

While venture capital investors in the tech sector are generally reluctant to enter into confidential disclosure agreements (CDA) and generally eschew them, life science venture investors generally will enter into CDAs in advance of looking at proprietary and confidential information. This form was developed by in-house counsel at a number of leading life science venture firms and represents consensus “best practices” for a life science VC that is the receiving party.

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this “Agreement”) is made and entered into as of [] (“Effective Date”), by and between [] (“Company”) and VC FIRM/VC FUND (“Recipient”) (the Company and Recipient, collectively, the “Parties”).

1. Definition of Confidential Information. “Confidential Information” as used in this Agreement shall mean information concerning Company’s business, property or technology that has commercial and other value [related to the Company’s programs described in Attachment A – attach non-confidential presentation or description if available], is confidential in nature and not generally known to the public and is disclosed by Company to Recipient. Information shall be identified as “Confidential” at the time of disclosure and disclosed in writing, or if disclosed orally or visually, shall be confirmed in writing as confidential within thirty (30) days of such oral or visual disclosure. [*Consider including where disclosing company is public*: Notwithstanding anything else contained in this Agreement, Company hereby represents and agrees that all Confidential Information disclosed under this Agreement will either (A) not constitute material non-public information relating to the Disclosing Party for purposes of U.S. federal or state securities laws or (B) be publicly disclosed no later than [Company’s earnings call or quarterly (or annual) report for the quarter ending _____, 201_]. Company acknowledges that Recipient intends to rely on this representation and agreement in selling securities acquired by Recipient from Company, if any.]

2. Nondisclosure and Nonuse Obligation. Recipient shall not disclose any Confidential Information of Company to any third party (other than to its employees and representatives as provided for below), and shall only use Confidential Information of Company in connection with its internal evaluations of the proposed transaction or business relationship between the parties. Recipient will treat all Confidential Information with the same degree of care as it accords its own Confidential Information, but in no case less than reasonable care. Recipient will disclose Confidential Information only to those of its employees and representatives [including without limitation actual or potential co-investors already under CDA with the Company, and Recipient’s members, partners, directors, officers, contractors, agents, advisers, affiliates, attorneys, accountants, lenders and consultants] who need to know such information and who are bound by confidentiality obligations that are similar to those which protect the Confidential Information hereunder.

3. Exclusions from Nondisclosure and Nonuse Obligations. Recipient’s obligations under Paragraph 2 shall not apply to Confidential Information that is (a) in the public domain or known in the trade at or subsequent to the time communicated to Recipient by Company through no fault of Recipient; (b) rightfully in Recipient’s possession free of any obligation of confidentiality at or subsequent to the time communicated to Recipient by Company; (c)

received from a third party who rightfully disclosed it to Recipient without restriction on its subsequent disclosure; (d) developed by employees or agents of Recipient independently of and without reference to any Confidential Information communicated to Recipient by Company or (e) approved for release in writing by the Company. In addition, any disclosure of any portion of Confidential Information either (i) in response to a valid order by a court or other governmental body, or (ii) otherwise required by law, shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that, to the extent legally permissible and reasonably possible, Recipient shall provide prompt prior written notice thereof to Company to enable Company (at its sole expense) to seek a protective order or otherwise prevent such disclosure. *[Include for VC that is Registered Investment Adviser: Notwithstanding the foregoing, no such notice will be required in respect of disclosures of Confidential Information to regulatory authorities having or claiming to have jurisdiction over Recipient in connection with routine regulatory examinations.]* [Further, notwithstanding anything to the contrary in this Agreement, Recipient is expressly authorized to disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of any transaction entered into with the Company and all materials of any kind (including opinions or other tax analyses) that are provided to Recipient related to such tax treatment and structure.]

4. Ownership. All Confidential Information shall remain the property of Company, and no license or other rights to Recipient is granted or implied hereby. Recipient obtains no right or license pursuant to this Agreement under any copyright, patent, trade secret or other intellectual property right of Company, except solely for the use expressly permitted herein.

5. No Warranty. Company supplies Confidential Information “AS IS,” and without express or implied warranties of any kind. Company shall not be responsible or liable for any business decision made by Recipient in reliance on disclosures made pursuant to this Agreement.

6. No Other Restrictions. Company understands that Recipient and its affiliates and representatives are engaged in the business of venture capital, and review and invest in many opportunities that may involve similar or competing technologies, products or services. The Company agrees that neither this Agreement nor any disclosure of the Confidential Information hereunder (a) obligates Recipient to receive any information from, perform any work for, invest in or enter into any agreement with the Company or its affiliates or any third party; (b) limits Recipient or its affiliates or representatives from assigning or reassigning personnel in any way; or (c) limits Recipient or its affiliates or representatives from engaging in or operating any business, entering into any agreement or business relationship with any third party, or evaluating, engaging in investment discussions with or investing in any third party, whether or not competitive with the Company or its affiliates, except insofar as this Agreement restricts the use and disclosure of Confidential Information.

7. No Promotion. Without the prior written consent of Recipient, the Company shall not, and shall cause its representatives not to, (a) disclose to any person or entity the existence of this Agreement, the fact that Recipient has received or will receive any information from the Company, that discussions or negotiations with respect to any potential transaction are taking place or the nature or the outcome of such discussions or negotiations; (b) represent, directly or indirectly, whether orally or in writing, that the Company, any transaction or potential transaction, or any product or service provided by the Company or any of its representatives has been approved or endorsed by Recipient or any of its representatives; or (c) use, or permit the use

of, the name of Recipient or any of its representatives for any promotional purpose or any other activities, including in any marketing materials, publications, advertising or press releases.]

8. Injunctive Relief. The Parties acknowledge and agree that money damages may not be a sufficient remedy for any breach of their respective obligations under this Agreement and that each shall be entitled to seek injunctive relief as a remedy for any such breach by the other party. Such remedy will not be deemed the exclusive remedy for a breach of Recipient's obligations under this Agreement, but will be in addition to all other available legal and equitable remedies.

9. Term. This Agreement will govern all communications from Company to Recipient from the Effective Date and will remain in full force and effect for six (6) months. Recipient's obligations with respect to the Confidential Information hereunder shall continue in full force and effect for a period of [1- 3] years following the Effective Date. Upon Company's written request, Recipient shall, at its sole election, return or destroy all Confidential Information received hereunder (other than a single archival copy that may be retained solely for the purpose of ensuring compliance with this Agreement). Notwithstanding the foregoing, nothing shall require the alteration, modification, deletion or destruction of back-up tapes or other back-up media made in the ordinary course of business, provided that said backup tapes or other back-up media shall be stored in a manner that prevents unauthorized access or use of Confidential Information.

10. Binding Effect; Counterparts. This Agreement will benefit and be binding upon the parties and their respective successors and assigns. This Agreement may be executed in one or more counterparts, each of which is an original, but taken together constituting one and the same instrument. Execution of a facsimile copy shall have the same force and effect as execution of an original, and a facsimile signature shall be deemed an original and valid signature.

11. Non-Waiver; Modification. No failure or delay by either party in exercising any right, power, or remedy under this Agreement will operate as a waiver of any such right, power or remedy. No waiver or modification of any provision of this Agreement will be effective unless in writing and signed by both parties.

12. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of [] without regard to the conflicts of laws provisions thereof. Exclusive jurisdiction and venue for any action arising under this Agreement is in the federal and state courts located in or nearest to [], and both parties hereby consent to such jurisdiction and venue for this purpose. [EACH PARTY HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, LIABILITY OR LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY. EACH PARTY HEREBY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY SUCH ACTION, LIABILITY OR LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS

AGREEMENT, AS APPLICABLE, BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS OF THIS PARAGRAPH.]

13. Entire Agreement. This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter hereof and supersedes all prior and contemporaneous agreements, negotiations and understandings between the parties, both oral and written.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

“Company”

“Recipient”

[_____]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

ATTACHMENT A