

MUTUAL CONFIDENTIALITY AGREEMENT

Between

5

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
UNIVERSITY OF CALIFORNIA, SANTA BARBARA**

And

10

COMPANY

15 This Confidentiality Agreement (“Agreement”) is effective this ___ day of ___ 2013 (“Effective Date”) by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation, acting through its Santa Barbara campus having an Office of Technology & Industry Alliances located at 342 Lagoon Road, Santa Barbara, California 93106-2055 (“University”), and [COMPANY], a _____ corporation, having a principal place of business at _____ (“Company”).

20 WHEREAS, University is a non-profit organization dedicated, in part, to engaging in research activities for the advancement of knowledge and benefit of the public;

WHEREAS, University and Company wish to discuss potential research collaborations between the research laboratories of Professor _____, et al., and Company;

25 WHEREAS, during the course of such discussions the parties may need to exchange proprietary information relating to _____.

30 NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties agree as follows:

1. Confidential Information. During the term of this Agreement, either party may provide the other party with certain proprietary business or technical information or materials (“Confidential Information”). Except as required by law, and as long as all written disclosures of Confidential Information are clearly marked “Confidential” and all oral disclosures of Confidential Information are reduced to a writing that is clearly marked “Confidential” within fourteen (14) days of such oral disclosure, the receiving party will hold Confidential Information in confidence and agrees to prevent its disclosure to third parties using the same degree of care that the receiving party uses with its own information of like kind. This obligation shall continue in effect for five (5) years after expiration or termination of the Agreement.

40 Information and material disclosed shall not be considered confidential which: (1) is now public knowledge or subsequently becomes public knowledge through no breach of this Agreement; (2) is rightfully in the receiving party’s possession prior to the disclosing party’s disclosure as shown by written or tangible records; (3) is rightfully disclosed to receiving party by a third party; or (4) is independently developed by or for the receiving party without reliance upon Confidential Information received by the disclosing party as shown by written or tangible records.

45 With regard to Confidential Information, Company agrees that University may disclose such information as may be legally required to be disclosed including, but not limited to, under the California Public Records Act.

50

2. No Rights or Warranties. Both parties understand and agree that Confidential Information is provided “as is” and thus, the receiving party uses Confidential Information at its own risk. The disclosing party extends no warranties of any kind, either express or implied, including, but not limited to, warranties of merchantability and fitness for a particular purpose. Nothing in this Agreement is or shall be construed as conferring by implication, estoppel, or otherwise any license or rights under any patents or other rights of University or Company.

3. Term. The term of this Agreement shall commence upon the Effective Date and continue for a period of five (5) years.

4. Termination. Either University or Company may terminate this Agreement by giving sixty (60) days written notice to the other. Upon the termination or expiration of this Agreement, and upon written request, a party shall destroy or return any Confidential Information except for one (1) archival copy. Any Confidential Information provided under this Agreement prior to termination shall be treated as confidential by the receiving party for five (5) years after the date of termination.

5. Applicable Law. This Agreement will be governed by the laws of the State of California, United States of America, without regard to the conflict of laws provisions thereof.

6. Notice. Whenever any notice is to be given hereunder, it will be in writing and sent to the authorized representative for the receiving party as indicated below:

University: University of California, Santa Barbara
Office of Technology & Industry Alliances
552 University Avenue, Trailer #342
Santa Barbara, CA 93106-2055

Company: [INSERT]

7. Assignment. Neither party will assign its rights or duties under this Agreement to another without the prior express written consent of the other party.

8. Amendments. No agreements, modifications, or waivers to this Agreement shall be valid unless in writing and signed by both parties.

9. Miscellaneous.

9.1. Not a Partnership or Joint Venture. The parties, by this Agreement, do not intend to create a partnership, principal/agent, master/servant, or joint venture relationship and nothing in this Agreement shall be construed as creating such a relationship between the parties.

9.2. Severability. If any term or provision of this Agreement shall be held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement.

9.3. Recitals & Headings. The recitals herein constitute an integral part of the Agreement reached and are to be considered as such. However, the captions and headings contained in this Agreement have been inserted for reference and convenience only and in no way define, limit, or describe the text of this Agreement or the intent of any provision.

9.4. No Waiver. The wavier by either party of a breach or default of any provision of this Agreement shall not constitute a waiver of any succeeding breach, nor shall any delay or omission on the part of either party to exercise any right that it has under this Agreement operate as a waiver of such right, unless the terms of this Agreement set forth a specific time limit for the exercise thereof.

105

9.5. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all previous agreements and understandings on the subject matter of this Agreement, if any.

110

9.6. Counterparts. This Agreement may be executed in counterparts. Facsimile and electronically scanned signatures shall have the same effect as original signatures.

115

IN WITNESS WHEREOF, the parties hereto have caused this Confidentiality Agreement to be executed as set forth below.

[COMPANY]

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA

By: _____
Name:
Title:
Date:

By: _____
Name:
Title:
Date:

RESEARCH AGREEMENT

Between

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

And

[COMPANY]

This Research Agreement (“Agreement”) is entered into on this ____ day of _____, 201_ (“Effective Date”) by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California Constitutional corporation, on behalf of its [location] campus, hereinafter called “University,” and, _____[COMPANY], a _____ [state of incorporation] corporation, having a principal place of business at _____ [street address], hereinafter called “Sponsor.”

WHEREAS, University is a non-profit organization dedicated, in part, to engaging in high quality research activities for the advancement of knowledge and benefit of the public; and

WHEREAS, the research project contemplated by this Agreement is of mutual interest and benefit to both the University and Sponsor, and is consistent with the research and educational objectives of the University.

NOW THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties agree as follows:

1. Statement of Work

University, through its Principal Investigator(s), shall use reasonable efforts to perform the research activities set forth in the Statement of Work attached hereto as Exhibit A, which is hereby incorporated in full by reference. Sponsor acknowledges and agrees that University cannot guarantee the results of any of its research activities, and that minor deviations from the Statement of Work may occur to further the scientific goals of the Statement of Work.

Sponsor understands that University may be involved in similar research on behalf of itself and others. University shall be free to continue such research provided that is is conducted separately from the Statement of Work and Sponsor shall not gain any rights via this Agreement to such other research.

In the event that physical deliverables or samples are exchanged between the parties, such exchanges shall be subject to the provisions of Exhibit B, Physical Research Samples, which is attached hereto and is hereby incorporated in full by reference.

2. Term of the Agreement

The term of this Agreement shall be from _____ through _____.

The terms of this Agreement may be extended at no additional cost to Sponsor by amendment to this Agreement or through written approval from Sponsor’s Authorized Representative.

3. Cost to Sponsor

The cost to Sponsor for University’s performance hereunder shall not exceed _____. This Agreement shall be performed on a cost- reimbursement basis. When expenditures reach the above

amount, Sponsor will not be required to fund, and University will not be required to perform additional work hereunder unless by mutual agreement of the parties. It is understood that the funds provided by Sponsor which are not used in a particular budget period may be used in subsequent budget periods, and that the Principal Investigator may transfer funds within the budget as needed without Sponsor's approval, as long as such transfers do not effect a change in the research described in the Statement of Work.

4. Payment

One [**or annual**] advance payment will be made to University by Sponsor in accordance with Article 3 hereof, which is hereby incorporated in full by reference. To ease administrative burden, please note that no invoice will be sent by University to prompt the payments due under this Agreement. Payment may be made by check or by wire transfer, and shall be made payable to The Regents of the University of California.

If payment is made by check, it shall be sent to:

[address]

If payment is made via wire transfer, it shall be made to:

[address and transfer info]

Payments should refer to both the Principal Investigator's last name and Sponsor's name. If payment is made via wire transfer, Sponsor shall be responsible for all wire transfer fees.

In the event that Sponsor issues a purchase order in connection with this Agreement, the terms and conditions of such purchase order shall not be applicable to this Agreement regardless of their incorporation into the purchase order by reference nor through any order of precedence clause within the purchase order document.

5. Principal Investigator

University's performance hereunder will be under the direction of Professor _____, who will serve as Principal Investigator ("Principal Investigator"). In the event that the Principal Investigator becomes unable or unwilling to continue work under this Agreement and an alternate Principal Investigator is not agreeable to Sponsor, Sponsor will have the option to terminate this Agreement in accordance with Article 15 hereof. Sponsor understands and agrees that Principal Investigator is the scientific contact for University but is not authorized to amend, modify or terminate the terms and conditions of this Agreement. Requests to amend, modify or terminate the terms of this Agreement must be directed to <appropriate University office> and must comply with the notice requirements of this Agreement.

6. Rights in Data

University will have the unrestricted right to publish, disclose, disseminate and use, in whole and in part, any data or information developed by University under this Agreement. Additionally, University will have the right to publish, disclose, disseminate and use, in whole or in part, any data or information received in the performance of this Agreement except as set forth in Article 10 ("Confidentiality") hereof. Except as set forth in Article 8 ("Patents and Inventions") and Article 9 ("Copyright"), Sponsor will have the right to publish and use any technical reports and information specified to be delivered hereunder. It is agreed, however, that under no circumstances will Sponsor state or imply in any

publication, other published announcement, or otherwise, that University has tested, endorsed or approved any product, service or company. SPONSOR UNDERSTANDS AND AGREES THAT SUCH DATA IS PROVIDED "AS IS" AND THUS, SPONSOR USES SUCH DATA AT ITS OWN RISK. UNIVERSITY EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. Equipment

In the event that University purchases or fabricates equipment hereunder, title to such equipment will vest in University.

8. Patents and Inventions

8.1 Inventorship and ownership of patentable developments or discoveries first conceived and actually reduced to practice in the performance of this Agreement ("Subject Inventions") will be determined in accordance with applicable U.S. Patent Law and University policy.

8.2 To the extent that University will have the legal right to do so, and provided Sponsor pays all costs as set forth in Article 3, Sponsor will have a time-limited first right to negotiate a license to the University's interest in any Subject Invention.

8.3 University shall promptly disclose to Sponsor any Subject Inventions. Sponsor shall hold this disclosure on a confidential basis and will not disclose the information to any third party without the prior written consent of University. Sponsor will notify University in writing within thirty (30) days of notice of such disclosure to Sponsor whether or not it wishes to secure an option or license to University's interest in the disclosed Subject Invention ("Election Period"). Sponsor will have ninety (90) days from the date of election to conclude such option or license agreement with University ("Negotiation Period"). Said option or license will contain reasonable terms, will require diligent performance by Sponsor for the timely commercial development and early marketing of all Subject Inventions subject to the license, and will include Sponsor's obligation to reimburse University's patent costs for all Subject Inventions subject to the option or license. University may file patent applications at its own discretion and expense or at the written request of the Sponsor at Sponsor's expense. If such option or license negotiation is not concluded within the Negotiation Period or if Sponsor does not notify University of its wish to secure an option or license within the Election Period, neither party will have any further obligation to the other with respect to University's interest in the Subject Invention and the rights to such Subject Invention will be disposed of in accordance with University's policies.

8.4 Nothing in this Agreement is or shall be construed as conferring by implication, estoppel, or otherwise any license or rights under any patents or other rights of the University.

9. Copyright

Copyright in original works of authorship, including computer software, first created and fixed in a tangible medium of expression by University in the performance of this Agreement will vest in University. At Sponsor's request and to the extent that University has the legal right to do so, University will grant to Sponsor a license to University's interest in such works on reasonable terms and conditions, including reasonable royalties, as the parties mutually agree in a separate writing.

10. Confidentiality

During the course of this Agreement, Sponsor may provide University with certain proprietary business or technical information or materials (“Confidential Information”). Except as required by law, and as long as all written disclosures of Confidential Information are clearly marked “Confidential” and all oral disclosures of Confidential Information are both identified as confidential at the time of disclosure and are thereafter reduced to a writing that is clearly marked “Confidential” within fourteen (14) days of such oral disclosure, University will hold Confidential Information in confidence and agrees to prevent its disclosure to third parties using the same degree of care that the University uses with its own information of like kind. Confidential Information shall be provided only to University’s Principal Investigator and only on a “need to know” basis. This obligation shall continue in effect for three (3) years after expiration or termination of this Agreement.

Information and materials disclosed by Sponsor shall not be considered confidential which: (1) is now public knowledge or subsequently becomes such through no breach of this Agreement; (2) is rightfully in University’s possession prior to Sponsor’s disclosure as shown by written records; (3) is rightfully disclosed to University by a third party; or, (4) is independently developed by or for University without reliance upon confidential information received by Sponsor.

11. Publication

University shall have the right, at its discretion, to make or permit to be made scholarly disclosures of the results of the project, including without limitation, publication in scholarly journals, presentations at academic and other conferences, disclosures to University and non-University scholars, and disclosures in grant and funding applications. University will furnish Sponsor with a copy or notice of any publication in any scholarly journal or conference presentation that includes a report of the results of the project at least thirty (30) days prior to submission for publication (“Review Period”). Upon written notification by Sponsor within the Review Period, University agrees to delete any of Sponsor’s Confidential Information that appears in the publication. If it is determined that a patent application should be filed, University will delay publishing such proposed publication for a maximum of an additional thirty (30) days in order to protect the potential patentability of any invention described therein.

University shall have final authority to determine the scope and content of any publications.

12. Export Control

The parties acknowledge that, because University is an institution of higher education and has many foreign persons who are students, employees and visitors, University conducts its research activities as “fundamental research” under export control regulations (as set forth in ITAR 120.10(5) and 120.11, and EAR 15 C.F.R. 734(b)(3) and 734.7 through 734.11). Accordingly, the parties agree that Sponsor shall not provide University with any export-controlled proprietary data or technology.

13. Governing Law

This Agreement will be governed by the laws of the State of California, United States of America, without regard to the conflict of laws provisions thereof.

14. Notice

Whenever any notice is to be given hereunder, it will be in writing and sent to the attention of the authorized representative for the receiving party indicated below (hereinafter “Authorized Representative”) by certified mail or overnight courier, at following address:

University: [address]
Attn: [name]

Sponsor: _____

Attn: _____

15. Termination

Either University or Sponsor may terminate this Agreement by giving sixty (60) days written notice to the other. Sponsor will pay University actual direct and indirect costs and noncancellable commitments incurred prior to the effective date of termination and fair close-out related costs. If the total of such costs is less than the total funds advanced, the balance will be returned to Sponsor. In all instances, the total cost to Sponsor in the event of termination shall not exceed the total estimated cost specified in Article 3.

16. Publicity

Neither party will use the name, trade name, trademark or other designation of the other party in connection with any products, promotion, or advertising, without the prior written permission of the other party. However, nothing in this Article is intended to restrict either party from disclosing the existence of and nature of this Agreement (including the name of the other party) or from including the existence of and nature of this Agreement in the routine reporting of its activities.

University shall have the right to acknowledge Sponsor's support of the investigations under this Agreement in scientific or academic publications and other scientific or academic publications, without Sponsor's prior approval.

17. Indemnification

Sponsor shall defend, indemnify, and hold University, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of its performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of Sponsor, its officers, agents, or employees.

University shall defend, indemnify, and hold Sponsor, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees), or claims for injury or damages arising out of its performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorney's fees, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of University, its officers, agents, or employees.

This Article shall survive the termination or expiration of this Agreement.

18. Excusable Delays

University will be excused from performance hereunder if a delay is caused by inclement weather, fire, flood, strike, or other labor dispute, acts of God, acts of governmental officials or agencies, terrorism, or any other cause beyond the control of University. The excusable delay is allowed for the period of time

affected by the delay. If a delay occurs, the parties will revise the performance period or other provisions hereunder as appropriate.

19. Assignment

Neither party will assign its rights or duties under this Agreement to another without the prior express written consent of the other party; provided, however, that Sponsor may assign this Agreement to a successor in ownership of all or substantially all its business assets in the field to which this Agreement relates if such successor will expressly assume in writing the obligation to perform in accordance with the terms and conditions of this Agreement. Any other purported assignment will be void.

20. Amendments

No agreements, modifications, or waivers to this Agreement shall be valid unless in writing and signed by the Authorized Representatives of the parties.

21. Miscellaneous

21.1 Not a Partnership or Joint Venture. It is understood and agreed by the parties that the University is performing this contract as an independent contractor. The parties, by this Agreement, do not intend to create a partnership, principal/agent, master/servant, or joint venture relationship and nothing in this Agreement shall be construed as creating such a relationship between the parties.

21.2 Severability. If any term or provision of this Agreement shall be held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement.

21.3 Recitals & Headings. The recitals herein constitute an integral part of the Agreement reached and are to be considered as such. However, the captions and headings contained in this Agreement have been inserted for reference and convenience only and in no way define, limit, or describe the text of this Agreement or the intent of any provision.

21.4 No Waiver. The waiver by either party of a breach or default of any provision of this Agreement shall not constitute a waiver of any succeeding breach, nor shall any delay or omission on the part of either party to exercise any right that it has under this Agreement operate as a waiver of such right, unless the terms of this Agreement sets forth a specific time limit for the exercise thereof.

22. Entire Agreement

This Agreement, and Exhibits A through B, constitute the entire agreement and understanding between the parties and supersedes all previous agreements and understandings on the subject matter of this Agreement, if any.

COMPANY

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

Signature

Signature

[Name]

[Name]

[Title]

Date

[Title]

Date

EXHIBIT A
Statement of Work

EXHIBIT B
Physical Research Samples

For the purpose of interpretation under this Exhibit C, the party transferring the physical research samples referenced in Exhibit A shall be referred to as the “PROVIDER” and the party receiving the physical research samples shall be referred to as the “RECIPIENT.” The physical research samples will be referred to as the ‘MATERIAL.’

The MATERIAL is the property of the PROVIDER and is made available for research and evaluation purposes only. No other rights or licenses express or implied, are granted by the transmission of the MATERIAL to RECIPIENT.

Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. THE PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PROPRIETARY RIGHTS. Unless prohibited by law, RECIPIENT assumes all liability for claims for damages against it by third parties which may arise from the use, storage, or disposal of the MATERIAL except that, to the extent permitted by law, the PROVIDER shall be liable to the RECIPIENT when the damage is caused by the gross negligence or willful misconduct of the PROVIDER.

The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations.

CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

5 The University of Tulania (“Tulania”) and Acme Pharmaceuticals, Inc. ("ACME"), believe that in order to further the potential business relationship between Tulania and ACME, ACME may need to disclose to Tulania certain Confidential Information (as defined herein) belonging to ACME. Tulania is sometimes referred to herein as the “Recipient”. This Agreement as defined below is made as of June 10, 2010 (“Effective Date”).

10 **RECITALS**

A. Professor Coyote of Tulania has expressed an interest in pursuing discussions regarding a potential research collaboration with ACME (the “Potential Transaction”).

15 B. In connection with negotiations concerning the Potential Transaction, ACME or its authorized agents will provide to the Recipient certain information about its business affairs, technology and operations.

C. Since some of the information to be provided is either non-public, confidential or proprietary in nature, ACME wishes to ensure that the Recipient agrees to maintain the confidentiality of the information.

20 D. In consideration for the disclosure to the Recipient by ACME of the Confidential Information (as defined herein), the Recipient has agreed to enter into this agreement (the “Agreement”).

AGREEMENT

25 In consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

30 1. For purposes of this Agreement, the term “Confidential Information” means any and all information communicated to Recipient on or after the Effective Date, whether communicated in writing, orally, visually, electronically or in any other form (including without limitation, written documents, drawings, models, photographs, sketches, diskettes, e-mail, magnetic tapes and other electromagnetic forms), concerning finances, production, manufacturing processes and methods, technologies, formulae, data, business methods, business strategies, operational procedures, business manuals, contracts, marketing plans, future expansion plans, customer lists, financial statements, and all other information which ACME or its authorized agents provide to the Recipient, together with such portions of analyses, 35 compilations, studies, or other documents, prepared by or for the Recipient, or for Recipient’s employees, consultants, or representatives (including, by way of example, attorneys or accountants) (such employees, consultants and representatives, collectively, “Agents”), which contain or are derived from information provided by ACME or its agents. Without limiting the foregoing, information shall be deemed to be provided by ACME to the extent it is learned or 40 derived by the Recipient or the Recipient’s Agents (a) from any inspection, examination or other

review of books, records, contracts, other documentation or operations of ACME; (b) from communications with the employees, agents, attorneys, accountants or representatives of ACME; or (c) during visits to ACME premises. However, Confidential Information does not include any information which the Recipient can demonstrate (i) is or becomes part of the public domain through no fault of the Recipient or its Agents or representatives and without breach of this Agreement; (ii) was available to or known by the Recipient on a non-confidential basis prior to disclosure hereunder; (iii) was independently developed by the Recipient without use of or reference to information disclosed to the Recipient by ACME; or (iv) was disclosed to the Recipient by a third party who was under no obligation of confidentiality to ACME with respect to the disclosed information. Information shall not be deemed to be in the public domain or in the prior possession of the Recipient merely because any part of said information is embodied in more general information in the public domain or in the prior possession of the Recipient.

2. The Recipient will hold the Confidential Information in strict confidence and will use the Confidential Information solely for the purpose of evaluating the Potential Transaction. Except as expressly agreed in writing by ACME, the Recipient will not disclose or use the Confidential Information, directly or indirectly, in any way or embody any of the Confidential Information in any way, including in any of Recipient's products or services or patent applications, or exploit the Confidential Information in any way, except as expressly permitted herein.

3. The Recipient may disclose the Confidential Information only to its Agents who have a need to review the Confidential Information for the purpose of enabling the Recipient to evaluate the Potential Transaction. Should the Recipient provide the Confidential Information to any of its Agents, the Recipient will inform them of the confidential nature of the Confidential Information and direct them not to disclose the Confidential Information or use the Confidential Information other than in accordance with this Agreement and cause them to execute agreements (or have agreements previously executed) to that effect. The Recipient shall be responsible for unauthorized use or disclosure of Confidential Information by its Agents in violation of this Agreement. Any act or omission by or on behalf of Recipient's Agents that, if performed by the Recipient would constitute a breach of this Agreement, will be deemed a breach of this Agreement by the Recipient.

4. The Recipient agrees that all Confidential Information shall remain the exclusive property of ACME and, should either party terminate negotiations of the Potential Transaction or should either party decide, at any time, not to pursue the Potential Transaction, the Recipient will promptly return to ACME or destroy all documents, notes and other tangible materials representing the Confidential Information and all copies thereof. Return or destruction of such materials shall not release the Recipient from its obligations hereunder.

5. Except as expressly permitted in this Agreement, neither party nor its Agents will disclose the existence, nature or status of the investigations, discussions, or negotiations that are taking place, or will take place, concerning a Potential Transaction between the parties without the other party's prior written consent.

6. ACME may discontinue furnishing information at any time at its sole discretion, and any offer may be withdrawn at any time without notice.

7. This Agreement shall be construed under and governed by the laws of the State of Tullania.

85 8. This Agreement supersedes any and all prior understandings or agreements between the parties with respect to the subject matter of this Agreement.

9. This Agreement can only be modified by a written document, signed by both parties. Waiver of any breach of this Agreement shall not be a waiver of any subsequent breach.

90 10. In the event that the Recipient should be required pursuant to applicable governmental law, rule regulation or order or as part of a legal process (by subpoena or court order) to disclose any Confidential Information, it is agreed that the Recipient will have the right hereunder to disclose such information solely to the extent so required, provided, however, that the Recipient will provide prompt advance notice to ACME of such request so an appropriate protective order may be sought and will reasonably cooperate in efforts to obtain such an order.

95 11. Recipient hereby acknowledges, agrees and accepts that because an award of money damages would be inadequate for any breach of this Agreement, ACME is entitled, without the posting of a bond or other security, to equitable relief, including, without limitation, injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to ACME. Further, Recipient understands and agrees that ACME will be entitled to reimbursement from Recipient for reasonable expenses, including attorney's fees, incurred by ACME in successfully enforcing its rights under this Agreement and in successfully preventing breaches or threatened breaches of Recipient's obligations hereunder.

100 12. This Agreement shall terminate seven (7) years from the date of the last disclosure to the Recipient of any Confidential Information.

[Signature page follows]

110

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

ACME PHARMACEUTICALS, INC.

UNIVERSITY OF TULANIA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: 20 Prickly Pear Parkway
Tucson, AZ 80577

Address: 1000 Alligator Drive
Nawlins, Tulania 86753

115

ACKNOWLEDGED AND AGREED: I have read this Agreement and understand my obligations hereunder.

PROFESSOR COYOTE

Address: _____

120

EXERCISE '2'

CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

5 The University of Tulania (“Tulania”) and Acme Pharmaceuticals, Inc. (“ACME”), believe that in order to further the potential business relationship between Tulania and ACME, ACME may need to disclose to Tulania certain Confidential Information (as defined herein) belonging to ACME. Tulania is sometimes referred to herein as the “Recipient”. This Agreement as defined below is made as of June 10, 2010 (“Effective Date”).

10 RECITALS

A. Professor Coyote of Tulania has expressed an interest in pursuing discussions regarding a potential research collaboration with ACME (the “Potential Transaction”).

15 B. In connection with negotiations concerning the Potential Transaction, ACME or its authorized agents will provide to the Recipient certain information about its business affairs, technology and operations.

C. Since some of the information to be provided is either non-public, confidential or proprietary in nature, ACME wishes to ensure that the Recipient agrees to maintain the confidentiality of the information.

20 D. In consideration for the disclosure to the Recipient by ACME of the Confidential Information (as defined herein), the Recipient has agreed to enter into this agreement (the “Agreement”).

AGREEMENT

25 In consideration of the promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

30 1. For purposes of this Agreement, the term “Confidential Information” means any and all information communicated to Recipient ~~during the term of the Agreement or after the Effective Date, so long as written disclosures of Confidential Information are clearly marked “Confidential” and all oral disclosures of Confidential Information are reduced to a writing that is clearly marked “Confidential” within fourteen (14) days of such oral disclosure, whether~~ ~~communicated in writing, orally, visually, electronically or in any other form~~ (including without limitation, written documents, drawings, models, photographs, sketches, diskettes, e-mail, magnetic tapes and other electromagnetic forms), concerning finances, production, manufacturing processes and methods, technologies, formulae, data, business methods, business strategies, operational procedures, business manuals, contracts, marketing plans, future expansion plans, customer lists, financial statements, and all other information which ACME or its authorized agents provide to the Recipient, together with such portions of analyses, compilations, studies, or other documents, prepared by or for the Recipient, ~~or for Recipient’s employees, consultants, or representatives (including, by way of example, attorneys or accountants) (such employees, consultants and representatives, collectively, “Agents”); which~~

Comment [KS1]: An explicit marking requirement (including reduction to writing, if disclosed orally) is important in the event that there are any misunderstandings or disputes between the parties as to what was specifically to be treated as Confidential Information.

45 contain ~~or are derived from Confidential~~ Information provided by ACME or its agents. ~~Without limiting the foregoing, information shall be deemed to be provided by ACME to the extent it is learned or derived by the Recipient or the Recipient's Agents (a) from any inspection, examination or other review of books, records, contracts, other documentation or operations of~~
50 ~~ACME; (b) from communications with the employees, agents, attorneys, accountants or representatives of ACME; or (c) during visits to ACME premises.~~ However, Confidential Information does not include any information which the Recipient can demonstrate (i) is or becomes part of the public domain through no fault of the Recipient or its Agents or representatives and without breach of this Agreement; (ii) was available to or known by the
55 Recipient on a non-confidential basis prior to disclosure hereunder; (iii) was independently developed by the Recipient without use of or reference to information disclosed to the Recipient by ACME; or (iv) was disclosed to the Recipient by a third party who was under no obligation of confidentiality to ACME with respect to the disclosed information. Information shall not be deemed to be in the public domain or in the prior possession of the Recipient merely because any part of said information is embodied in more general information in the public domain or in the prior possession of the Recipient.

2. The Recipient will hold the Confidential Information in strict confidence and will use the Confidential Information solely for the purpose of evaluating the Potential Transaction. Except ~~as required by law or~~ as expressly agreed in writing by ACME, the Recipient will not
60 disclose or use the Confidential Information, directly or indirectly, in any way or embody any of the Confidential Information in any way, including in any of Recipient's products or services or patent applications, or exploit the Confidential Information in any way, except as expressly permitted herein.

3. The Recipient may disclose the Confidential Information only to its ~~officers, employees, and authorized agents (collectively, "Agents")~~ who have a need to review the Confidential Information for the purpose of enabling the Recipient to evaluate the Potential
65 Transaction. ~~Should the Recipient provide the Confidential Information to any of its Agents, the Recipient and~~ will inform them of the confidential nature of the Confidential Information and direct them not to disclose the Confidential Information or use the Confidential Information
70 other than in accordance with this Agreement ~~and cause them to execute agreements (or have agreements previously executed) to that effect.~~ The Recipient ~~shall will~~ be responsible for unauthorized use or disclosure of Confidential Information by its Agents in violation of this Agreement. Any act or omission by or on behalf of Recipient's Agents that, if performed by the
75 Recipient would constitute a breach of this Agreement, will be deemed a breach of this Agreement by the Recipient.

4. The Recipient agrees that all Confidential Information ~~shall will~~ remain the exclusive property of ACME and, should either party terminate negotiations of the Potential Transaction or should either party decide, at any time, not to pursue the Potential Transaction,
80 the Recipient will, ~~upon ACME's written request,~~ promptly return to ACME or destroy all documents, notes and other tangible materials representing the Confidential Information and all copies thereof. Return or destruction of such materials shall not release the Recipient from its obligations hereunder. ~~Notwithstanding the foregoing, Recipient may keep an archival copy of the Confidential Information for the sole purpose of determining its continuing legal obligation hereunder.~~

Comment [KS2]: We want to delete this because this refers to information that we create. As a university we would not want information that we create to be deemed CI. However, we shouldn't expect to be able to disclose any of ACME's CI in a publication.

Comment [KS3]: Depending on the circumstances of the relationship, it may be reasonable to include some forms of these disclosures in the definition of CI. Ideally, all disclosures of CI will be subject to a marking requirement for the concern noted above.

Comment [KS4]: It is best to be clear and indicate to whom we will disclose the information – students, employees in the Recipient investigator's laboratory who may be involved in the evaluation of the Potential Transaction.

Comment [KS5]: Most institutions do not require its students or employees to sign separate NDAs with the university – important to ensure NDA terms are consistent with institutional practices.

Comment [KS6]: Should ensure that such contract-specific action is prompted by the request of the company, and not presumed that university will independently do

Comment [KS7]: University will need to be able to know what it is supposed to keep confidential. Generally, the archival copy would be in the general counsel's office or the tech transfer office.

85 | ~~5.~~ Except as expressly permitted in this Agreement, neither party nor its Agents will disclose the existence, nature or status of the investigations, discussions, or negotiations that are taking place, or will take place, concerning a Potential Transaction between the parties without the other party's prior written consent.

Formatted: No bullets or numbering

90 | ~~6-5.~~ ACME may discontinue furnishing Confidential Information information at any time at its sole discretion, and any offer may be withdrawn at any time without notice.

Comment [KS8]: Due to the information access laws, including FOIA (Freedom of Information Act) and any State-specific laws, cannot agree to keep existence of agreement confidential. Section 2 already establishes need to maintain CI as confidential. For some relationships (including precursor to licensing relationships), may be acceptable to keep specific terms of the Agreement, or the details of the Potential Transaction, confidential.

~~7-6.~~ This Agreement shall be construed under and governed by the laws of the State of New York.

Comment [KS9]: Should ensure that all references to information being shared are consistent with defined term Confidential Information.

~~8-7.~~ This Agreement supersedes any and all prior understandings or agreements between the parties with respect to the subject matter of this Agreement.

Comment [KS10]: Deleted since it deals with the terms of the transaction, rather than CI.

95 | ~~9-8.~~ This Agreement can only be modified by a written document, signed by both parties. Waiver of any breach of this Agreement shall not be a waiver of any subsequent breach.

Comment [KS11]: Generally (when each party is from a different state), not in university's interests to agree to provider's home state. Some universities can remain silent on choice of law. When providers prefer to specify, depending on university requirements, can agree to a neutral state, such as New York.

100 | ~~10-9.~~ In the event that the Recipient should be is required pursuant to applicable governmental law, rule regulation or order or as part of a legal process (by subpoena, administrative agency, or court order from a court of competent jurisdiction) to disclose any Confidential Information, it is agreed that the Recipient will have has the right hereunder to disclose such Confidential Information solely to the extent so required, provided, however, that the Recipient will provide s prompt advance notice to ACME of such request so an appropriate protective order may be sought and will that Recipient reasonably cooperates in ACME's efforts to obtain such an order.

Comment [KS12]: Change is made to make the tenses more obligatory than permissive.

Comment [KS13]: Want to preserve university's ability to challenge the jurisdiction of a court

105 | ~~11-10.~~ Recipient hereby acknowledges, agrees and accepts that because an award of money damages would be inadequate for any breach of this Agreement, ACME is entitled, without the posting of a bond or other security, to equitable relief, including, without limitation, injunctive relief and specific performance. Such remedies will not be the exclusive remedies for any breach of this Agreement but will be in addition to all other remedies available at law or equity to ACME. Further, Recipient understands and agrees that ACME will be entitled to reimbursement from Recipient for reasonable expenses, including attorney's fees, incurred by ACME in successfully enforcing its rights under this Agreement and in successfully preventing breaches or threatened breaches of Recipient's obligations hereunder.

Comment [KS14]: Be specific

115 | ~~12-11.~~ This Agreement shall terminate seven (7) five (5) years from the date of the last disclosure to the Recipient of any Confidential Information.

Comment [KS15]: This last sentence means that university will pay legal costs even if the court doesn't award such costs to ACME. In the event of an alleged breach and a court action, expenses payable to ACME should be only those as decided in court.

Comment [KS16]: Ideally, the term of the agreement will be tailored to the specific length of time that the parties contemplate sharing CI. Also, given the context of the Potential Transaction (research collaboration), it may be appropriate to (1) incorporate the terms of this CDA within a resulting Sponsored Research Agreement or (2) plan to terminate this CDA and have confidentiality terms of the SRA cover subsequent sharing of CI.

[Signature page follows]

120

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

ACME PHARMACEUTICALS, INC.

UNIVERSITY OF TULANIA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Address: 20 Prickly Pear Parkway
Tucson, AZ 80577

Address: 1000 Alligator Drive
Nawlins, Tulania 86753

125

READ AND ACKNOWLEDGED AND AGREED:

I have read this Agreement and understand my obligations hereunder.

Comment [KS17]: Should ensure lead researcher is not implied to be a direct party to the Agreement. For companies that seek the explicit signature acknowledgment of university's lead researcher, will want to be clear that it is just an acknowledgement of the obligations, not that s/he is agreeing to the contract.

PROFESSOR COYOTE

Address: _____

130