



NON-DISCLOSURE AGREEMENT

THIS AGREEMENT dated the ____ day of _____, 200__ is made between the **British Columbia Cancer Agency Branch**, with offices at 600 West 10th Avenue, Vancouver, British Columbia, Canada, V5Z 4E6 (“Disclosing Party”) and _____, with offices at _____ (“Receiving Party”).

In consideration of the mutual promises and covenants contained in this Agreement the parties hereto agree as follows:

1. Confidential Information and Confidential Materials

(a) “Confidential Information” means any and all information that is or has been received by the Receiving Party from the Disclosing Party and that: (a) relates to the Disclosing Party’s business, operations or activities; and (b) is designated by the Disclosing Party as being confidential or is disclosed in circumstances where the Receiving Party would reasonably understand that the disclosed information would be confidential. Without limiting the generality of the foregoing, Confidential Information shall include trade secrets and other confidential and/or proprietary information, business plans, informational memoranda, reports, investigations, research, work in progress, marketing and sales programs, financial projections, cost summaries, pricing formula, contract analyses, financial information, projections, confidential filings with any international, federal or state/provincial agency, and all other confidential concepts, methods of doing business, ideas, materials or information prepared or performed by or on behalf of the Disclosing Party by its researchers, employees, officers, directors, agents, representatives or consultants.

(b) Confidential Information shall not include any information that: (i) is or subsequently becomes publicly available without Receiving Party’s breach of any obligation owed Disclosing Party; (ii) became known to Receiving Party prior to Disclosing Party’s disclosure of such information to Receiving Party; (iii) became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party; or (iv) is independently developed by Receiving Party.

(c) “Confidential Materials” shall mean all tangible materials containing Confidential Information, including without limitation written or printed documents and computer discs or tapes, whether machine or user readable.

2. Restrictions

(a) Receiving Party shall not disclose any Confidential Information to third parties for five (5) years following the date of its disclosure by Disclosing Party to Receiving Party, except to Receiving Party’s consultants as provided below. However, Receiving Party may disclose Confidential Information in accordance with judicial or other governmental order, provided Receiving Party shall give Disclosing Party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent.

(b) Receiving Party shall take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, to keep confidential the Confidential Information. Receiving Party may disclose Confidential Information or Confidential Material only to Receiving Party’s employees or consultants on a need-to-know basis; provided however that the Receiving Party shall first obtain from all such employees and consultants a written agreement to maintain the confidentiality and proprietary nature of the Confidential Information and Confidential Materials on the terms and conditions contained in this Agreement.

(c) Confidential Information and Confidential Materials may be disclosed, reproduced, summarized or distributed only in pursuance of Receiving Party's business relationship with Disclosing Party, and only as otherwise provided hereunder. Receiving Party agrees to segregate all such Confidential Materials from the materials of others in order to prevent commingling.

(d) Receiving Party agrees, upon the written request of Disclosing Party to return to Disclosing Party all Confidential Information and Confidential Materials provided by Disclosing Party and to destroy all analyses, studies, compilations, copies, extracts, reproductions, computer data, memoranda and notes and other writings prepared by Receiving Party based on or containing any of the Confidential Information without retaining any copies thereof.

3. Rights and Remedies

(a) Receiving Party shall notify Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information and/or Confidential Materials, or any other breach of this Agreement by Receiving Party, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and/or Confidential Materials and prevent its further unauthorized use.

(b) Receiving Party shall return all originals, copies, reproductions and summaries of Confidential Information or Confidential Materials at Disclosing Party's request, or at Disclosing Party's option, certify destruction of the same.

(c) Receiving Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction. Receiving Party hereby consents to any ex-parte application for such relief.

4. General

(a) All Confidential Information and Confidential Materials are and shall remain the property of Disclosing Party. By disclosing information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under Disclosing Party patents, copyrights, trademarks, or trade secret information.

(b) Disclosing Party makes no express or implied warranties or representations directly or indirectly to Receiving Party as to the accuracy or completeness of any Confidential Information or Confidential Materials. Neither Disclosing Party nor any of its directors, officers, researchers, employees, servants or agents shall have any liability to Receiving Party or any other recipients of the Confidential Information or Confidential Materials arising out of use of the same.

(c) Receiving Party agrees that it does not intend nor will it, directly or indirectly, export or re-export (i) any Confidential Information or Confidential Materials, or (ii) any product (or any part thereof), process or service that is the direct product of the Confidential Information or Confidential Materials to (A) any country that is subject to U.S. export restrictions, or to any national of such country, wherever located, who intends to transmit or transport the products back to such country; (B) to any end-user who Receiving Party knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons; or (C) to any end-user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government.

(d) The terms of confidentiality under this Agreement shall not be construed to limit Receiving Party's right to independently develop or acquire products without use of Disclosing Party's Confidential Information or Confidential Materials. Further, Receiving Party shall be free to use for any purpose the residuals resulting from access to or work with such Confidential Information, provided that Receiving Party shall maintain the confidentiality of the Confidential Information as provided herein. The term "residuals" means information in non-tangible form, which may be retained by persons who have

had access to the Confidential Information, including ideas, concepts, know-how or techniques contained therein. Receiving Party shall not have any obligation to limit or restrict the assignment of such persons or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant Receiving Party a license under Disclosing Party's patents, copyrights, or other intellectual property rights.

(e) Disclosing Party acknowledges that Receiving Party may be engaged in discussions with, and may obtain confidential information from other entities that carry on business(es) that may be competitive with the business or operations and activities carried on by Disclosing Party. Nothing in this Agreement shall be construed as limiting Receiving Party's ability to pursue other business opportunities that may be competitive with those of Disclosing Party, provided Receiving Party does not breach the provisions of this Agreement regarding the unauthorized disclosure of Disclosing Party's Confidential Information.

(f) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of the Disclosing Party, its agents, or employees, but only by an instrument in writing signed by an authorized officer of Disclosing Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

(g) Receiving Party hereby agrees to indemnify and save harmless Disclosing Party from and against all actions, claims, damages, losses, expenses and costs (including attorney fees on a solicitor and client basis) which Disclosing Party may sustain, incur or become liable for as a result of any breach of this Agreement by Receiving Party and of any other confidentiality agreements entered into pursuant hereto by Receiving Party's employees and consultants and this indemnity shall continue in full force and effect and be applicable whether or not such employees and consultants who have caused or contributed to such breach cease to be employed or engaged by Receiving Party. If Disclosing Party employees counsel to enforce any rights arising out of or relating to this Agreement, it shall be entitled to recover reasonable legal fees. This Agreement shall be construed in accordance with the laws of the Province of British Columbia, and both parties consent to the exclusive jurisdiction of the courts sitting in the Province of British Columbia. Process may be served on either party by Canadian mail, postage prepaid, certified or registered, return receipt requested and will be deemed to have been received on the third day following mailing.

(h) Subject to the limitations set forth in this Agreement, this Agreement will enure to the benefit of and be binding upon the parties, their successors and assigns.

(i) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

(j) All obligations created by this Agreement shall survive change or termination of the parties' business relationship.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

COMPANY:	BRITISH COLUMBIA CANCER AGENCY
By: _____	By: _____
Name:	Dr. Samuel Abraham
Title:	Director, Technology Development, BC Cancer Agency
Date:	Date: