

## MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement ("*Agreement*") is made and entered into as of , 20\_\_\_\_ (the "*Effective Date*") by and between \_\_\_\_\_ ("Receiving Party") at \_\_\_\_\_ and Synerex Laboratories, LLC ("*Disclosing Party*") and governs the disclosure of Confidential Information (as defined below) by the parties.

1. Permitted Use of Disclosing Party's Confidential Information. The "**Permitted Use**" of a Disclosing Party's Confidential Information is as agreed in writing by the parties, but in no event shall use by the Receiving Party extend to that which reasonably could commercially damage the Disclosing Party.

2. Definition of Confidential Information. Each party (each, a "*Receiving Party*") understands that the other party (each, a "*Disclosing Party*") has disclosed or may disclose to the Receiving Party information relating to the Disclosing Party's business and/or technology processes that is confidential or proprietary in nature, whether explicitly designated as such or which in good faith ought to be treated as such given its nature and/or the nature of the disclosure (which to the extent previously, presently or subsequently obtained by the Receiving Party is hereinafter referred to as "**Confidential Information**"). Confidential Information may include, but shall not be deemed to be not limited to, the following: (i) non-published patent applications and the information contained therein, trade secrets, inventions (whether patentable or not), discoveries and improvements; (ii) prototypes, products, concepts, know-how, ideas, techniques, processes, methodologies, testing procedures, design and functional specifications, analysis and performance information, sketches, drawings, models, apparatus, equipment, user documentation, internal documentation, technical or other representations, documentation, diagrams, schematics, flow charts, features, mode of operation and other details of products and services, and information concerning research, experimental work, development, design details and specifications; (iii) software design and architecture, software programs, source code, object code and other computer code, modules, software source documents, specifications, algorithms, formulas, scripts, data, databases, and formulas related to the current, future and proposed products and services; (iv) names and expertise of directors, officers, employees and consultants; (v) procurement requirements, purchasing, names of customers, suppliers and strategic partners, and lists thereof; and (vi) technical, business, financial, marketing, customer, supplier and product development plans, schedules, forecasts, strategies, materials sales, merchandising, promotional and marketing plans and information. Without limiting the foregoing, Confidential Information also may include proprietary or confidential information of any third party who may disclose such information to the Disclosing Party in the course of the Disclosing Party's business, and for purposes of this Agreement, as between the parties such third party confidential information shall be deemed the Disclosing Party's Confidential Information. The parties agree that the foregoing clauses (i), (ii), (iii), (iv), (v) and (vi) shall not apply or shall cease to apply (as applicable) with respect to any information the Receiving Party can show as a matter of contemporaneous record and otherwise by clear and convincing evidence: (a) was rightfully in the Receiving Party's possession or known by it without restriction prior to disclosure by the Disclosing Party, (b) was developed by those of the Receiving Party's personnel who did not have access to the Disclosing Party's Confidential Information, (c) was rightfully obtained from a third party who was not prohibited from transmitting the information to the Receiving Party by

a contractual, legal or fiduciary obligation to the Disclosing Party, or (d) was or (through no improper action or inaction by the Receiving Party or any employee, agent, officer and/or director of the Receiving Party) becomes generally available to the public without restriction; provided, however, that should any information come within any circumstance listed in this sentence, this sentence does not authorize the Receiving Party to infringe any proprietary rights of the Disclosing Party. The Receiving Party may make disclosures of the Disclosing Party's Confidential Information required by court order or other valid governmental agency order, provided the Receiving Party promptly notifies the Disclosing Party of the disclosure requirement and cooperates with the Disclosing Party's reasonable efforts to resist or narrow the disclosure and to obtain an order or other reliable assurance that confidential treatment will be afforded the Disclosing Party's Confidential Information. Notwithstanding anything to the contrary, each party agrees that the existence of any business-related negotiations, discussions, or consultations between the parties, whether already entered or entered into later, shall be deemed to be the Confidential Information of both parties.

3. Nondisclosure Obligations. The Receiving Party agrees: (i) to hold the Disclosing Party's Confidential Information in strict confidence and to protect the confidentiality of such Confidential Information using all precautions the Receiving Party takes to protect its own Confidential Information, which in no instance may be less than reasonable precautions; (ii) the Receiving Party will not divulge any of the Disclosing Party's Confidential Information or any information derived therefrom to any third party, including, but not limited to, any parent, subsidiary, or affiliated entity (even if owned or controlled by the Receiving Party) without the Disclosing Party's express prior written approval, even if the third party has a contractual duty of confidentiality to the Receiving Party; (iii) not to make any use whatsoever at any time of Confidential Information without the Disclosing Party's express prior written approval except for the Permitted Use; (iv) not to copy, modify or create Derivative Works (defined below) of any Confidential Information (notwithstanding the provisions in Section 4 of this Agreement, which the Receiving Party acknowledges are intended merely as partial protection of the Disclosing Party's rights in the event the Receiving Party breaches this provision); and (v) not to alter or delete any proprietary legends or markings on any Confidential Information. The Receiving Party further agrees not to circulate or disclose the Disclosing Party's Confidential Information within its organization except to those employees, agents, officers and/or directors of the Receiving Party who have a legitimate "need to know" such Confidential Information and who are obligated by appropriate written agreements to keep the Confidential Information confidential in a manner no less restrictive than set forth in this Agreement, and the Receiving Party acknowledges and agrees that it is responsible and liable for such persons' compliance with such confidentiality obligations.

4. Ownership and Return of Confidential Information and Other Materials. All of the Disclosing Party's Confidential Information, and any Derivative Works thereof whether created by the Disclosing Party or the Receiving Party, remain the property of the Disclosing Party and no license or other rights to the Disclosing Party's Confidential Information or Derivatives is granted or implied hereby. For purposes of this Agreement, "**Derivative Works**" shall mean: (i) for copyrightable or copyrighted material, the definition of "derivative work" as set forth in the U.S. Copyright Act, 17 U.S.C. § 101 et seq. (which for purposes of this Agreement shall also be considered "works made for hire" as that term is defined in the U.S. Copyright Act if such is made by a party other than the Disclosing Party); (ii) for patentable or

patented material, any improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected under copyright, patent and/or trade secret laws. The Receiving Party hereby assigns to the Disclosing Party all of the Receiving Party's rights, title in interest and interest in and to all Derivative Works and agrees to take all reasonable actions associated with such assignment (including but not limited to executing assignment agreements). All materials (including, without limitation, documents, drawings, models, apparatus, sketches, designs, lists, and all other tangible media of expression) furnished to the Receiving Party by the Disclosing Party shall remain the property of the Disclosing Party. Within five (5) business days of the Disclosing Party's request, the Receiving Party shall destroy or deliver to the Disclosing Party, at the Disclosing Party's option, (a) all materials furnished to the Receiving Party by the Disclosing Party, (b) all tangible media of expression in the Receiving Party's possession or control which incorporate or in which are fixed any Confidential Information, and (c) written certification of the Receiving Party's compliance with these obligations.

5. No Obligation to Disclose. Each party understands and agrees that nothing herein requires the Disclosing Party (i) to disclose any Confidential Information, which shall be disclosed, if at all, solely at the option of the Disclosing Party, or (ii) to proceed with any relationship in connection with which Confidential Information may be disclosed.

6. Reverse Engineering / Independent Development. Notwithstanding any other provision of this Agreement, including but not limited to any term, termination, and/or survival provision, the Receiving Party shall not (and the Receiving Party shall not use any third party to) reverse engineer, decompile, disassemble, or otherwise attempt to discern the design, structure, internal workings, or other technology incorporated in any of the Disclosing Party's Confidential Information disclosed to the Receiving Party hereunder at any time whatsoever. The terms of this Agreement shall not be construed to limit in any way the Receiving Party's right to independently develop products and services without use of the Receiving Party's Confidential Information.

7. Obligation to Notify and Assist. The Receiving Party agrees to immediately notify the Disclosing Party of any unauthorized use or disclosure of the Disclosing Party's Confidential Information related to the Receiving Party's possession of the Disclosing Party's Confidential Information or any other breach of this Agreement, and the Receiving Party agrees to cooperate in every reasonable way to help the Disclosing Party regain possession of any misused or mis-disclosed the Receiving Party's Confidential Information and prevent (or limit to the extent possible) its further unauthorized use or disclosure.

8. Term. This Agreement governs all disclosures of Confidential Information between the parties through the date on which either party receives written notice from the other party that subsequent communications shall not be so governed, except for disclosures of Confidential Information made pursuant to a separate agreement; provided, however, that each party's obligations regarding the other party's Confidential Information disclosed pursuant to this Agreement shall continue for a three year period from the date of such disclosure.

9. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." THE DISCLOSING PARTY MAKES NO WARRANTY, EXPRESS OR IMPLIED,

REGARDING THE TIMELINESS, ACCURACY, PERFORMANCE OR COMPLETENESS OF ANY OF ITS CONFIDENTIAL INFORMATION.

10. Assignment. Neither party shall assign this Agreement or its rights hereunder without the other party's prior written consent, which consent shall not be unreasonably withheld or delayed.

11. Compliance with Laws: Both parties will comply with all applicable federal, state, and local statutes, rules and regulations, including without limitation, U.S. export control laws and regulations as they currently exist and may be amended from time to time. The Receiving Party agrees not to remove, export or re-export from the United States any of the Disclosing Party's Confidential Information or any direct product thereof except in compliance with all provisions of this Agreement.

12. Governing Law and Forum; Legal Fees. This Agreement shall be governed by the laws of the United States of America and the State of Texas, as such laws are applied to agreements entered into and to be performed entirely within Texas between Texas residents, and without regard to the choice of law and conflict of laws provisions thereof, and the parties irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts having within their jurisdiction Travis County, Texas and agree to waive all objections and defenses regarding personal jurisdiction, venue and forum non conveniens (excepting any actions seeking to enforce any order or judgment of such federal or state courts located in Travis County, Texas). The prevailing party in any action to enforce this Agreement shall be entitled to costs and fees (including attorneys' fees and expert witness fees) incurred in connection with suchaction.

13. Severability. If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable, (i) that provision shall be deemed amended to achieve as nearly as possible the same economic effect as the original provision, and (ii) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired.

14. Waiver; Amendment; Modification. No term or provision will be considered waived, and no breach excused, unless such waiver or consent is in writing signed by the Disclosing Party. The Disclosing Party's waiver or consent shall not operate, or be construed, as a waiver of, consent to, or excuse of any other breach by the Receiving Party. This Agreement may be amended or modified only by written mutual agreement of authorized representatives of the parties.

15. Injunctive Relief. The Parties hereby acknowledge and agree that, in the event of any breach of this Agreement by either Party, including, without limitation, the actual or threatened disclosure of a Party's Information without the express prior written consent of that Party, such Party will suffer irreparable harm and injury and no remedy at law will afford it adequate protection against, or appropriate compensation for, such injury. Accordingly, each Party hereby agrees that, in any such event, the harmed Party shall be entitled to seek specific performance of the other Party's obligations under this Agreement, as well as such further injunctive relief as may be granted by a court of competent jurisdiction.

16. The parties have executed this Agreement on the date first written above. Signature of an authorized representative is required (e.g., if a company, then an officer of the company; if an individual, then the individual). By signing this Agreement you are hereby representing that you are authorized to legally bind the entity, company or individual to the terms of this Agreement.

Synerex Laboratories, LLC

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

Address:  
1305 Blue Ridge Drive,  
Suite 503  
Georgetown, Texas 78626  
TEL. 806-570-4647

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

Address:  
\_\_\_\_\_  
\_\_\_\_\_  
TEL. \_\_\_\_\_