

## **MUTUAL NON-DISCLOSURE AGREEMENT**

This Mutual Non-Disclosure Agreement (the "Agreement") is made this **DAY** day of **MONTH** **YEAR** (the "Effective Date").

### **BETWEEN:**

**DALHOUSIE UNIVERSITY**, a university with its principal place of business at 6299 South Street, PO Box 15000 Halifax, Nova Scotia, B3H 4R2, Canada ("Dalhousie")

**- AND -**

**COMPANY**, a body corporate, incorporated under the laws of **Jurisdiction** with its registered office at **Company Complete Address** (the "Company")

(hereinafter referred to individually as "Party" and collectively as "Parties")

### **BACKGROUND**

- A.** The researcher(s) at Dalhousie identified in Schedule "A" (collectively, the "**Researchers**") and the Company wish to engage in discussions for the purposes set out in Schedule "A" (the "**Authorized Purpose**").
- B.** This Agreement provides the terms and conditions under which a disclosure or communication of certain confidential or proprietary information is made by one Party, including its employees, students or representatives, (the "**Disclosing Party**") to the other Party, including its employees, students or representatives, (the "**Receiving Party**") in connection with the Authorized Purpose.

**Now Therefore** in consideration of the mutual covenants contained in this Agreement (the sufficiency of which is hereby acknowledged by each of the parties), the parties agree as follows:

- 1. Definitions.** In this Agreement, the following terms shall have the meanings as set out below:
  - a) "**Confidential Information**" means any and all information directly or indirectly related to the research project or subject matter identified in Schedule "A", disclosed orally or in writing to the Receiving Party by the Disclosing Party or gathered by the Receiving Party from inspection of any property, activities or facilities of the Disclosing Party, after the Effective Date, regardless of whether the information is specifically identified or marked as "Confidential", in all forms and however fixed, stored, expressed or embodied, including but not limited to:
    - i. discoveries, inventions, intellectual property, technical data, materials, biological materials, equipment, routes of synthesis, compounds, formulations,

techniques, methodologies, assay systems, formulae, procedures, tests, products and product information, substances, organisms, technology, research results or plans, processes, scientific knowledge, know-how, reports, descriptions, drawings, specifications, designs, compositions, strategies, trade secrets, pre-clinical and clinical studies, patent positioning, information concerning the existence, scope or activities of any research, development, manufacturing, marketing, market opportunities, or other projects;

- ii. sources of supply, relationships with consultants and employees, business operations, business plans and business developments and other business and financial information;
- iii. any other confidential information about suppliers, licensors, licensees, partners, affiliates, customers, potential customers or others;
- iv. information, data, records, protocols, specimens, final reports, methodologies, modifications, innovations, improvements, writings, documentation, software, or techniques developed or generated within the framework of this Agreement.

All other capitalized terms not defined above are as defined in the body of this Agreement.

**2. Information Not Subject to Confidentiality.** The obligations set forth in this Agreement shall not in any way restrict or impair the right of the Receiving Party, to the extent permitted by law (such as privacy laws), to disclose or use in any way information which the Receiving Party can demonstrate:

- i. was in the knowledge, possession or control of the Receiving Party prior to its disclosure by the Disclosing Party;
- ii. was generally available to the public prior to disclosure by the Disclosing Party, or becomes generally available to the public through no fault of the Receiving Party;
- iii. is developed independently by the Receiving Party as a result of the operations or activities of the Receiving Party, but only to the extent such information does not include or incorporate other Confidential Information; or
- iv. is obtained from a source other than the Disclosing Party without breach of any confidentiality obligation.

**3. Legally Required Disclosures.** The obligations set forth in this Agreement shall not in any way restrict or impair the right of the Receiving Party to disclose or use in any way information which is disclosed pursuant to law, regulation or lawful order or process (collectively “**Requirements**”). If the Receiving Party becomes compelled to disclose any Confidential Information of the Disclosing Party pursuant to any Requirement, the Receiving Party shall, where permitted by law, provide the Disclosing Party with prompt notice of any such Requirement and shall reasonably cooperate with the Disclosing Party in seeking to obtain any protective order or other arrangement pursuant to which the confidentiality of the Confidential Information is preserved. If such an order or

arrangement is not obtained, the Receiving Party shall disclose only that portion of the Confidential Information as is required pursuant to such Requirements. Any such required disclosure shall not, in and of itself, change the status of the disclosed information as Confidential Information under the terms of this Agreement. The Company hereby acknowledges that Dalhousie is a public university subject to the public's right to access information under the *Freedom of Information and Protection of Privacy Act (Nova Scotia)*.

4. **Designated Representatives.** The designated representatives of Dalhousie and the Company (the "**Representatives**") are the individuals identified in Schedule "A". The Representatives are the individuals to whom notices under this Agreement shall be sent. Any notice shall be given in writing by registered mail or delivered personally.
5. **Restrictions on Use and Disclosure of Confidential Information.** Except as otherwise provided for herein, or as may be authorized from time-to-time in writing by the Disclosing Party prior to such disclosure, the Receiving Party shall not:
  - a) use or reproduce Confidential Information for any purpose except as required to accomplish the Authorized Purpose; or
  - b) disclose Confidential Information to any person or individual other than to its employees, students or representatives who have a need to know and who are bound by confidentiality obligations substantially similar to those herein,
6. **Personal Information.**
  - a) The Parties agree that no information about an identifiable individual ("**Personal Information**") shall be disclosed under this Agreement unless it is disclosed in accordance with all applicable privacy policies, procedures and guidelines of Dalhousie including, without limitation, the Dalhousie's *Policy for the Protection of Personal Information from Access Outside Canada*, and in compliance with all applicable privacy legislation including, without limitation, the *Freedom of Information and Protection of Privacy Act (Nova Scotia)*, the *Personal Information International Disclosure Protection Act (Nova Scotia)*, the *Personal Health Information Act*, and the *Personal Information Protection and Electronic Documents Act (Canada)* (collectively, the "**Privacy Laws**").
  - b) In the event Personal Information is disclosed pursuant to subsection 6(a), the Receiving Party shall satisfy and comply with all Privacy Laws including, without limitation, protecting the Personal Information by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure or disposal, and prohibiting access and/or storage of Personal Information outside of Canada.
7. **Jointly Created Confidential Information.** Any Confidential Information created jointly by the Parties shall be included in the definition of Confidential Information and shall be jointly owned by the Parties unless otherwise agreed to in writing.
8. **No Warranty.** The Disclosing Party provides information on an "**AS IS**" basis, without warranty, representation or conditions of any kind as to its accuracy, completeness,

operability, fitness for particular purpose, non-infringement of third party intellectual property rights or any other warranty, express or implied. **THE DISCLOSING PARTY WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGES ARISING OUT OF THE USE OF CONFIDENTIAL INFORMATION.** Disclosure of information containing business plans is for planning purposes only and the Disclosing Party may change or cancel its plans at any time. The use of such information is at the Receiving Party's own risk.

- 9. Security.** The Receiving Party shall protect the Confidential Information against unauthorized disclosure, or use for any purpose other than the Authorized Purpose, using the same degree of care, but no less than a reasonable degree of care, as it uses to protect its own Confidential Information.
- 10. Restrictions.** The Receiving Party may not reverse engineer, decompile or disassemble any products or technology disclosed to the Receiving Party.
- 11. Co-Mingling.** The Receiving Party agrees to, where reasonably possible, segregate all Confidential Information from the confidential information of others in order to prevent co-mingling (or in such a way as to allow any co-mingling to be reversed) and in a manner sufficient to ensure that Confidential Information is easily retrievable and identifiable as belonging to the Disclosing Party.
- 12. Notice of Unauthorized Disclosure.** The Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information, or any other breach of this Agreement by the Receiving Party, and will co-operate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use.
- 13. Return of Confidential Information.** Upon receipt of a written request from the Disclosing Party following termination or expiration of this Agreement, the Receiving Party shall return to the Disclosing Party all originals, copies, reproductions and summaries of all tangible Confidential Information in its possession or under its control, and shall destroy all Confidential Information in a non-deliverable form, including without limitation the deletion of all documentation, information or data from its system, files, etc., and provide certificates to the Disclosing Party confirming such destruction. Notwithstanding the foregoing, the Receiving Party may retain one copy of the Confidential Information in a secure location as a record of its obligations under this Agreement, but shall have no further right to use the Confidential Information.
- 14. Assignment.** This Agreement may not be assigned by either party hereto to any third party without the prior written consent of the other party hereto.
- 15. Injunctive Relief.** The Parties acknowledge that any violation of any of the provisions of this Agreement may result in immediate and irreparable damage for which monetary damages may not be a sufficient remedy and agree that in the event of such violation, the Disclosing Party shall be entitled, without waiving any other rights or remedies, to seek such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction, without the necessity of proving actual damages.

**16. Ownership.** The Disclosing Party shall retain ownership of all rights, including all intellectual property rights, in its Confidential Information. Neither the execution of this Agreement, nor the furnishing of any Confidential Information by the Disclosing Party shall be construed as granting to the Receiving Party, either by implication otherwise, any interest, license or right respecting the Confidential Information, including without limitation, any intellectual property right therein, now or hereinafter owned or controlled by the Disclosing Party, other than as expressly provided for in this Agreement.

**17. Definitive Agreement.** No contract or agreement providing for any transaction involving the parties shall be deemed to exist between the parties unless and until a final definitive agreement has been executed and delivered. Each party agrees that unless and until a final definitive agreement regarding a transaction between the parties has been executed and delivered, neither party will be under any legal obligation of any kind whatsoever with respect to completing or negotiating such a transaction by virtue of this Agreement or any written or oral expression with respect to such a transaction by any of its respective directors, officers, employees, agents or any other representative except, in the case of this Agreement, for the matters specifically agreed to herein. Both parties further acknowledge and agree that each party reserves the right, in its sole discretion, to provide or not provide Confidential Information to the Receiving Party under this Agreement, to reject any and all proposals made by the other party or any of its representatives with regard to a transaction between the Parties, and to terminate discussions and negotiations at any time.

**18. Export Controls.** Neither party shall provide any Confidential Information to the other Party which contains any technology, information, product, technical data or software subject to export control laws of any country.

**19. Term of this Agreement.** This Agreement shall terminate on the Agreement Expiration Date set out in Schedule A, but may be terminated by either Party by giving 30 days written notice to the other Party. Termination, however, shall not affect the rights and obligations arising under this Agreement with respect to Confidential Information disclosed prior to termination, including without limitation the confidentiality period set forth in paragraph 20 herein. The following provisions shall survive termination of this Agreement: 6 (privacy laws), 8 (no warranty), 13 (return or destruction), 15 (injunctive relief), 16 (ownership) and 21(b) (governing law).

**20. Term of Confidentiality.** Unless otherwise agreed to in writing, the Receiving Party shall not have any obligations of confidentiality under this Agreement after Confidentiality Expiration Date, provided that the Receiving Party remains in compliance with all laws protecting Personal Information.

## **21. General.**

a) **Headings.** The headings of the sections of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

b) **Governing Law.** This Agreement is governed by and interpreted in accordance with the laws of the Province of Nova Scotia and the federal laws of Canada as applicable

herein. For the purposes of all legal proceedings, this Agreement shall be deemed to have been performed in the Province of Nova Scotia and the courts of the Province of Nova Scotia shall have the exclusive jurisdiction to entertain any action arising under this Agreement. Each Party hereto hereby irrevocably attorns to the jurisdiction of the courts of the Province of Nova Scotia.

- c) **Amendments.** No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by the parties.
- d) **Counterparts.** This Agreement may be executed in counterpart by the Parties, either through original copies or by facsimile or electronically each of which will be deemed an original and all of which will constitute the same instrument.
- e) **Enurement.** This Agreement shall enure to the benefit of and shall be binding upon the parties hereto and their respective heirs, executors, administrators, legal and personal representatives, successors and permitted assigns.
- f) **Entire Agreement.** This Agreement constitutes the complete and entire agreement of the parties and supersedes all previous communications, oral or written, and all other communications between them relating to the subject matter of this Agreement.
- g) **Waiver.** No failure or delay by the Disclosing Party in exercising any right hereunder shall operate as a waiver hereof, or shall estop the Disclosing Party from obtaining permanent injunctive relief. The waiver by either party of a breach of any provisions of this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by such party.



**BY SIGNING BELOW**, the Parties agree to be bound by the terms of this Agreement as of the Effective Date.

**DALHOUSIE UNIVERSITY**

**COMPANY**

Per: \_\_\_\_\_ Per: \_\_\_\_\_  
Stephen Hartlen Name:  
Assistant Vice-President, Industry Relations Title:

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**We have the authority to legally bind  
University.**

**We have the authority to legally bind the  
Company.**

**RESEARCHER ACKNOWLEDGMENT**

The undersigned Researcher(s) each acknowledges, by signing below:

- a) that they have read and understood the terms of this Non-Disclosure Agreement and their obligations under it as a Dalhousie Researcher;
- b) that they agree to require anyone who may work with the Company's Confidential Information under the Researcher(s)'s direction or supervision, to sign an acknowledgement in the form of Schedule B, before he or she begins work with the Company's Confidential Information;
- c) that this agreement covers only the transfer and treatment of Confidential Information; and
- d) that a separate agreement would be required if the Company and the Researcher(s)/Dalhousie want to engage in other activities, for example, funding or collaborative research.

*Please type and sign your name below.*

**RESEARCHER(S)**

**RESEARCHER 1**

**RESEARCHER 2**

Per: \_\_\_\_\_ Per: \_\_\_\_\_  
Name: \_\_\_\_\_ Name: \_\_\_\_\_  
Title: \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

**SCHEDULE "A"**  
**AUTHORIZED PURPOSE**

**Agreement Effective Date:** DAY day of MONTH YEAR \*\* must match first line of agreement

**Agreement Expiration Date:** DAY day of MONTH YEAR

**Confidentiality Expiration Date:** DAY day of MONTH YEAR

**Researchers:**

NAME, Faculty of FACULTY, Department of DEPARTMENT, Dalhousie University

NAME, Faculty of FACULTY, Department of DEPARTMENT, Dalhousie University

**Research Project/Subject Matter:** Name project

**Authorized Purpose:** Explain why need NDA, ex. To explore potential for future research project.

**Designated Representatives:**

For Dalhousie:

Stephen Hartlen  
Assistant Vice-President, Industry Relations  
Office of Commercialization & Industry Engagement  
1344 Summer Street, Suite 207  
PO Box 15000  
Halifax, Nova Scotia, Canada B3H 4R2

For the Company:

NAME  
TITLE  
COMPANY  
ADDRESS



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**SCHEDULE “B”  
CONFIDENTIALITY ACKNOWLEDGEMENT**

**To:** DALHOUSIE PI NAME, the “Principal Investigator”

**Re:** Mutual Non-Disclosure Agreement between COMPANY (the “Company”) and Dalhousie University regarding describe Technology and research or subject matter.

I acknowledge that in the course of my involvement with Principal Investigator I may receive confidential information, and agree to do all things necessary to keep such information confidential, including:

- (i) I understand that the “confidential information” means all information I receive from the Principal Investigator or the Company, regardless of whether the information is specifically identified or marked as “Confidential”;
- (ii) I will not collect, use, reproduce, store or disclose, the confidential information for any purpose except as instructed by the Principal Investigator;
- (iii) I will protect the confidential information, using the same degree of care, but no less than a reasonable degree of care, as I use to protect my own and Dalhousie’s confidential and proprietary information;
- (iv) I will segregate the confidential information from the confidential information of others (including my own) in order to prevent co-mingling;
- (v) I will notify the Principal Investigator if I suspect any unauthorized use or disclosure of the confidential information, and will co-operate in every reasonable way to help to regain possession of the confidential information and prevent its further unauthorized use; and
- (vi) I will return or destroy all originals, copies, reproductions and summaries of the confidential information at the Principal Investigator or Dalhousie’s request.

Dated at Halifax, NS, the DAY day of MONTH YEAR

*Please type and sign name of the student researcher or other participant in research activities related to Confidential Information below.*

**RESEARCHER**

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Date: \_\_\_\_\_