



Mutual Non-Disclosure Agreement

This Agreement is made effective on [REDACTED], 201[REDACTED] (“Effective Date”).

between

COMPANY

a corporation incorporated under the laws of _____
 (“Company”)

- and -

GOVERNORS OF THE UNIVERSITY OF CALGARY

a provincial corporation pursuant to the *Post-Secondary Learning Act*, S.A. 2003, c.P-19.5
 (the “University”)

- A.** Dr. [REDACTED] from the University’s Department of [REDACTED] is receiving funding from Mitacs to support [REDACTED] student name [REDACTED]; and,
- B.** The University and the Company wish to exchange Confidential Information solely for the purpose of the Mitacs-Accelerate/Elevate project “PROJECT NAME” (the “Purpose”).

The parties agree as follows:

1. CONFIDENTIAL INFORMATION

- 1.1. “Confidential Information” means any proprietary information (including, without limitation, all proprietary information which relates to Provider’s business, technology, products, services, research, trade secrets, know-how, formulas, processes, ideas, and inventions) that is disclosed by a disclosing party (“Provider”) to a receiving party (“Recipient”) and clearly marked as confidential or proprietary at the time of disclosure. Confidential Information may include orally disclosed information if it is clearly identified as confidential or proprietary at the time of disclosure and such designation is confirmed in writing no later than thirty (30) days after such disclosure.
- 1.2. Confidential Information shall not include any information that Recipient can document:

- a) is or subsequently becomes generally available to the public through no act or fault of the Recipient;
 - b) was in the possession of Recipient prior to its disclosure by the Provider to the Recipient;
 - c) is independently developed by Recipient without reference to the Confidential Information;
 - d) was lawfully acquired by Recipient from a third party who was not under an obligation of confidentiality to the Provider; or,
 - e) is required to be disclosed for compliance with applicable law, government regulation or court order; however, the party required to disclose Confidential Information must give the other party prompt, advance notice of its need to disclose and must cooperate with the other party to narrow or avoid such disclosure, or assist other party to obtain an available protective order, or other remedy.
- 1.3. The Confidential Information is and will at all times remain the exclusive property of the Provider and nothing in this Agreement grants the Recipient any right, title, or interest in or to the Confidential Information.
- 1.4. Nothing in this Agreement will be construed to require Provider to disclose any confidential information to Recipient or to negotiate or enter into any business transaction with Recipient.

2. USE AND NON-DISCLOSURE

- 2.1. During the term of this Agreement and for a period of three (3) years following the termination or expiry of this Agreement, Recipient:
- a) agrees not to use the Confidential Information for anything other than the Purpose; and,
 - b) may disclose the Confidential Information only to those employees and other persons who have a need to know such information for the Purpose. Recipient shall ensure that such employees and persons accessing Confidential Information are fully aware of the obligations imposed by this Agreement. 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, any less than reasonable care.

3. TERM AND TERMINATION

- 3.1. The term of this Agreement shall be one (1) year from the Effective Date, unless otherwise extended or renewed. This Agreement may be terminated by either party by giving thirty (30) days written notice to the other party.

- 3.2. Provider may, at any time during the term of this agreement, deliver written notice to Recipient requesting either the return to Provider of all copies or extracts of Provider's Confidential Information, or the destruction of the Confidential Information followed by delivery to Provider of written notice certifying such destruction. Recipient may retain one (1) copy of the Confidential Information for the sole purpose of documenting compliance with this Agreement.

4. NO WARRANTY

- 4.1. ALL CONFIDENTIAL INFORMATION FURNISHED UNDER THIS AGREEMENT IS PROVIDED BY DISCLOSING PARTY "AS IS, WITH ALL FAULTS." DISCLOSING PARTY DOES NOT MAKE ANY WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, REGARDING THE ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, FITNESS FOR USE, NON-INFRINGEMENT OR OTHER ATTRIBUTES OF ITS CONFIDENTIAL INFORMATION. PROVIDER WILL NOT BE LIABLE FOR ANY DAMAGE OR LOSS ARISING FROM ANY USE OF THE CONFIDENTIAL INFORMATION BY RECIPIENT EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR LOSS.

5. NOTICES

- 5.1. All notices related to the administration of this Agreement will be delivered (i) by registered or certified mail, postage prepaid, (ii) by courier service, or (iii) by e-mail to the following addresses of the respective parties:

For Company:

-insert address-

Telephone:

E-mail:

For the University:

Attn: Research Services - Legal & IP
Director, Research Services
University of Calgary
MLT 3rd Floor, 2500 University Drive NW
Calgary, Alberta T2N 1N4

Telephone: 403-220-6354
E-mail: legaladm@ucalgary.ca

Notices shall be effective on the fifth (5th) business day following the date of mailing if mailed, upon documented receipt if sent by courier service, or upon transmission if sent by electronic mail. A party may change its address listed above by notice to the other party.

6. GOVERNING LAW

- 6.1. This Agreement will be governed by and interpreted in accordance with the laws of the Province of Alberta and the parties expressly attorn to the exclusive jurisdiction of the courts of Alberta for enforcement thereof.

7. GENERAL TERMS

- 7.1. Recipient acknowledges and agrees that due to the unique nature of Provider's Confidential Information, there may be no adequate remedy at law for any breach of its obligations hereunder. Provider may be entitled to appropriate equitable relief in addition to whatever remedies it might have at law. Recipient will notify Provider in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware.
- 7.2. Recipient shall not assign or transfer this Agreement or any of its rights hereunder or delegate any of its obligations hereunder (except by merger, acquisition, or operation of law) without the prior written consent of the other party, which consent shall not be unreasonably withheld. Subject to the foregoing, this Agreement shall enure to the benefit of and be binding upon the parties, their permitted successors and permitted assigns.
- 7.3. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior understanding and agreements between them respecting the subject matter hereof. It shall not be modified except by a written agreement signed by both parties.
- 7.4. The terms and conditions set out in Section 1, 2, 3, 4.1, and, 6.1 shall survive expiry or termination of this Agreement.
- 7.5. No delay, failure or waiver of either party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.
- 7.6. Nothing contained herein shall be construed so as to create a joint venture, partnership or agency between the parties hereto. Neither Sponsor nor the University shall hold itself out contrary to the terms of this provision, by advertising or otherwise, nor shall Sponsor or University be bound or become liable because of any representations, actions or omissions of the other.
- 7.7. This Agreement may be executed in any number of counterparts, with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one and the same original agreement. Delivery of this Agreement by e-mail or facsimile transmission shall constitute valid and effective delivery.

SIGNED BY THE PARTIES AS AN AGREEMENT.

COMPANY

**THE GOVERNORS OF THE UNIVERSITY OF
CALGARY**

per: _____

per: _____

Name:

Name:

Title:

Title:

Date: _____

Date: _____