

# MUTUAL CONFIDENTIAL NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT** (the “**Agreement**”) made the [DAY] (•) day of [MONTH], [YEAR]

**BETWEEN:** The Royal Institution for the Advancement of Learning/McGill University a Canadian university with its principal place of business located at 845 Sherbrooke Street West, Montreal, Quebec, H3A 2T5, Canada

(hereinafter referred to as “**McGill**”)

**AND:** [COMPANY NAME]  
a corporation under the laws of [JURISDICTION]  
with a place of business at [COMPANY ADDRESS]

(hereinafter referred to as the “**Company**”)

(individually McGill and the Company are each a “**Party**” and collectively, the “**Parties**”)

**WHEREAS** McGill, in particular Prof. [PROFESSOR NAME] of McGill’s [NAME OF DEPARTMENT], and the Company each have proprietary knowledge and information relating to [DESCRIBE INFORMATION];

**WHEREAS** the Parties wish to enter into discussions to evaluate their mutual interest in pursuing a business relations for [DESCRIBE PURPOSE] (the “**Purpose**”);

**WHEREAS** during said discussions either Party may disclose to the other certain information deemed to be confidential in nature; and

**WHEREAS** the Parties wish to establish their respective rights and obligations with respect to such information.

**NOW THEREFORE**, in consideration of the foregoing and the mutual obligations and undertakings set forth below, the Parties hereto agree as follows:

1. The Preamble forms an integral part of this Agreement.
2. Definitions:
  - a) “**Confidential Information**” means the information relating to the Purpose provided by one Party to the other Party and clearly marked “CONFIDENTIAL” or if related orally or visually, identified as “CONFIDENTIAL” at the time of disclosure. Confidential Information includes, but is not limited to, formulations, know-how, manufacturing processes, inventions, products, processes, techniques, compositions, compounds, plans, practices, drawings, prototypes,

recordings, instructions, manuals, papers or other materials in whatever form or nature;

- b) **“Provider”** means, as appropriate, the Party providing Confidential Information to the other Party; and
- c) **“Recipient”** means, as appropriate, the Party receiving Confidential Information to the other Party.

[OPTIONAL: d) **“Representatives”** includes directors, officers, representatives, experts, employees, agents, advisors or consultants who have a need to know the Confidential Information.]

- 3. Recipient shall for a period of [NUMBER] (•) years from the date of this Agreement keep in strict confidence and not disclose to any third party any Confidential Information received from Provider prior to and during the term of this Agreement. Obligations of confidentiality will not apply to information that:
  - a) at the time of disclosure is published or is otherwise in the public domain; or
  - b) after disclosure becomes part of the public domain; or
  - c) was known to Recipient prior to receipt from Provider and was not acquired by Recipient, its employees, directors, agents, consultants, advisers, or other third parties directly or indirectly from Provider; or
  - d) is developed independently by Recipient without reference to Confidential Information; or
  - e) Recipient is required by law to disclose, provided that Recipient shall, where possible, so advise Provider in advance of such disclosure so as to allow Provider an opportunity to challenge such disclosure.
- 4. Recipient agrees not to use the Confidential Information in any manner whatsoever, directly or indirectly, and Recipient will not make use of such Confidential Information for any purpose, within or outside of its business, other than in connection with the Purpose. Recipient agrees, prior to the termination of this Agreement, to provide the Provider with all work products incorporating or derived therefrom or written confirmation of their destruction.

*[ALTERNATE CLAUSE: Recipient agrees not to use the Confidential Information in any manner whatsoever, directly or indirectly, and Recipient will not make use of such Confidential Information for any purpose, within or outside of its business, other than in connection with the Purpose. Upon the written request of the Provider, Recipient shall promptly return to the Provider any and all Confidential Information without retaining any copies or excerpt thereof except that Recipient may keep one (1) copy for evidentiary purposes only. ]*

- 5. Recipient may disclose the Confidential Information only to such of its employees [OPTIONAL: and Representatives] who have a need to know such information for the Purpose and according to the terms and conditions contained herein. Recipient shall ensure that its employees [OPTIONAL: and Representatives] are fully aware of

the confidential nature of the Confidential Information and of the obligations of confidentiality owed to the Provider. Recipient agrees to protect the Provider's Confidential Information using at least the same degree of care Recipient uses to protect its own confidential information, but in no event less than reasonable care.

6. This Agreement is effective as of the date first above written and shall remain in full force and effect until [DATE] (•), unless terminated earlier by either Party. Either Party may terminate this Agreement for any reason upon sixty (60) days written notice to the other Party. The rights and obligations of the Parties under paragraphs 3 and 4 of this Agreement shall continue beyond termination.
7. No right or license whatsoever, expressed or implied, is granted by either Party to the other pursuant to this Agreement under any patent, patent application, copyright, trademark or other proprietary right now or hereafter held by or licensed to Provider. No legal obligations, rights, relationship or duties shall be construed or inferred from the entering into of this Agreement other than as expressly set out herein.
8. The Confidential Information is disclosed by the Parties without any express or implied representation or warranty as to the accuracy or the completeness thereof. The Parties explicitly disclaim any liability relating to the information, errors or omissions therefrom.
9. Recipient recognizes that improper use of the Confidential Information disclosed hereunder shall cause irreparable damage to the Provide and agrees that the Provider may take any and all available legal action and shall be entitled to injunctive relief to prevent breaches of this Agreement.
10. If, for any reason, any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability and the remainder of this Agreement shall be enforced to the fullest extent possible.
11. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, or implied or statutory, between the Parties other than as expressly set forth in this Agreement.
12. This Agreement shall not be assignable or transferable and shall enure to the benefit of and be binding upon the Parties hereto.
13. Nothing in this Agreement shall make either Party the partner of the other Party nor constitute either Party the agent or legal representative of the other Party, or create any fiduciary relationship between them.
14. Any demand, notice or other communication to be given in connection with this Agreement shall be given in writing and shall be given by personal delivery, by registered mail or by electronic means of communication addressed to Recipient as follows:

**McGill:** Office of the Vice-Principal (Research and International Relations)  
1555 Peel Street, 11<sup>th</sup> Floor  
Montreal, Quebec H3A 3L8  
Canada

Attention: [NAME OF OFFICER]  
Tel: 514.398.4200  
Fax: 514.398.1482

**Company:** [NAME and COORDINATES]

15. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument, and signatures transmitted by facsimile or in a PDF file shall be acceptable to bind each Party and shall not affect the validity of the Agreement in any way.
16. This Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec and the laws of Canada applicable therein and hereby submit to the jurisdiction of the courts of the Province of Quebec.
17. The Parties hereto hereby acknowledge that they have required this Agreement to be drawn up in the English language. *Les parties reconnaissent avoir demandé que le présent contrat soit rédigé en langue anglaise.*

**IN WITNESS WHEREOF** the Parties have duly executed this Agreement, in duplicate, effective as of the date first above written.

**The Royal Institution for the  
Advancement of Learning/McGILL  
UNIVERSITY**

By its authorized signatory:

**[COMPANY NAME]**

By its authorized signatory:

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

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

### **Acknowledgement**

I, Prof. **[PROFESSOR NAME]**, having read this Agreement, hereby agree to act in accordance with all the terms and conditions herein and further agree to ensure that all McGill participants are informed of their obligations under such terms and conditions.

\_\_\_\_\_  
Prof. **[PROFESSOR NAME]**