**CONFIDENTIAL DISCLOSURE AGREEMENT[[1]](#footnote-1)**

This Confidential Disclosure Agreement (this “Agreement”), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_, 201\_\_ is entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a corporation having an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (as hereafter defined “Company”), and \_\_\_\_\_\_\_\_\_\_\_, a corporation having an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**[Your Company][[2]](#footnote-2)**”).

**RECITALS**

**A. [Your Company]** desires to explore possible business, research or strategic relationships or other transactions with Company and Company desires to explore possible such relationships or transactions with **[Your Company]** (the “Purpose[[3]](#footnote-3)”).

**B. [Your Company]** has or has offered to furnish to and receive from Company certain Confidential Information (as defined below) for the Purpose; and

**C.** In connection with the Purpose, it is anticipated that **[Your Company]** and Company will disclose certain Confidential Information to the other party and its directors, officers and employees (collectively, “Representatives”[[4]](#footnote-4)), and **[Your Company]** and Company is each willing to do so provided that the other party agrees to maintain the confidentiality of such Confidential Information pursuant to the terms of this Agreement. A party disclosing Confidential Information shall be referred to as a Disclosing Party and a party receiving Confidential Information shall be referred to as a Receiving Party.

 **NOW THEREFORE**, in consideration of **[Your Company]** and Company disclosing such information based upon the terms and conditions set forth herein, each party agrees as follows:

**1. Confidentiality.** The Receiving Party agrees to hold, and cause its Representatives to hold, in confidence in the same manner as its own confidential and proprietary information of like kind, but in no event less than a reasonable standard of care, and shall not (A) disclose to any Representative, other than on a need to know basis in order to fulfill the Purpose, (B) use or copy for any purpose except the Purpose[[5]](#footnote-5), and (C) shall not disclose to any third party, any information, biological material, compound, device, know-how, data, method, process, design, formula or test data relating to any work-in-process, future development, research, clinical, manufacturing, marketing, business plan, pricing, financial or personnel matter or any other confidential or proprietary information, whether written, oral, visual, electronic or other media, (“Confidential Information[[6]](#footnote-6)”), provided by the Disclosing Party to the Receiving Party, whether belonging to Disclosing Party or a third party.[[7]](#footnote-7) If the Receiving Party discloses Confidential Information to a Representative it will inform the Representative of the confidential and proprietary nature of the Confidential Information and obtain the agreement of the Representative that it will be bound, if not already so bound, by conditions of confidentiality and non-use regarding the Confidential Information which are at least as restrictive as these set forth herein. The Receiving Party shall be responsible for any violation of this Agreement by any of its Representatives.

**2. Information Not Treated as Confidential**. The Receiving Party shall have no such obligations of confidentiality or non-use with respect to all or any portion of Confidential Information disclosed by the Disclosing Party which:

(a) is or later becomes generally available to the public by use, publication or the like, through no fault of the Receiving Party or its Representatives;

(b) is obtained from a third party without restriction, without the breach of any obligation to the Disclosing Party; or

(c) Receiving Party already rightfully possesses, as evidenced by its written records, predating receipt thereof from Disclosing Party.[[8]](#footnote-8)

Notwithstanding the foregoing, any combination of features or disclosures shall not be deemed to fall within the foregoing exclusions merely because individual features fall within an exclusion unless the combination itself falls within an exclusion.

**3. Compelled Disclosure.** Receiving Party or its Representatives may disclose Confidential Information in response to a valid order of a court or other government body or as required by law, but only that portion of the Confidential Information which is legally required to be disclosed; provided, however, that Receiving Party promptly advises Disclosing Party in writing. Upon Disclosing Party’s request, Receiving Party and its Representatives will use reasonable efforts to assist Disclosing Party to obtain assurances that confidential treatment will be accorded to the Confidential Information disclosed pursuant to this Section. Receiving Party and its Representatives shall give Disclosing Party written notice of any Confidential Information disclosed pursuant to this Section.

**4. Notice of Independent Knowledge of Breach.** Receiving Party agrees to promptly notify Disclosing Party in writing if it becomes aware of any breach of this Agreement by it or its Representatives and will cooperate with the Disclosing Party to help the Disclosing Party regain possession of its Confidential Information and prevent its further unauthorized use or disclosure.

**5. Equitable Relief.** Receiving Party hereby acknowledges that disclosure or use of Confidential Information in violation of this Agreement may result in irreparable harm to Disclosing Party. Accordingly, Receiving Party agrees that Disclosing Party shall have the right to seek, in addition to any other remedies available at law, equitable relief, including without limitation an injunction or temporary restraining order, in the event of any actual or threatened breach of this Agreement. A party who breaches or attempts to breach this Agreement shall be liable to the other party for all legal fees and costs incurred in the successful enforcement of this Agreement or the successful establishment of breach of this Agreement.[[9]](#footnote-9)

**6. Return of Confidential Information.** Upon termination of this Agreement or the written request of Disclosing Party, Confidential Information in tangible or electronic form received by Receiving Party and its Representatives from Disclosing Party shall, at Disclosing Party’s sole option and expense either be destroyed or immediately returned and Receiving Party shall provide written certification that all copies of Confidential Information have been destroyed or returned; provided, however, that Receiving Party may maintain a single copy of the Confidential Information solely for the purposes of monitoring or demonstrating its compliance with this Agreement or applicable laws or regulations.

**7. Patent Rights and Licenses.** It is understood that Confidential Information disclosed hereunder shall at all times remain the property of the Disclosing Party, that no rights or license to any Confidential Information, patent, patent application, trademark, copyright or trade secret is hereby granted by this Agreement and that the disclosure of Confidential Information shall not obligate either party to enter into a business relationship nor effect the ability of either party to enter or pursue any line of business or products, even if such pursuit is competitive or potentially competitive with the other party. The Disclosing Party makes no representations or warranties, express or implied, as to the accuracy or completeness of the Confidential Information.

**8. Term.** This Agreement shall be effective on the date hereof and shall remain in effect for one (1) year from the date of this Agreement or until either party shall give the other party at least thirty (30) days’ written notice of termination, whichever occurs first. However, the obligations with respect to Confidential Information pursuant to this Agreement shall continue for a period of seven (7) years[[10]](#footnote-10) from the date of the earlier of expiration or termination of this Agreement, at the end of which time all obligations will terminate.

**9. Warranties.** Each party warrants and represents that it has the right to enter into this Agreement and that the terms of this Agreement are not inconsistent with other contractual obligations, expressed or implied, by which it is bound. Each party warrants and represents that it has the authority to disclose to the other party any Confidential Information it discloses hereunder.

**10. Governing Law.** This Agreement shall be governed by the laws of The Commonwealth of Massachusetts[[11]](#footnote-11), without reference to its conflicts of law principles, and the parties hereby submit to the exclusive jurisdiction of the Massachusetts courts, both state and federal.

**11. Severability.** In the event any court shall determine that any term or provision of this Agreement is invalid, such determination shall not affect the validity of the remaining terms or provisions of this Agreement, which shall remain in full force and effect.

**12. Amendments and Waiver.**  No modification of this Agreement shall be effective unless made in writing and signed by duly authorized representatives of Company and **[Your Company]**. No failure or delay in exercising any remedy under this Agreement shall operate as a waiver hereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other remedy.

**13. Successors.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

**14. Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the parties (whether written or oral) relating to said subject matter.

**IN WITNESS WHEREOF**, this Agreement is executed as of the date set forth above.

**Company**

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

Name:

Title:

**[Your Company]**

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

Name:

Title:

1. This form Confidential Disclosure Agreement is intended for use by two life science corporations or other entities that will each be sharing confidential information with the other. Because of the generality of this form, this CDA will require modifications in all situations, including where one party is not an entity or is not disclosing confidential information, for strategic transactions or for financings, among others, and should not be used without specific legal advice based on the particularities of the situation*.* Using this CDA does not create an attorney client relationship between you and Fabbri Law, LLC. [↑](#footnote-ref-1)
2. Replace throughout CDA with your company’s name. [↑](#footnote-ref-2)
3. Make sure the description of the Purpose is accurate. [↑](#footnote-ref-3)
4. If the CDA is being used in connection with a strategic transaction consider including consultants, attorneys, advisors and accountants as Representatives. [↑](#footnote-ref-4)
5. If the CDA is being used in connection with a strategic transaction consider including a prohibition of testing, replicating or reverse engineering of Confidential Information. [↑](#footnote-ref-5)
6. Also consider whether the existence and terms of this Agreement should be treated as Confidential Information. [↑](#footnote-ref-6)
7. Often times a CDA will require that a Disclosing Party mark or identify its Confidential Information as “confidential” at the time of disclosure, and in the case of oral disclosure, to follow up by identifying such Confidential Information in writing within a fixed period after oral disclosure. As a general rule, if your company will predominately be the recipient of Confidential Information, such a provision is favorable. If your company will predominately be the discloser of Confidential Information, this provision is unfavorable. Before agreeing to such a provision, be sure you have the systems and controls in place to assure Confidential Information is marked and identified in accordance with the CDA or you may end up with Confidential Information that is not subject to the protections of the CDA. [↑](#footnote-ref-7)
8. Sometimes an exclusion will be provided for information independently developed by the Receiving Party without reference to the Disclosing Party’s Confidential Information. As a general rule, if your company will predominately be the recipient of Confidential Information, such a provision is favorable. If your company will predominately be the discloser of Confidential Information, this provision is unfavorable. [↑](#footnote-ref-8)
9. As a general rule, if your company will predominately be the recipient of Confidential Information, a provision where the breach party is responsible for the costs of enforcement is unfavorable. If your company will predominately be the discloser of Confidential Information, such a provision is favorable. [↑](#footnote-ref-9)
10. You may want a longer or permanent confidentiality period to protect trade secrets that will retain value for longer periods of time. If the CDA is with an investment banker, broker or strategic advisor, a shorter confidentiality period is typical. [↑](#footnote-ref-10)
11. Generally you will want the state where your company’s primary operations are located but other factors may come into consideration. [↑](#footnote-ref-11)