**Novasenta, Inc.**

**MUTUAL CONFIDENTIAL Disclosure Agreement**

This Mutual Confidential Disclosure Agreement (the “**Agreement**”) between [ ], a Delaware corporation (“**Company**”) and [  ], [a [Delaware] corporation][an individual] (“**Counterparty**”), is effective as of [Date] (the “**Effective Date**”). Company and Counterparty are referred to herein individually as “**Party**” and collectively as the “**Parties**.” As used in this Agreement, the Party disclosing Confidential Information (as defined below) is referred to as the “**Disclosing Party**”; the Party receiving such Confidential Information is referred to as “**Recipient**.”

1. Purpose. The Parties intend to [explore a business opportunity of mutual interest concerning the research, development and/or commercialization of one or more drug candidates under development by Company, and to engage in discussions relating to a possible consensual negotiated transaction relating thereto][[1]](#footnote-2) (the “**Purpose**”), in the course of which the Disclosing Party may disclose to Recipient certain Confidential Information (defined below).
2. Confidential Information. “**Confidential** **Information**” means (i) any and all information provided by Disclosing Party to Recipient, either directly or indirectly, whether in graphic, written, electronic or oral form, identified at the time of disclosure as confidential, or which by its context would reasonably be deemed to be confidential, including, without limitation, know-how, trade secrets and any information concerning or resulting from any research and development or other project, experimental work, product development plans, regulatory compliance information, information relating to therapeutic targets, leads and candidates and research, development and regulatory strategies; and (ii) any notes, reports, summaries, analyses, compilations, studies, interpretations, memoranda or other materials, in whatever form maintained, whether prepared by the Company, Recipient or Recipient’s Representatives which contain, reference, reflect or are based upon, in whole or in part, any Confidential Information delivered to Recipient or its Representatives under this Agreement. The Confidential Information may also include information of a third party that is disclosed to Recipient by Disclosing Party or such third party at Disclosing Party’s direction.
3. Non-use and Non-disclosure. Recipient agrees to use the Confidential Information only for the Purpose. Recipient and its Representatives (defined below) shall not modify, reverse engineer, disassemble, decompile, create other works from or determine the composition of any formulations, prototypes, software or other tangible objects that embody Confidential Information. Recipient shall, and shall direct its Representatives to, hold in strict confidence and not disclose to any third party any Confidential Information or exploit such Confidential Information for its own benefit or the benefit of another except as approved in writing in advance by Disclosing Party. Without limiting the foregoing, Recipient shall permit access to Confidential Information only to those of Recipient’s subsidiaries, directors, officers, employees, affiliates, consultants, independent contractors, agents or advisors (including without limitation attorneys, accountants, bankers, financial advisors and members of advisory boards) actual or potential investors, lenders, partners, or acquirors (such of the foregoing persons as actually receive Confidential Information pursuant hereto, “**Representatives**”) having a need to know such information and who, prior to the disclosure of Confidential Information to such Representative, are bound by confidentiality and non-use obligations at least as restrictive as those contained herein. Recipient shall be responsible for the breach of this Agreement by its Representatives as if such breach were by Recipient itself. Recipient shall prevent its Representatives from prohibited or unauthorized disclosure or use of the Confidential Information or any other actions that would constitute a breach of this Agreement if taken by Recipient. Recipient and its Representatives may not reproduce Confidential Information in any form except as required to accomplish the Purpose. Any reproduction of any Confidential Information of the Disclosing Party by Recipient or its Representatives shall remain the property of the Disclosing Party and, to the extent practicable, shall contain any and all confidential or proprietary notices or legends which appear on the original.
4. Limitation on Obligations. The non-use and non-disclosure restrictions regarding Confidential Information set forth in this Agreement shall not apply toinformation that Recipient can establish by competent proof (i) was publicly known and made generally available in the public domain prior to the time of disclosure to Recipient by Disclosing Party; (ii) becomes publicly known and made generally available after disclosure to Recipient by Disclosing Party other than as a result of a breach of this Agreement by Recipient or its Representatives; (iii) is in the possession of Recipient or its Representatives, without confidentiality restrictions, at the time of disclosure by Disclosing Party as shown by Recipient’s or such Representatives files and records immediately prior to the time of disclosure; (iv) is obtained by Recipient or its Representatives from a third party not under confidentiality and non-use obligations and without a breach of any obligations of confidentiality or non-use; or (v) was independently developed by Recipient or its Representatives without use of or benefit from the Confidential Information. If Recipient or its Representatives become compelled by law, regulation (including the rules of any applicable securities exchange), court order, or other governmental authority to disclose the Confidential Information, Recipient or such Representative shall give Disclosing Party prompt notice and cooperate reasonably with Disclosing Party in any proceeding to obtain a protective order or other remedy. In the event of such compulsory disclosure, Recipient and its Representatives shall exercise reasonable best efforts to ensure the confidential treatment of the Confidential Information, and may disclose only such portion of the Confidential Information that is legally required to be disclosed; provided, that, to the extent legally permissible and reasonably practical in the circumstances, Recipient or such Representative shall provide the Company with the text of the proposed disclosure reasonably far in advance of such disclosure. Compulsory disclosures made pursuant to this section shall not relieve Recipient or such Representative of its obligations of confidentiality and non-use with respect to non-compulsory disclosures.
5. No Warranty; No License.All Confidential Information is provided “AS IS,” without any warranty of any kind. Except as permitted in Section 3, nothing in this Agreement grants Recipient or its Representatives any interest, title or property rights, by license or otherwise, in any Confidential Information of the Disclosing Party, or to any invention or any patent, copyright, trademark, trade secret or other intellectual property right that has issued or that may issue, based on such Confidential Information.
6. Injunctive Relief. Recipient acknowledges that breach of its confidentiality or non-use obligations under this Agreement may cause irreparable harm for which Disclosing Party may not be fully or adequately compensated by recovery of monetary damages. Accordingly, in the event of any violation or threatened violation by Recipient or its Representatives, Disclosing Party shall be entitled to seek injunctive relief from a court of competent jurisdiction in addition to any other remedy that may be available at law or in equity, without the necessity of posting bond or proving actual damages.
7. Term; Return of Materials. This Agreement shall be effective as of the Effective Date and shall terminate upon the 5 year anniversary of such date; provided, however, that Confidential Information that constitutes a trade secret shall continue to be subject to the obligations of nondisclosure and non-use until such Confidential Information is no longer a trade secret. Upon the expiration of the term, or upon written request of Disclosing Party at any time, Recipient and its Representatives shall promptly return to Disclosing Party, or at Recipient’s option destroy (with such destruction to be confirmed in writing upon request of Disclosing Party), all documents and other tangible or derivative materials representing the Confidential Information and all copies thereof, except that: (i) Recipient and its Representatives shall not be required to erase electronic files created in the ordinary course of business during automatic system back-up procedures pursuant to its electronic record retention and destruction practices that apply to its own general electronic files and information so long as such electronic files are: (a) maintained only on centralized storage servers (and not on personal computers or devices); (b) not accessible by any of its personnel (other than its information technology specialists); and (c) are not otherwise accessed subsequently except with the written consent of the Disclosing Party or as required by law or legal process. Such retained copies of Confidential Information shall remain subject to the confidentiality and non-use obligations herein.
8. No Obligation for Future Transaction.Nothing herein shall obligate either Party to proceed with any transaction between them, and each Party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement at any time.
9. Miscellaneous.
   1. Governing Law; Entire Agreement. This Agreement shall be governed by the laws of the State of Delaware, without reference to any conflict of laws rule that would result in the application of the laws of any other jurisdiction. In the event a dispute arises regarding this Agreement, the prevailing party shall be entitled to recover its reasonable costs in such matter, including without limitation attorneys’ fees and costs, in addition to any other relief to which it is entitled. This Agreement sets forth the complete, exclusive and final statement of the agreement between the Parties as to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the Parties regarding such subject matter.
   2. Assignment. Neither Party may assign or transfer this Agreement, or any rights or obligations under this Agreement without the prior written consent of the other Party, which consent may be withheld in the other Party’s sole discretion, except that either Party may assign this Agreement without consent of the other Party to an affiliate or any acquirer (so long as such acquirer is not a direct competitor of the other Party) of all or substantially all of such Party’s business or assets or of the business division or product line of such Party to which the Confidential Information primarily relates. Any such purported assignment inconsistent with the foregoing shall be null and void *ab initio* and shall be deemed a material breach of this Agreement. This Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the Parties.
   3. Notice. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the addresses set forth at the end of this Agreement or such other address as either party may specify in writing.
   4. Amendments; Waivers; Severability.This Agreement may not be amended, nor any provision waived, in whole or in part, except by a writing signed by both Parties and identifying the provision so amended or waived. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions and the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
   5. Exportation.Recipient shall not export, reexport or retransfer, directly or indirectly, any information or technical data disclosed under this Agreement acquired from a Disclosing Party pursuant to this Agreement or any product, including software, using or containing any such information to any country or recipient for which the U.S. Government or any agency thereof at the time of export, reexport or retransfer requires a license or other governmental approval without first obtaining such license or approval. Recipient agrees to provide Disclosing Party with the export classification of the information upon request.
   6. Interpretation; Counterparts. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. The Parties agree that no ambiguities are to be resolved against the drafting Party in the construction or interpretation of this Agreement. This Agreement may be executed in two or more counterparts, each of which will be considered an original, but all of which together will constitute one and the same instrument. A facsimile, PDF or any other type of copy of an executed version of this Agreement signed by a Party is binding upon the signing Party to the same extent as the original of the signed agreement.

*(Signature Page Follows)*

**In Witness Whereof,** the Parties have caused this Agreement to be executed as of the Effective Date.

**Company**

By:

Name:

Title:

Address:

**[COUNTERPARTY NAME]**

By:

Name:

Title:

Address:

1. Note to Novasenta: Revise as necessary to describe the subject matter of the underlying matter. If this relates to a possible M&A transaction then M&A counsel should be consulted. [↑](#footnote-ref-2)