

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 0G4, Canada

(hereinafter referred to as “McGill”)

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

(hereinafter referred to as the “Partnering Organization”)

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

WHEREAS McGill, in particular the Academic Supervisor Prof. [PROFESSOR NAME] of McGill’s [NAME OF DEPARTMENT], and the **Partnering Organization** 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 research collaboration under the Mitacs (Accelerate program) and/or Mitacs (Elevate program) for [DESCRIBE PURPOSE] (the “Project”); **WHEREAS** during said discussions and research collaboration 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 towards 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 Project 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.
- d) “**Academic Supervisor**” means the academic supervisor of an Intern.
- e) “**Intern (s)**” mean the graduate students or postdoctoral fellows participating in the Mitacs (Accelerate) or (Elevate) program.
- f) “**Project**” means the research project entitled : “ to be completed” approved by Mitacs for funding under the Mitacs Accelerate and /or Elevate program

[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 three (3) years from the termination or expiration 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, for any purpose, within or outside of its business, other than in connection with the Project. 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 Project. 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 and Intern(s) who have a need to know such information for the Project and according to the terms and conditions contained herein. Recipient shall ensure that its employees and Intern(s) 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 6 months after termination or after completion of the Project 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:

The Royal Institution for the Advancement of Learning/McGill
University
Office of Sponsored Research
James Administration Building, 2nd Floor
845 Sherbrooke Street West
Montreal, QC H3A 0G4

Attention: [NAME OF OFFICER]
Tel: 514.398.3996
Fax: 514.398.4853

Partnering [NAME and COORDINATES]
Organization:

- 15. Counterparts.** This Agreement may be executed in any number of counterparts by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery by facsimile or by electronic transmission in portable document format (PDF) of an executed counterpart of this Agreement is as effective as delivery of an originally executed counterpart of this Agreement
- 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.** For the purposes of this Agreement, Provider shall not disclose any information that falls under United States export control laws.

[ALTERNATE CLAUSE: In the event that goods or information falling under Canadian or United States export control rules or controlled goods regulations are required to be provided by the Company to McGill, Company will so inform McGill in writing, in accordance with section 14, "Notices", prior to any such disclosure, Company shall not forward or provide any such information to McGill without the express written permission of McGill. Company shall be responsible to make it available only to eligible individuals as designated by McGill, or to obtain the appropriate license or approval from the relevant agency, or to invoke an available exception, exemption or exclusion. Notwithstanding the above, no goods or information subject to International Traffic in Arms Regulations (ITAR) shall be disclosed/transferred to McGill under this Agreement.]

- 18.** 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:

Partnering Organization
By its authorized signatory:

Per: _____
Name:
Title:

Per: _____
Name:
Title:

Acknowledgement

I, Prof. [PROFESSOR NAME], acting as the Academic Supervisor, 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]

DRAFT: Contact OSR