**Instructions for Executing this Non-Disclosure Agreement**

**Both Parties desire to exchange their Confidential Information with the other Party.**

**Please read ….. Improper signatures or incomplete information will DELAY your request!**

1. The purpose of this agreement is to enable both parties to discuss the minimum but necessary information, some of which may be confidential information, to determine if both wish to enter into a collaborative research project. This agreement does not protect research results generated.
2. Read the entire agreement and provide the necessary information in all the open fields on the first page of the NDA. **Note: if any fields are not completed…we will not execute the NDA. This is a legal agreement.**
3. The University Contact must complete their contact information and the Purpose for exchanging Confidential Information and then send the NDA to the Company Contact. The University Contact must be an employee of the UNIVERSITY.
4. The Company Contact must complete their personal and COMPANY information. The Company Contact must be an employee of the COMPANY.
5. The Company Contact should coordinate the review and execution of the NDA which must be signed by a person who has the authority to legally bind the COMPANY. This is usually an officer or executive. Verifiable electronic signatures and PDF are acceptable.
6. After signing, the COMPANY should send a PDF of the partially signed document to the Technology Transfer and Agreements Assistant at the Catalyst Centre (i.e. UofG’s Tech Transfer Office) at ipadmin@uoguelph.ca for review and processing. Normally, we do not use hardcopies, however, you may request an original hardcopy with wet signatures, but you must specify the exact address and person to receive it.
7. If the legal terms of the NDA are not acceptable to the COMPANY then please contact Meaghan Gibson at 519.824.4120 x58882 or email her at ipadmin@uoguelph.ca with your suggested edits using tracked changes in a separate word document and she will coordinate review by the UofG legal team.
8. Once the UofG Catalyst Centre has received a properly completed and partially executed NDA, an authorized official from the Catalyst Centre will execute the NDA within 48 hours of receipt.
9. As soon as we have executed the NDA, we will send a PDF copy to the Company Contact, COMPANY’s administration team, and the University Contact indicating that you are free to exchange Confidential Information.
10. Once the NDA is executed, the Catalyst Centre does not need to be copied on the specific arrangements and discussions involving the exchange of the Confidential Information. This can be done directly by the designated party Contacts.
11. Remember to keep e-copies of your **“marked Confidential Information”** which you shared with the other party.

**MUTUAL NON-DISCLOSURE AGREEMENT**

This Agreement between UNIVERSITY and COMPANY (individually Party and collectively Parties) is made effective on the (day-month-year) 2016 (“Effective Date”). This Agreement shall terminate no later than one (1) year following the Effective Date, unless terminated sooner, however each Party’s obligation not to disclose the other Party’s Confidential Information expires five (5) years after the Effective Date. This Agreement is not meant to protect trade secrets, which require non-disclosure for an indefinite time and it is not meant to be used to conduct or perform the collaborative research by the Parties under a specific and separate sponsored research agreement.

In consideration of the mutual covenants set out in this Agreement and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged by each of the Parties), the Parties agree as follows:

**UNIVERSITY** is University of Guelph,which is an academic institution with administrative offices at Catalyst Centre, 50 Stone Road East, Guelph, Ontario, Canada, N1G 2W1,

Phone: 1.519.824.4120 x58882, Email: ipadmin@uoguelph.ca *(Legal Notices should be sent to this address)*

**UNIVERSITY CONTACT** is an employee of UNIVERSITY in the Department of who will be coordinating, sending and receiving the Confidential Information: Phone: 519.824.4120 x Email: @uoguelph.ca

The **Purpose** for exchanging Confidential Information is:

 To discuss the opportunities and mutual benefits of entering into a research collaboration in the field of

**COMPANY** is , which is a corporation with administrative offices at *(Legal Notices should be sent to this address)*

**COMPANY CONTACT**(s)are employees of COMPANYwho will be coordinating, sending and receiving the Confidential Information and include:

 Phone: Email:

 Phone: Email:

COMPANY manager handling legal review is:

Phone: Email:

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**Execution:** Representatives authorized to legally bind the UNIVERSITY or COMPANY, have executed this Agreement.

Signed by COMPANY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name and Title:

Signed by UNIVERSITY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Sherri Cox, Executive Director, Research Innovation & Knowledge Mobilisation

1. **DEFINITION OF CONFIDENTIAL INFORMATION**

Confidential Information means any information disclosed by one Party (the ‘DISCLOSER’) to the other (the ‘RECIPIENT’) relating to the Purpose first stated above, which is identified by the DISCLOSER as “confidential or proprietary” using clear labels or written markings; or if orally or visually disclosed, then confirmed by DISCLOSER to the RECIPIENT in writing or other tangible medium within fifteen (15) days of the disclosure.

1. **EXCEPTIONS TO CONFIDENTIAL INFORMATION**

This Agreement does not apply to information that:

1. was available to the public at the time of disclosure, or subsequently became available to the public without fault of RECIPIENT;
2. was known to RECIPIENT at the time of disclosure or was independently developed by RECIPIENT, provided there is adequate documentation to confirm such prior knowledge or development;
3. was received by RECIPIENT from a third Party and RECIPIENT was not aware that the third Party had a duty of confidentiality to DISCLOSER in respect of the information;
4. is used or disclosed by RECIPIENT with DISCLOSER’s prior written approval; or
5. is required to be disclosed by law, provided that RECIPIENT gives DISCLOSER sufficient prior written notice of any such disclosure to allow DISCLOSER to contest the disclosure. Any action taken by DISCLOSER to contest the disclosure must not compromise the obligations of RECIPIENT under the order to disclose or cause RECIPIENT to be subject to any fine, penalty or prosecution.
6. **DESIGNATED REPRESENTATIVES**

Each Party shall designate a representative (UNIVERSITY CONTACT and COMPANY CONTACT listed above) for coordinating receipt, release and delivery of Confidential Information. Designates may be added or replaced by notifying the other Party.

1. **USE OF CONFIDENTIAL INFORMATION**

RECIPIENT may only use the Confidential Information for determining the suitability of a research collaboration or for negotiating a general business relationship between the Parties specific to the Purpose (‘Permitted Purpose’). RECIPIENT must not use the Confidential Information for any other purpose without the prior written approval of DISCLOSER.

1. **NON-DISCLOSURE**

RECIPIENT must keep the Confidential Information in confidence. RECIPIENT may only disclose the Confidential Information to its employees, directors, officers, agents, students (in UNIVERSITY’s case) and consultants who have a need-to-know the Confidential Information for the Permitted Purpose, provided that they are advised of the confidential nature of the Confidential Information and are under an obligation to maintain its confidentiality. RECIPIENT must not otherwise disclose Confidential Information to any person or third Party without the prior written approval of DISCLOSER.

1. **STANDARD OF CARE**

RECIPIENT must use at least the same standard of care in protecting the confidentiality of the Confidential Information as it uses in protecting its own information of a similar nature and, in any event, no less than a reasonable standard of care. RECIPIENT must notify DISCLOSER promptly upon discovery that any Confidential Information has been accessed or otherwise acquired by or disclosed to an unauthorized person.

1. **RETURN OF CONFIDENTIAL INFORMATION**

If requested in writing by DISCLOSER, the RECIPIENT must cease using, return to DISCLOSER and/or destroy all Confidential Information and any copies of Confidential Information in its possession or control. RECIPIENT may retain one archival copy of such Confidential Information for the sole purpose of establishing the extent of the disclosure of such Confidential Information, provided that such information is not used by RECIPIENT for any other purpose and is subject to the confidentiality requirements set out in this Agreement.

1. **NO LICENCE OR OTHER RIGHTS**

All Confidential Information remains the property of DISCLOSER and no licence or any other rights to the Confidential Information is granted to RECIPIENT under this Agreement. This Agreement does not obligate the DISCLOSER to make any disclosure of Confidential Information to the RECIPIENT or require the Parties to enter into any business relationship or further agreement.

1. **LIMITED WARRANTY & LIABILITY**

DISCLOSER warrants that it has the right to disclose the Confidential Information to RECIPIENT. DISCLOSER makes no other warranties in respect of the Confidential Information and provides all information “AS IS” without any express or implied warranty of any kind, including any warranty as to merchantability, fitness for a particular purpose, accuracy, completeness or violation of third Party intellectual property rights. Neither Party will be liable for any special, incidental nor consequential damages of any kind whatsoever resulting from the disclosure, use or receipt of the Confidential Information.

1. **GENERAL PROVISIONS**

10.1 **Notices** – All notices given under this Agreement must be in writing and delivered by hand, courier or registered mail, or confirmed email with return receipt requested, to the address of the Party set out on page one of this Agreement. Notices will be deemed to have been received on the date of delivery, if delivered by courier, on the fifth business day following receipt, if delivered by registered mail or on the first business day following the electronic confirmation of the successful transmission, if sent by confirmed email.

10.2 **Remedies** – RECIPI ENT agrees that damages may not be an adequate remedy for any breach or threatened breach of the RECIPIENT’s obligations under this Agreement. Accordingly, in addition to any and all other available remedies, DISCLOSER will be entitled to seek a temporary or permanent injunction or any other form of equitable relief to enforce the obligations contained in this Agreement.

10.3 **No Waiver** – Failure of a Party to enforce its rights on one occasion will not result in a waiver of those rights on any other occasion.

10.4 **Assignment** – Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.

10.5 **Regulatory Compliance** – Each Party must comply with all applicable laws, regulations and rules in its jurisdiction, including but not limited to those relating to the export of information and data.

10.6 **Entire Agreement** – This Agreement represents the entire agreement between the Parties with regard to the Confidential Information and supersedes any previous understandings, commitments or agreements, whether written or oral. No amendment or modification of this Agreement will be effective unless made in writing and signed by authorized representatives of both Parties.

10.7 **Severability** – If any provision of this Agreement is wholly or partially unenforceable for any reason, all other provisions will continue in full force and effect.

10.8 **Binding Effect** – This Agreement is binding upon and will inure to the benefits of the Parties and their respective successors and permitted assigns.

10.9 **Execution** – This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument. This Agreement may also be created as an electronic document and executed by electronic signature.

10.10 **Governing Law** – This Agreement will be governed and construed in accordance with the laws of the Province of Ontario and the laws of Canada and the Parties attorn to the exclusive jurisdiction of the courts of the Province of Ontario.

10.11 **Freedom of Information and Protection Privacy** – COMPANY acknowledges that UNIVERSITY is an educational institution to which the Freedom of Information and Protection Privacy Act (Ontario) applies.

End of terms.