**RECIPROCAL CONFIDENTIALITY AGREEMENT**

**AGREEMENT** dated [insert date] 2018

**BETWEEN**:

(1) **THE UNIVERSITY OF NEWCASTLE UPON TYNE**, a charitable organisation established under the Universities of Durham and Newcastle upon Tyne Act 1963, a statute of England, whose address for service is King’s Gate, Newcastle upon Tyne, NE1 7RU, England (the “**University**”); and

(2) [**COMPANY NAME**] a [type of organisation] [registered/incorporated/established] under the laws of [country] with [registered office/principal place of business] at [address] (the “**Company”**).

# BACKGROUND

1. Cancer Research Technology and the University entered into a collaboration and licence agreement with a third party pharmaceutical company (the “Collaboration and Licence Agreement”) to identify and develop inhibitors of Poly (ADP ribose) polymerase (“PARP”). The PARP inhibitor rucaparib (“Rucaparib”) was discovered and developed under the Collaboration and Licence Agreement.
2. The University has initiated a process to identify a company that will purchase all or a portion of its interest in royalties related to the commercial sales of Rucaparib and has received a number of indicative offers from potential purchasers.
3. The University wishes to assure the confidentiality of certain confidential information within the scope of paragraphs A and B above that has been or may be disclosed by them or their representatives to the Company and the Company wishes to assure the confidentiality of confidential information that has been or may be disclosed by it or its representatives to the University, in each case, for the Purpose.

**IT IS AGREED AS FOLLOWS**:

# Definitions

In this Agreement the following words and expressions shall have the following meanings:

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| “Affiliate” | means any business entity or person that directly or indirectly controls or is controlled by or is under common control of a Party. For the purposes of this definition, “control” means ownership, directly or through one or more Affiliates, of fifty percent (50%) of the shares of stock entitled to vote for the election of directors, in the case of a corporation, or fifty percent (50%) or more of the equity interests in the case of any other type of legal entity, status as a general partner in any partnership, or any other arrangement whereby the Party controls or has the right to control the Board of Directors or equivalent governing body of a corporation or entity; |
| “Authorised Persons” | the Recipient’s directors, officers, employees and legal or other professional advisers provided that they are bound by obligations of confidentiality and non-use no less restrictive than those set out in this Agreement. For the purpose of this Agreement, Authorised Persons shall also include the University’s Affiliates providing they are bound by obligations of confidentiality and non-use no less restrictive than those set out in this Agreement; |
| **“Confidential Information”** | any information, in tangible or non-tangible form (including oral disclosure), and/or physical items or materials, including but not limited to the Specified Confidential Information, know how, data, formulae, results of experimentation, knowledge of chemical and biological structures and functions, inventions, techniques, research and development plans, business strategies, proposed terms for a further agreement, software, third party relationships, products and other technical or business information, (whether or not marked as confidential) which is obtained by the Recipient from the Discloser or its representatives and including the content of this Agreement. Information in a compilation or a compilation of information may be Confidential Information notwithstanding some or all elements of the information are in the public domain; |
| **“Commencement Date”** | means the date of this Agreement; |
| **“Discloser”** | means each Party insofar as it discloses Confidential Information under this Agreement;  |
| **“Party”** | means a party to this Agreement; |
| **“Purpose”** | to enable the parties to decide whether or not they wish to enter into a business relationship; |
| **“Recipient”** | means each Party insofar as it obtains Confidential Information under this Agreement; and |
| **“Specified Confidential Information”** | means the Collaboration and Licence Agreement*.* |

# Protection of Confidential Information

The Recipient undertakes that except as provided elsewhere in this Agreement or as expressly authorised in writing by the Discloser it shall:

## not disclose any Confidential Information to any person except to Authorised Persons and then only to such extent as is necessary for the Purpose;

## protect Confidential Information with a degree of care which is no less than it uses to protect its own confidential information;

## not use any Confidential Information for any purpose other than the Purpose;

## upon completion or fulfilment of the Purpose or on the earlier written request of the Discloser, make no further use or disclosure of the Confidential Information;

## upon the written request of the Discloser promptly return to the Discloser or, at the Discloser’s option destroy, on demand all documents and any other medium on which any Confidential Information is stored (other than the Recipient’s computers) and all copies of the same, in the possession or control of the Recipient and shall erase all copies from its computers and make no further use of the Confidential Information; and

## promptly notify the Discloser if it becomes aware that any of the Confidential Information falls within the provisions of Clause 3.

The Recipient represents to the Discloser that it maintains policies and procedures designed to prevent the unauthorised disclosure of its proprietary data and information.

# Applicability of Undertakings

The undertakings given in Clause 2 shall not apply to Confidential Information which:

## the Recipient can demonstrate by reference to written records was known to it before being obtained in connection with this Agreement without any obligation to keep it confidential; or

## is, at the time of being obtained in connection with this Agreement, or at any time thereafter and through no fault of the Recipient becomes, public knowledge; or

## is, at any time after being obtained in connection with this Agreement, lawfully obtained by the Recipient from any third party without any obligation by the Recipient to maintain such information in confidence; or

## is required to be disclosed by a competent court or regulatory authority or otherwise by applicable law, provided that in so far as the Recipient is able to do so, the Recipient shall give notice to the Discloser of such disclosure as soon as reasonably practicable.

# Term

This Agreement shall commence on the Commencement Date and shall remain in effect notwithstanding completion, fulfilment or early termination of the Purpose for a period of one (1) year from the Commencement Date. The obligations of non-disclosure and non-use shall survive for a period of fifteen (15) years after the termination or expiry of this Agreement.

# Intellectual Property

## No licence under any intellectual property right is granted or implied by this Agreement or the disclosure of Confidential Information. The Recipient acknowledges and agrees that Confidential Information and any medium on which it is supplied and all intellectual property rights in the Confidential Information shall remain the property of the Discloser.

# No Warranty

The technical Confidential Information and the technology to which it relates is experimental in nature. The Discloser does not give or agree to any representation, warranty, undertaking or condition in relation to it, whether as to its utility, quality, fitness for a purpose, safety, accuracy, efficacy, completeness or otherwise and any provisions implied by law to the contrary are excluded to the fullest extent permissible by law.

# Assignability

No Party may assign or transfer any rights (or, for the avoidance of doubt, any obligations) under this Agreement without the prior written consent of the other Parties.

# Cumulative Rights

The provisions of this Agreement are in addition to and not in substitution for any rights possessed at law by the Discloser in relation to any of its Confidential Information. The Recipient acknowledges that breach of this Agreement may result in irreparable injury to the Discloser which may not be adequately compensated by monetary damages. The Recipient therefore consents to the Discloser seeking injunctive relief against it to prevent breach of this Agreement.

# Law and disputes

This Agreement shall be governed by and construed in accordance with the laws of England and the Parties agree to submit to the non-exclusive jurisdiction of the English Courts.

# Third Parties

No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party.

# Counterparts

This Agreement may be executed via facsimile, or through e-mail exchange of executed PDF reproductions of this Agreement.

AGREED by the parties through their authorised representatives:

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| --- | --- |
| For and on behalf of the **University** | For and on behalf of the **Company** |
| Signature……………………………………….. | Signature……………………………………….. |
| Name:…………………………………………… | Name:…………………………………………… |
| Title:……………………………………………... | Title:……………………………………………... |