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Attorney Docket  
No.: 053960-1

FINANCE SECTION

To the Assistant Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Dr. Tom Powdrill

2. Name and address of receiving party(ies):

Genometrix Genomics, Inc. (a Delaware corporation)  
3408 Albans  
Houston, TX 77005

3. Nature of conveyance:

☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☒ Other: (Employee Non-Disclosure & Development Agreement)

Execution Date: April 1, 1998

4. Application number(s) or patent number(s): 10/104,307, filed 3/22/02

If this document is being filed together with a new application, the execution date of the application is: N/A

A. Patent Application No.(s):

B. Patent No.(s):

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence document should be mailed:

GARY D. COLBY, Ph.D., J.D.  
AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.  
One Commerce Square - 2005 Market Street - Suite 2200  
Philadelphia, PA 19103  
Telephone: (215) 965-1200  
Direct Dial: (215) 965-1285  
Facsimile: (215) 965-1210  
E-Mail: gcolby@akingump.com

6. Total number of applications and patents involved: [ 1 ]

7. Total fee (37 C.F.R. 3.41) Cal. 1 x \$40.00 = \$ 40.00

☒ Check enclosed  
☐ Authorized to be charged to deposit account

8. Deposit account number: 50-1017  
(Billing No.: 053960.0001)

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9. Statement and signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Gary D. Colby  
Name of Person Signing

Signature

Date

9 August 2002

Total number of pages including cover sheet, attachments and document: [ 6 ]



## EMPLOYEE NON-DISCLOSURE AND DEVELOPMENT AGREEMENT

as April 1, 1998

Dr. Tom Powdrill  
3015 N. Millbend Dr.  
The Woodlands, TX 77380

Dear Tom:

In consideration of and as a condition to your employment by Genometrix Incorporated (the "Company"), you hereby covenant and agree with the Company as follows:

1. You agree that you will not at any time, whether during the negotiations with respect to your employment by the Company, during your employment by the Company or after the termination of your employment, reveal or disclose to any person or entity any of the scientific, technical, trade or business secrets or confidential information concerning the organization, business or finances of the Company, or of any third party which information of such third party the Company is under an obligation to keep confidential, including, without limitation, information disclosed to you prior to the date hereof and including but not limited to scientific, technical, trade or business secrets or confidential information respecting products, designs, methods, know how, techniques, systems, processes, software programs, works of authorship, customer lists, projects, plans and proposals, inventions, discoveries, improvements, Developments (as defined below) and other developments (the "Confidential Information") or any embodiment, element, evidence or other tangible manifestation of any of such Confidential Information, including, without limitation, notes, memoranda, reports, lists, records, drawings, sketches, specifications, samples, compounds, organisms, cell lines, cultures and progeny, reproductions and derivatives of any of them, software programs, chip masks, data or documentary, machine-readable or other materials (the "Proprietary Materials"), except as may be required in the ordinary course of performing your duties as an employee of the Company, and you agree you shall keep secret all matters entrusted to you and shall not use or attempt to use any such information in any manner which may injure or cause loss or may be calculated to injure or cause loss whether directly or indirectly to the Company.

<sup>1</sup>  
Genometrix Incorporated

3608 Research Forest Dr., Suite B7 The Woodlands, TX 77381 281/367-1038 Fax: 281/367-1325 E-mail: info@genometrix.com

**PATENT**  
**REEL: 013196 FRAME: 0278**

Further, you agree that during your employment you shall not use or permit to be used any of the Confidential Information or Proprietary Materials otherwise than for the benefit of the Company. You agree that you will not make any copies of the Confidential Information or the Proprietary Materials, except when appropriate for the furtherance of the business of the Company or duly and specifically authorized to do so. You further agree that you shall not, after the termination of your employment, use or permit to be used any of the Confidential Information or Proprietary Materials, it being agreed that the Confidential Information or Proprietary Materials shall be and remain the sole and exclusive property of the Company and that immediately upon the termination of your employment you shall deliver all of the foregoing, and all copies thereof, in your possession or under your control, to the Company, at its main office.

Notwithstanding any other provision hereof, the Confidential Information and Proprietary Materials shall not include information which (i) is publicly known through publication or otherwise through no wrongful act by you; (ii) is independently made available to you by a third party who is under no obligation to keep such information confidential; or (iii) is required to be disclosed pursuant to the lawful requirement of a governmental agency or by order of a court of competent jurisdiction (but only to the extent of the required disclosure), provided that such disclosure is subject to all applicable governmental or judicial protection available for like material and you provide the Company prior written notice of such disclosure.

You acknowledge that the Company has developed and will develop its Confidential Information and Proprietary Materials over a significant period of time and at significant expense, and its Confidential Information and Proprietary Materials are integral to the goodwill of the Company. Protection of the Confidential Information and the Proprietary Material is necessary to the conduct of the Company's business, and the Company is and shall at all times remain the sole owner of the Confidential Information and the Proprietary Materials. No proprietary rights or licenses are granted to you by this Agreement.

2. If at any time or times during your employment, you shall (either alone or with others) make, conceive, discover or reduce to practice any invention, idea, modification, discovery, design, development, improvement, process, software program, work of authorship, documentation, formula, data, technique, know-how, secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright, trademark, service mark or similar statutes or subject to analogous protection) (herein called "Developments") that (a) relates to the business of the Company or any of the products or services being developed, manufactured or sold by the Company or which may be used in relation therewith, (b) is made, conceived, discovered or reduced to practice in connection with your services to the Company during your employment by the Company or (c) results from the use of the premises or

personal property (whether tangible to intangible) owned, leased or contracted for by the Company, including, without limitation, the Confidential Information and the Proprietary Materials, such Developments and the benefits thereof shall immediately become the sole and absolute property of the Company and its assigns and the Company may use or pursue them without restriction or disclose to the Company (or any persons designated by it) all such Developments and you hereby assign, set over and transfer any and all right, title and interest you may have or acquire in the Developments and benefits and/or rights resulting therefrom to the Company and its assigns without further compensation and shall communicate, without cost or delay, and without publishing the same, all available information relating thereto (with all necessary plans and models) to the Company.

You agree to and do hereby grant to the Company, title to all copyrightable material first designed, produced or composed in the course of or pursuant to the performance of work for the Company, which material shall be deemed "works made for hire" under Title 17, United States Code, Section 1.01 of the Copyright Act of 1976, or any successor provision.

Upon disclosure of any of the Developments to the Company, you will, during your employment and at any time thereafter, at the request and cost of the Company, sign, execute, make and do all such deeds, documents, acts and things as the Company and its duly authorized agents may reasonably require: (a) to apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights, trademarks, service marks, or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and (b) to defend any opposition proceedings in respect of such application and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright, trademark, service mark or other analogous protection.

In the event the Company is unable, after reasonable effort, to secure your signature on any letters patent, copyright, trademark, service mark or other analogous protection relating to any of the Developments, whether because of your physical or mental incapacity or for any other reason whatsoever, you hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as your agent and attorney-in-fact, to act for and in your behalf and stead to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright, trademark, service mark or other analogous protection thereon with the same legal force and effect as if executed by you.

Unless covered by an appropriate agreement between any third party and the Company, you agree that you will not engage in any activities or use any facilities

of a third party as a result of which claims of ownership to any of the Developments may be made by such third party.

3. You represent that your performance of all of the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information acquired by you in confidence or in trust prior to your employment by the Company and will not result in, a violation of, conflict with, or default under any contract, commitment, agreement, understanding, arrangement, or restriction, or any adjudication, order, injunction or finding of any kind by any court or agency to which you may be a party or by which you were, are or may be bound. You have not entered into, and you agree you will not enter into, any agreement either written or oral in conflict herewith.
4. You understand and agree that your obligations under this Agreement shall survive any change in your position, title or function with the Company and the termination of your employment regardless of the manner of such termination and shall be binding upon your heirs, executors, administrators and legal representatives in their capacity as such.
5. You agree that the breach of this Agreement by you will cause irreparable damage to the Company and that in the event of such breach the Company shall have, in addition to any and all remedies of law, the right to an injunction, specific performance or other equitable relief to prevent the violation of your obligations hereunder.
6. You understand that this Agreement does not create an obligation on the Company or any other person or entity to continue your employment.
7. Any amendment to or modification of this Agreement, and any waiver of any provision hereof, shall be in writing. Any waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach hereof.
8. The parties intend this Agreement to be enforced as written. However, the parties agree that each provision herein shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity or subject so as to be unenforceable at law, such provision or provisions shall be construed by the appropriate judicial body by limiting and reducing it or them, so as to be enforceable to the maximum extent compatible with the applicable law as it shall then appear.

9. This Agreement shall be governed by and construed in accordance with the law of the State of Texas, without giving effect to the conflict of law principles thereof. The representations set forth herein shall survive the execution hereof.
10. The term "Company" shall include Genometrix Incorporated and any of its subsidiaries, subdivisions or affiliates. The Company shall have the right to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns.
11. For purposes of this Agreement, the terms "employment" and "employee" shall include any position you hold with the Company from time to time.

Please indicate your agreement to and acceptance of the foregoing by signing and returning one copy to the undersigned.

Sincerely,

GENOMETRIX INCORPORATED

By:   
Judy Richmond, Secretary

ACCEPTED AND AGREED:

  
Tom Powdrill

Date: 4/1/98