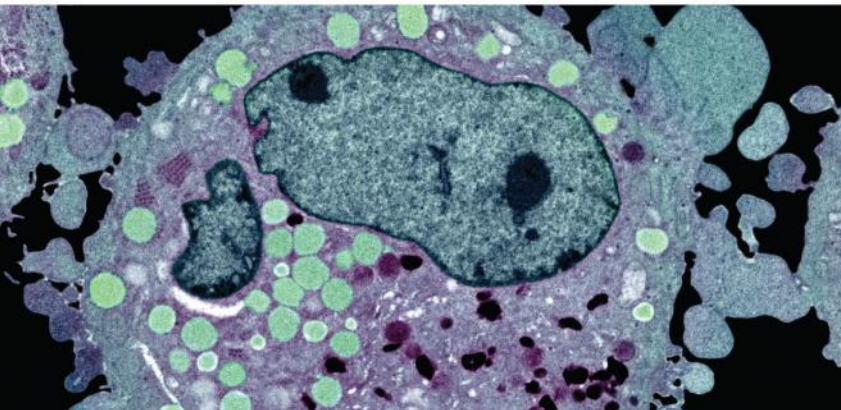


# NDA's and Essential Contracts for Early Stage Companies

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# Contracts

- Provides clarity on what was agreed
- Provides path for opportunity
- Provides mechanism for dispute resolution
- Allows validation to third parties

# The Documentation

- NDA (Non disclosure Agreement)
- Term Sheet
- Loan Agreement
- Security Agreement – or a combined LSA
- Guaranty
- Warrants
- Intercreditor Agreement/Subordination Agreement
- Other Collateral Documents
  - E.g. control agreements, IP security agreements, landlord waivers, insurance endorsements, foreign documentation
- Ancillary Deliverables
  - E.g. certificates, board/shareholder consents, legal opinions



# Non Disclosure Agreements (NDA) or Confidentiality Disclosure Agreements (CDA)

- Agreement by both parties on how the shared information will be handled and controlled now and going forward
- Public vs Private information
- Enforcement period
- Jurisdiction of court



# Term Sheet Content

- Non-binding nature (depending on context)
  - In an acquisition context, a binding commitment will be requested that aligns with the commitment of buyer to close
- Economics:
  - Amount, type & availability (e.g. term, revolver, LC, milestones)
  - Amortization & maturity
  - Interest Rate, fees, prepayment premium
  - Borrowing base & prepayments
  - Warrant coverage
- Collateral & guarantees
- Financial covenants
- Financial reporting requirements
- Closing Conditions (e.g. deposit requirements)



# Loan and Security Agreement

- Obligates the Borrower to repay the loan and sets forth the basic terms of the loan
- Requires demonstrated financial fitness of the Borrower and its subsidiaries on the closing date
- Restricts activities of the Borrower and its subsidiaries during the term of the loan
- Restricts the flow of value out of the enterprise
- Provides lender enforcement rights
- Provides ongoing access to capital and sufficient operating flexibility to the Borrower



# Credit Agreement Provisions

- SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION
- SECTION 2. THE LOAN
- SECTION 3. SECURITY INTEREST
- SECTION 4. CONDITIONS PRECEDENT TO LOAN
- SECTION 5. REPRESENTATIONS AND WARRANTIES
- SECTION 6. INSURANCE; INDEMNIFICATION
- SECTION 7. COVENANTS OF BORROWER
  - AFFIRMATIVE COVENANTS (what you must do)
  - NEGATIVE COVENANTS (what you cannot do)
  - FINANCIAL COVENANTS
- SECTION 8. RIGHT TO INVEST; RIGHT TO CONVERT
- SECTION 9. EVENTS OF DEFAULT
- SECTION 10. REMEDIES
- SECTION 11. MISCELLANEOUS



# Other Types of Contracts

- Warrant agreements
  - Preferred Stock agreements
  - Common stock agreements
- Guarantees
- Subordination agreements
- Deposit Account Control Agreements (DACA)
- Convertible debt agreements
- Strategic partnership
- Manufacturing





# Other Types of Contracts

- Supplier agreements
- Contract Research Organization (CRO)
- Sales and Marketing Agreement
- Employment agreement
- Non Compete Agreements

# Intellectual Property Agreements

## ■ Ownership of IP

- Where/How Core IP Was Developed or Acquired
- Founder, Employee and Consultant Agreements
- Registered IP Title
- Asset Purchase Agreements
- License (Out) Agreements
- License (In) Agreements
- Government Funding Contracts
- Strategic/partnership agreements





# Thank you!

