**MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT (this “Agreement”) is entered into as of \_\_\_\_\_\_\_\_\_\_, 202\_ by and among Venatorx Pharmaceuticals, Inc. (“Venatorx”), GARDP Foundation (“GARDP”), and \_\_\_\_\_\_\_\_\_\_\_\_\_ (“YYYY”), to assure the protection and preservation of confidential and proprietary information to be disclosed by one party to either of the others in the course of evaluating a possible business relationship between or among them or conducting a contractual business relationship between or among them in relation to the conduct of pediatric clinical trials (for which Venatorx will be the sponsor and GARDP the clinical operational lead) to meet the pediatric regulatory requirements for the FDA and the EMA of a novel, broad-spectrum beta-lactamase inhibitor (taniborbactam) that restores the activity of the beta-lactam antibiotic cefepime against carbapenem-resistant Enterobacteriace (CRE) and carbapenem-resistant Pseudomonas aeruginosa (CRPA)(the “**Purpose**”).

 In reliance upon and in consideration of the following undertakings, **AND INTENDING TO BE LEGALLY BOUND**, the parties agree as follows:

1. The following definitions shall apply to this Agreement.
2. **“Disclosing Party”** means a party to this Agreement who discloses information to another party, and shall include the Disclosing Party’s subsidiaries, parent companies and affiliates, and their respective agents, employees, representatives and independent contractors (each a “Representative”). The parties acknowledge and agree that AMR Action Fund and its family of funds and entities is not an affiliate or Representative of Venatorx for purposes of this Agreement. The parties acknowledge and agree that GARDP NA Inc. and DNDi GARDP NPC Southern Africa are considered as affiliates of GARDP for purposes of this Agreement.
3. **“Receiving Party**” means a party to this Agreement who receives information from another party, and shall include the Receiving Party’s Representatives as defined above who need access to the Disclosing Party’s information in order to explore a possible business relationship between or among any of the parties or conduct a business relationship in accordance with the Purpose.
4. **“Confidential Information”** means all information disclosed by the **Disclosing Party** to the **Receiving Party** including, without limitation, protocols or protocol synopses, and other clinical study-related information; trade secrets, ideas, inventions or research and development information; technology, know-how, engineering or other data, processes, techniques, formulae or work-in-process; manufacturing, planning or marketing information, procedures or strategies; financial or other business information; information which has been provided hereunder in writing, orally, visually or in any other form, whether or not marked as confidential by the Disclosing Party; l. In addition, **“Confidential Information”** includes any of the foregoing relating to the past, present or future operations, finances, business interests, methodology or affairs of any third party to which the Disclosing Party owes a duty of confidentiality.

2. Subject to the provisions of Section 3, below, the Receiving Party, represents, warrants and agrees that it will not, directly or indirectly (a) use any Confidential Information of the Disclosing Party for any purpose other than to discuss or evaluate a possible business relationship or participate in a contractual business relationship according to the Purpose with the other parties to this Agreement; or (b) disclose the Confidential Information to any third party (other than the other party to this Agreement who shall be deemed a Receiving Party hereunder upon such disclosure) without the prior written consent of the Disclosing Party. Each Receiving Party shall use its best efforts to assure that its Representatives who have access to Confidential Information shall be bound by terms of confidentiality and restrictions on use with respect thereto that are at least as restrictive as the terms of this Agreement. Each Receiving Party shall notify the Disclosing Party of any breach of the Receiving Party’s obligations under this Section 2 as soon as practicable upon becoming aware of such breach.

3. The foregoing obligations shall not apply to any portion of a Disclosing Party’s Confidential Information that: (a) is at the time of disclosure or thereafter becomes generally available to the public other than as a result of disclosure by the Receiving Party in breach of this Agreement; (b) is lawfully received on a non-confidential basis from a third party who is not obligated to hold such information in confidence; (c) the Receiving Party can establish in writing was in the Receiving Party’s possession or known to Receiving Party on a non-confidential basis prior to the time of disclosure and was not acquired, directly or indirectly, from the Disclosing Party; (d) is independently developed or acquired by the Receiving Party without use of or reference to such Confidential Information, as shown by documentation or other evidence in the Receiving Party’s possession; or (e) the Receiving Party is required to disclose by applicable law or valid order issued by a court or governmental agency of competent jurisdiction or by a securities exchange or market on which Recipient’s securities are traded or are on which Recipient has applied to have its securities traded (any of the foregoing circumstances, a “***Legal Requirement***”), provided, however, that in such case the Receiving Party shall (i) to the extent not legally prohibited from doing so, give as much advance written notice as feasible to the Disclosing Party to enable the Disclosing Party to exercise its legal rights to prevent and/or limit such disclosure, (ii) reasonably cooperate with the Disclosing Party, at the Disclosing Party’s sole cost and expense, in its efforts to prevent and/or limit such disclosure, and (iii) disclose only that portion of the Confidential Information that, in the opinion of the Receiving Party’s legal counsel, such Legal Requirement specifically requires the Receiving Party to disclose and will exercise reasonable efforts to ensure that any such information so disclosed will be accorded confidential treatment; or (f) is required or requested by the United States Government (“USG”) pursuant to a Venatorx USG contract relating to the Purpose; provided that (i) Venatorx shall first notify in writing (“GARDP”) and/or (“YYYY”), as applicable, of such potential future disclosure and take reasonable actions to limit the disclosure of Confidential Information as permitted by applicable law, including but not limited to, the Freedom of Information Act, and, provided that (ii) this point (f) may apply only in the case of participation by YYYY in the conduct of the clinical trials mentioned in the Purpose and will exclude personal data which have not been consented to be transferred. In the case of non participation by YYY following signature of this Agreement, Venatorx will not submit any Confidential Information of YYYY to USG.

1. The Receiving Party agrees to institute and maintain appropriate security measures to carry out the purpose and intent of this Agreement. Promptly upon the written request of the Disclosing Party, the Receiving Party agrees to return to the Disclosing Party or destroy all copies of tangible Confidential Information of the Disclosing Party (including any copies or extracts therefrom) and to destroy all memoranda, compilations, analyses, notes and other materials prepared by the Receiving Party or any of its Representatives based on or reflecting any Confidential Information, except (a) one (1) copy that may be retained in the Receiving Party’s separate, confidential files solely for legal or regulatory compliance purposes and (b) Receiving Party shall not be obligated to delete archival copies retained in accordance with its normal procedures, or to remove any hidden or partial copies; provided however, that notwithstanding anything to contrary herein, all retained Confidential Information shall continue to be subject to the confidentiality and non-use obligations set forth herein. Upon the Disclosing Party’s request, an authorized Representative of the Receiving Party shall certify to the Receiving Party’s compliance with this Section 4.
2. This Agreement shall not be deemed to create any partnership, joint venture, license or other similar arrangement or relationship between or among the parties hereto, nor shall it be deemed to create any obligation on the part of either party to initiate or to continue any discussion, relationship or arrangement with another party regarding the Purpose. Confidential Information shall remain the property of the Disclosing Party. Nothing in this Agreement shall be construed as a grant of any right or license to trademarks, inventions, copyrights or patents, or as a grant to the Receiving Party of a right to use any of the Disclosing Party’s Confidential Information, except as set forth herein.
3. Each of the parties, in its capacity as the Receiving Party, acknowledges that it shall be responsible for any violation or breach of this Agreement by it and its Representatives and that a breach of this Agreement by the Receiving Party will result in irreparable and continuing damage to the Disclosing Party, for which there is no adequate remedy at law. Accordingly, each of the parties agrees that, in the event of any such breach or the threat of such breach by a Receiving Party, in addition to any other remedies available at law or otherwise, the Disclosing Party, its successors and assignees shall be entitled to seek injunctive relief and to such other and further relief, including damages, as may be proper, without having to post a bond or other security.
4. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to provisions of conflicts of laws.
5. This Agreement will terminate upon the earlier of (a) the execution of a definitive agreement relating to a business relationship in relation to the Purpose among Venatorx, [GARDP] and [YYYY], (b) the expiration of a period of two (2) years from the date hereof or (c) written notice from one party to the other of its intent to terminate this Agreement; *provided, however, that the parties specifically agree that the obligations set forth in of Section 2, above, shall survive any such expiration or termination of this Agreement for a period of seven (7) years.*
6. If any provision of this Agreement or the application in any particular circumstance is held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other provision hereof. This Agreement shall, in such circumstances, be deemed modified to the extent necessary to render enforceable the provisions hereof to the fullest extent permitted by law.
7. This Agreement shall be binding upon and inure to the benefit of each party’s respective successors and lawful assignees. This Agreement may be amended or modified only by a written instrument executed by a duly authorized officer of each party.
8. Notices given under this Agreement shall be in writing and given to a party at the address set forth below by (a) personal delivery; (b) facsimile transmission (with message confirmed); (c) first class mail, postage prepaid; or (d) Federal Express (or equivalent overnight delivery service), delivery charges prepaid.
9. This Agreement may be executed in separate counterparts, each of which shall be deemed an original and both of which, when taken together, shall constitute one and the same agreement. Counterparts may be delivered via facsimile, electronic mail (including pdf) or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.
10. This Agreement sets forth the entire understanding among the parties as to its subject matter, but does not limit or supersede any other non-disclosure, confidentiality or similar obligation between or among any of the parties including, without limitation, under any Confidentiality Disclosure Agreements, License Agreements, Services Agreements or otherwise.
11. No party may assign or transfer this Agreement, in whole or in part, without the prior written consent of the other parties, provided however, that a party may, without such consent, assign this Agreement to an unrelated third party in connection with a merger, consolidation or sale of substantially all of its business to which this Agreement relates. Subject to this Section 14, this Agreement will inure to the benefit of and be binding upon each party and its respective permitted successors and permitted assigns. Any purported assignment or transfer in violation of this Section shall be null and void. No assignment shall relieve the assigning party of any of its obligations hereunder.
12. All Confidential Information is provided “as is”. THE DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WHATSOEVER REGARDING THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION. The Disclosing Party shall have no liability for any expenses, losses or action incurred or undertaken by Receiving Party as a result of Receiving Party’s receipt or use of the Confidential Information. Each party represents and warrants that (a) it has the authority to enter into this Agreement, disclose and receive the Confidential Information disclosed hereunder and (b) that it is not a party to any other agreement or under any obligation to any third party that would prevent it from entering into this Agreement, disclosing or receiving the Confidential Information hereunder.

[*Signature page follows*]

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

|  |
| --- |
| **VENATORX PHARMACEUTICALS, INC.** |
| Signature: |  |
|  |  |
| Name: |  |
|  |  |
| Title: |  |
|  |  |
| Address: | 30 Spring Mill Drive, Malvern, PA, USA |

|  |
| --- |
|  **GARDP FOUNDATION** |
| Signature: |  |
|  |  |
| Name: |  |
|  |  |
| Title: |  |
|  |  |
| Address: | 15, chemin Camille-Vidart, 1202 GENEVA, Switzerland |

|  |
| --- |
| **[“YYYY”]** |
| Signature: |  |
|  |  |
| Name: |  |
|  |  |
| Title: |  |
|  |  |
| Address: |  |