**MUTUAL NONDISCLOSURE AGREEMENT**

 **This Mutual Nondisclosure Agreement** (the ***“Agreement”***) is made effective as of \_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_, 2012 (the ***“Effective Date”***) by and between \_\_\_\_\_, with a place of business at \_\_\_\_\_ (“Company”) and the **University of Utah**, a body politic and corporate of the State of Utah, on behalf of its Health Sciences Center, with an office at 75 South 2000 East, RAB Rm. 211, Salt Lake City, UT 84112 (“Institution”), utilizing the services of its employee, \_\_\_\_\_\_\_ M.D., who is not a party to this Agreement, 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 between the parties regarding ­­­­–a study entitled \_\_\_\_\_\_\_\_\_\_ (the “Study”) (collectively the “Purpose”). The parties hereby agree as follows:

1. Subject to the limitations set forth in Section 2, all confidential and proprietary relating to the Study information disclosed by either party to the other party shall be “***Proprietary Information***.” In particular, Proprietary Information of a party shall include, without limitation, the protocol, proposal, design, and information regarding inventions, ideas, compounds, products, processes, designs, formulas and methods.
2. The term “***Proprietary Information***” shall not include information that: (a) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, part of the public domain; (b) is known by the receiving party at the time of receiving such information; (c) is hereafter lawfully furnished to the receiving party by a third party; or (d) is independently developed by the receiving party without any breach of this Agreement.
3. Each party shall maintain all Proprietary Information of the other party in trust and confidence and shall not disclose any such Proprietary Information to any third party or use any such Proprietary Information for any unauthorized purpose. In particular, the receiving party shall not file any patent application containing any claim to any subject matter derived from the Proprietary Information of the disclosing party. The receiving party may use such Proprietary Information only to the extent required to accomplish the Purpose and for no other purpose. Nothing in this Agreement grants the receiving party the right to retain, distribute or commercialize any Proprietary Information belonging to the disclosing party, or to use it in any other manner other than the limited manner set forth herein. Proprietary Information shall not be reproduced in any form except as required to accomplish the Purpose.
4. Each party under this Agreement will protect the Proprietary Information of the other party received under this Agreement with the same degree of care used to protect its own Proprietary Information from unauthorized use or disclosure. Each party shall advise its employees, consultants and agents who might have access to Proprietary Information of disclosing party of the confidential nature thereof. Except as expressly permitted by this Section 4, a receiving party shall not disclose any Proprietary Information of the disclosing party to any third party without the disclosing party’s prior written consent.
5. Upon the disclosing party’s written request, the receiving party will return to the disclosing party all Proprietary Information disclosed hereunder, *provided, however*, that the receiving party may retain one copy of such Proprietary Information for archival purposes only.
6. Notwithstanding any other provision of this Agreement, disclosure of Proprietary Information of the disclosing party shall not be precluded if such disclosure is in response to a valid order of a court or other governmental body of competent jurisdiction of the United States or any political subdivision thereof or is otherwise required by law or regulation; *provided, however,* that the receiving party shall provide advance notice to the disclosing party where practicable.

Company acknowledges that Institution is a Utah governmental entity and thus subject to the Utah Government Records Access and Management Act, Utah Code §§ 63G-2-101 to -901, as amended, and Utah Code §§ 53B-16-301 to -305, as amended (“Records Statutes”). Institution’s confidentiality obligations under this shall be subject in all respects to compliance with Records Statutes.

1. The term of this Agreement will begin on the Effective Date and expire on the first anniversary of the Effective Date. The obligations of confidentiality and non-use will survive expiration of this Agreement for three (3) years from the Effective Date.
2. The parties agree to remain silent on the issue of governing law.

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

**In Witness Whereof**, the parties have, by duly authorized persons, executed this Agreement as of the Effective Date.

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