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## MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

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This Confidential Disclosure Agreement (“Agreement”) is made and entered into as of [DATE] (“Effective Date”) by and between [COMPANY NAME] having offices at [COMPANY ADDRESS] (“Company”), and the Regents of the University of California, a California constitutional corporation acting on behalf of its San Francisco campus, with an address at 3333 California Street, Suite S-11, San Francisco, California 94143-1209 (“UCSF”), either a “party” in the singular or the “parties” in the plural, for the purpose of protecting certain confidential information disclosed by the parties subject to this Agreement. A party receiving confidential information shall be referred to as “Recipient” and a party disclosing confidential information shall be referred to as “Discloser.”

WHEREAS, Company and UCSF intend to enter into discussions of mutual interest for the sole purpose of [REASON FOR DISCUSSION] (“Proposed Transaction”), and

WHEREAS, the Company and UCSF may disclose and receive non-public, proprietary information in the course of discussing such Proposed Transaction,

NOW THEREFORE, Company and UCSF hereby agree to the following terms and conditions in this Agreement:

### 1. CONFIDENTIALITY

This Agreement shall govern the conditions of disclosure of certain Confidential Information related to [TECHNICAL SUBJECT MATTER OF DISCUSSION] developed by [INVENTOR OR PI] of the University of California San Francisco [as disclosed in, but not limited to, UC Case No SFXXXX-XXX] and to [TECHNICAL SUBJECT MATTER OF DISCUSSION] developed by Company. “Confidential Information” shall mean proprietary and confidential information communicated by one party to the other in the course of discussing the Proposed Transaction, and marked as “Confidential” as reasonably possible. Confidential Information can consist of information in any format whether disclosed orally, in writing, electronically, visually, or by any combination thereof. Confidential Information will remain the exclusive property of the Discloser, and disclosure of such Confidential Information shall not be deemed to constitute a grant, by implication or otherwise, of a right or license to the Confidential Information.

The Recipient will use the Confidential Information only in the evaluation of the Proposed Transaction. The Recipient shall use reasonable efforts not to disclose the Discloser’s Confidential Information to anyone except those who have a need to know such Confidential Information for the purposes of evaluating the Proposed Transaction (“Representatives”) and are obligated to maintain the confidentiality of such Confidential Information. Recipient shall be responsible for the acts and omissions of all of its Representatives to whom Confidential Information is disclosed, or otherwise take appropriate steps to assure that its Representatives understand and agree to the obligations of confidentiality set forth herein.

The Recipient shall have no obligations under this paragraph with respect to information which:

- (a) was known to it prior to receipt hereunder, as demonstrated by written records;
- (b) at the time of disclosure was generally available to the public, or which after disclosure becomes generally available to the public through no fault attributable to receiving party;
- (c) is hereafter made available to receiving party for use or disclosure by Discloser from any third party having a right to do so;
- (d) is required to be disclosed by law, governmental rule or regulation or order of a court with competent jurisdiction; or
- (e) is independently developed by Recipient without reference to the Confidential Information.

## **2. USE OF DISCLOSER NAME**

Neither party will use the name of the other party, logo, trademarks or its employees in any advertisement, press release, or other publicity or public disclosure, or disclose the existence of this Agreement or the status of any discussions between the parties without prior written approval of the other party. Company understands that the California Education Code section 92000 provides that the name "University of California" is the property of the State and that no person shall use that name without permission of The Regents of the University of California. Such permission may be granted by the Chancellor or the Chancellor's designee.

## **3. NO OBLIGATION OR CLAIM**

The parties agree that unless and until a definitive agreement regarding the Proposed Transaction has been executed and delivered by Company and UCSF ("Definitive Agreement"), neither party will be under any legal obligation of any kind whatsoever with respect to the Proposed Transaction by virtue of this Agreement. The parties acknowledge this Agreement will not result in any claim whatsoever by either party against the other party for reimbursement of cost for any effort expended. In the event the parties decide to enter into the Proposed Transaction, the terms and conditions of the Definitive Agreement shall supersede the terms of this Agreement and such Definitive Agreement shall govern with regard to any Confidential Information disclosed under the Definitive Agreement.

## **4. TERM AND TERMINATION**

This Agreement shall remain in effect for one (1) year following the Effective Date of this Agreement. Either party may terminate this Agreement earlier for any reason by providing thirty (30) days written notice of termination to the other party. Notwithstanding termination of this Agreement, Recipient shall hold Discloser's Confidential Information in confidence for a period of five (5) years from the date of disclosure.

## **5. RETURN OF CONFIDENTIAL INFORMATION**

Upon request, Recipient shall promptly return to Discloser all of Discloser's Confidential Information and all copies thereof, or, at Recipient's election, destroy all such Confidential Information (in which instance Recipient shall certify that such destruction has been completed). Subject to the restrictions of this Agreement, Recipient may, if Recipient so elects, retain one (1) copy of Discloser's Confidential Information for archival purposes only.

## **6. RELATIONSHIP OF THE PARTIES**

For purposes of this Agreement, the relationship of the parties will be that of independent contractors, and nothing contained herein will be deemed to create any relationship of agency, joint venture or partnership. Neither party hereto will have any power to commit, contract for or otherwise obligate the other party to any third person.

## **7. MISCELLANEOUS**

- (a) Discloser certifies that it has the right to make the disclosures under this Agreement. NO OTHER WARRANTIES ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS."
- (b) The parties agree to comply with all laws, regulations and rules applicable to the Confidential Information.

- (c) This Agreement, together with any attachments hereto, represents the entire understanding of the parties and supersedes any prior or contemporaneous agreements or understandings between UCSF and Company with respect to the subject matter hereof. Furthermore, no modification, supplement, or new agreement may be executed, prior to the expiration of this Agreement, between UCSF and Company with respect to the subject matter hereof, without formal written amendment to this Agreement, signed by all parties.
- (d) This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign this Agreement or any interest herein, without the other party's express prior written consent.
- (e) This Agreement shall be governed by the laws of the State of California without giving effect to conflict-of-laws provisions. Any claim or controversy arising out of or related to this Agreement or any breach hereof shall be submitted to a court of applicable jurisdiction in San Francisco, California, and each party hereby consents to the jurisdiction and venue of such court. Recipient agrees that in the event of any breach or threatened breach by Recipient, Discloser may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect Discloser against any such breach or threatened breach.
- (f) This Agreement may be executed in one or more counterparts. Delivery of an executed counterpart of this Agreement by facsimile or a .pdf data file or other scanned executed counterpart by email shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Each duplicate and counterpart shall be equally admissible in evidence, and each shall fully bind each party who has executed it. The parties to this document agree that a copy of the original signature (including an electronic copy) may be used for any and all purposes for which the original signature may have been used. The parties agree they will have no rights to challenge the use or authenticity of this document based solely on the absence of an original signature.

**IN WITNESS WHEREOF**, the undersigned have entered into this Agreement as of the date first set forth above.

Agreed and Accepted By:

**[COMPANY NAME]** ("COMPANY"):

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ("UCSF"):**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_