from any other party.
	3. **Scope of Use.** Confidential Information shall be used only for evaluation purposes. Each party hereby agrees to keep in confidence and not disclose to any third party any Confidential Information disclosed by the other party during the course of their dealings with each other, except as hereinafter provided. Confidential Information may be disclosed to employees of the recipient who have a need to know such information and who have legally enforceable nondisclosure obligations to the recipient. Confidential Information shall not be reproduced in any form except as required to accomplish the purpose of this Agreement.
	4. **Return of Confidential Information.** Upon the request of any party hereto, the parties agree to promptly return or destroy each other’s Confidential Information, in whatever form, without retaining any copies or excerpts thereof, provided, however, that a receiving party’s counsel may retain one copy of the returned or destroyed items for archival purposes. Notwithstanding the foregoing, one copy of all Confidential Information may be kept by a party for archival purposes and for the purpose of defending against any claims arising in connection with this Agreement or a breach thereof and Confidential Information contained in system back up files (e.g., computer backup tapes) need not be returned or destroyed so long as they were created during the normal course of automatic system back up and are maintained in confidence and not readily accessible to users, it being understood that the archival copy and the backup tapes will continue to be handled and stored with the same level of security provided during the term of the Agreement.
	5. **No Warranties, Representations or Liability.** No party will disclose to any other party any Confidential Information that the disclosing party believes to be wrong. However**,** all Confidential Information is provided “AS IS”, without warranty or guarantee of any kind as to its accuracy, completeness, operability, fitness for particular purpose, or any other warranty, express or implied. No party shall be liable to any other party for any damages, loss, expense or claim of loss arising from use of or reliance on the Confidential Information of such other party.
	6. **Independent Development.** The terms of confidentiality under this Agreement shall not be construed to limit any party’s right to independently develop or acquire products without the use of the other party’s Confidential Information.
	7. **Preliminary Disclosure.** All disclosures shall be prefaced with a brief, non-confidential summary of the nature of the Confidential Information to permit the proposed recipient to determine whether it wishes to accept disclosure.
2. **Information Not Subject To Confidentiality**

The obligations set forth above shall not in any way restrict or impair the right of any party, to the extent permitted by law, to disclose the following:

* 1. information which at the time of disclosure has been published or is otherwise in the public domain;
	2. information which, after disclosure, becomes part of the public domain other than through a breach of this Agreement;
	3. information which was known to the recipient prior to receipt from the disclosing party, provided such prior knowledge can be adequately substantiated;
	4. information which becomes known to the receiving party from a source which legally derives such information independently of the disclosing party under this Agreement;
	5. information which the receiving party can demonstrate that it developed without reference to any Confidential Information provided pursuant to this Agreement;
	6. information which is freely disclosed by the owner of the Confidential Information to a third party without an obligation of confidentiality or nondisclosure; or,
	7. information which is disclosed pursuant to law, regulation or lawful order or process. In such event, the party from whom disclosure is required shall promptly notify the owner of the Confidential Information of the disclosure requirement, to permit the owner to oppose or limit such disclosure.
1. **Ownership**

Confidential Information may be used only as provided herein. No other right, immunity or license to the Confidential Information, either expressed or implied, is granted by any party to any other party pursuant to this Agreement under any patent, patent application, copyright, trademark or other intellectual property right, now or hereafter owned or controlled by any party.

1. **Term of This Agreement**

This Agreement shall terminate two (2) years from its effective date, but may be terminated by any party giving thirty (30) days’ written notice to the other parties. Termination, however, shall not affect the rights and obligations arising under this Agreement with respect to Confidential Information disclosed prior to termination, including without limitation the seven (7) year confidentiality period set forth herein.

1. **Term of Confidentiality**

Unless otherwise agreed to in writing, no party shall have any obligations of confidentiality under this Agreement after seven (7) years from the date of disclosure, provided that with respect to any trade secret information, a receiving party’s obligation of confidentiality shall last as long as such information remains a trade secret.

1. **Notices**

Any notice provided in connection with this Agreement shall be given in writing by certified mail, prepaid, return receipt requested, directed to the parties at the following addresses:

 Eastern Virginia Medical School

 P.O. Box 1980
Norfolk, VA 23501
Attn: Paul B. DiMarco
Director, Office of Technology Transfer

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. **No Formal Business Obligations**

Nothing in this Agreement or in any of the discussions the parties have engaged in or in the correspondence among the parties, shall constitute a confirmation, approval, consent or other agreement, to begin any project or any other business in the future among the parties hereto. The parties intend to effect a legally binding agreement with respect to any project or business transaction only by the execution and delivery of a definitive, written agreement. In the absence of such definitive agreement, any costs incurred by any party will be incurred at such party's risk and will be the sole responsibility of that party.

1. **Miscellaneous**
	1. **Governing Law; Jurisdiction; Attorneys’ Fees.** The provisions of this Agreement shall be governed by the laws of the Commonwealth of Virginia. Each party waives any right to a trial by jury. In the event of any dispute brought hereunder, a party substantially prevailing on its claims against another party shall be entitled to recover costs and reasonable attorneys’ fees and expenses from such other party.
	2. **Injunctive Relief.** Each party acknowledges and agrees that its unauthorized disclosure or use of Confidential Information hereunder will cause the party that disclosed the Confidential Information irreparable harm for which monetary relief would not be adequate and that, accordingly, in addition to any other remedies to such disclosing party may be entitled, the disclosing is entitled to injunctive relief therefor without any need to post bond in connection therewith.
	3. **Entire Agreement.** This Agreement contains the sole and entire agreement between the parties relating to the subject hereof and no party’s representation, promise, or condition not contained herein, or any amendment hereto shall not be binding on any other unless set forth in a subsequent written agreement signed by an authorized representative of the party to be bound thereby.
	4. **Publicity.** No party shall issue any public disclosures or statements regarding this project without the prior written consent of all of the other parties.
	5. **Assignment.** This Agreement is personal to the parties hereto and no party may assign or transfer its rights, interests or obligations hereunder without the prior written consent of the other.
	6. **Export Laws.** Each party hereto shall abide by all export/import laws of the United States of America, and any applicable foreign nation, when making disclosure of Confidential Information to any other party.
	7. **Defend Trade Secrets Act.** Each party acknowledges the limited immunity provided by the Defend Trade Secrets Act, codified at 18 U.S.C. § 1832, for certain disclosures of trade secret information, including disclosures: (a) made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; (b) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal; and (c) made by an individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law and discloses the trade secret information to the attorney of the individual and uses the trade secret information in the court proceeding, if the individual (i) files any document containing the trade secret under seal and (ii) does not disclose the trade secret except pursuant to court order.
	8. **Headings.** The section and paragraph headings herein are for reference only and are not intended to be a part of or to effect the meaning or interpretation of this Agreement.
	9. **No Disclosure of Third Party Information.** The parties hereby state that they do not desire to acquire from each other, and they hereby agree not to furnish to one another, any trade secret, proprietary know-how or confidential information acquired from third parties. Further, each party represents and warrants to the other parties that it is free to divulge, without any obligation to or violation of the rights of any third party, any and all information which it will demonstrate, divulge or in any other manner make known to the other parties hereunder. Each party shall and does hereby exonerate, indemnify and hold harmless the other parties from and against any and all liability, loss, cost, expense, damage, claims or demands for actual violation of the rights of any third party in any trade secret, proprietary know-how or other confidential information by reason of the other’s receipt of information disclosed hereunder.

(Signature page follows.)

**AGREED AND ACCEPTED**

Eastern Virginia Medical School

By:

Name:

Title:

Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_