

3. **EXCLUSION.**

The Confidential Information does not include information or data that:

- 3.1. is disclosed by a third party, acting independently, at arm's length and without knowledge of the contents of this Agreement, who acquires and delivers such information lawfully and without breaching any agreement, including this one;
- 3.2. is already in the public domain or, after disclosure, is published or otherwise becomes part of the public domain through no fault of Receiver;
- 3.3. is independently developed by the Receiver without access to, or use of, the Confidential Information of Discloser as evidenced by written records;
- 3.4. is already in the possession of Receiver or its employees, students, postdoctoral fellows, or other members without restriction and prior to disclosure of that specific Confidential Information hereunder; or
- 3.5. is required to be disclosed by law or by the order of any judicial, administrative, or similar body provided that Receiver has provided Discloser with notice of the required disclosure and co-operates reasonably, at Discloser's expense, in preventing and minimizing the extent of the disclosure.

4. **CONFIDENTIALITY.**

Each Receiver undertakes:

- 4.1. To treat Discloser's Confidential Information as confidential and not to disclose such Confidential Information to any third party (excepting those of its employees, Interns, and Academic Supervisors who need to know the Confidential Information and who agree to abide by and to be bound by the terms of this Agreement in substantially the form attached hereto);
- 4.2. To safeguard such Confidential Information in the same manner that Receiver treats its own confidential information and trade secrets, with not less than a reasonable degree of care; and
- 4.3. To use such Confidential Information solely for the purpose of performing the Project.

5. **PUBLICATION.**

The Parties acknowledge and agree that the Intern and Academic Supervisor intend to publish the results of research connected with the Project, and that Sponsor may also wish to publish the Project results. Confidential Information will not be included in such publication unless the Parties otherwise agree in writing or the following process is followed. In the event that Receiver intends to include Confidential Information in any publication, such publication will be provided to Discloser at least thirty (30) days in advance of the proposed publication date. Discloser may, within fifteen (15) days following receipt of a copy of the proposed publication, require by written notice to Receiver that some or all of Discloser's Confidential Information be removed from such publication. Failing receipt of such notice in the time and in the manner provided, Receiver will be at liberty to publish the proposed publication without further notice to Discloser.

6. **LIMITATIONS.**

Disclosure of the Confidential Information by Discloser will not be construed as granting Receiver a license of any rights, including without limitation any right to any copyright, trade-mark, patent or trade secret relating to the

Confidential Information in respect of which Discloser or any officer, director, employee, affiliate, partner, successor or assign now has or may in the future have any right, title or interest.

7. DISCRETION.

Notwithstanding execution of this Agreement, each Party maintains the sole and absolute discretion to determine what, if any, of the Confidential Information it will release to Receiver.

8. TERMINATION.

Either Party may for any reason terminate this Agreement upon Notice of not less than ten (10) business days, following which:

- 8.1. Receiver will immediately cease all further inspection, assessment and evaluation of the same; and
- 8.2. the Confidential Information will either be destroyed with Discloser's consent or be returned to Discloser, uncopied and undistributed, whether or not Receiver has completed the purpose for which the Confidential Information has been disclosed and delivered.

9. DISCLAIMER.

Receiver acknowledges and agrees that the Confidential Information is provided on an "AS IS" basis. Discloser makes NO REPRESENTATION OR WARRANTY (EXPRESS OR IMPLIED) WITH RESPECT TO THE CONFIDENTIAL INFORMATION, ITS ADEQUACY, ACCURACY, OR SUITABILITY FOR ANY PURPOSE INCLUDING WITHOUT LIMITATION, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT. Except as expressly agreed in writing, Discloser will not be liable to Receiver for any loss or damage arising directly or indirectly from any use of the Confidential Information, howsoever caused.

10. INDEMNITY.

Sponsor will indemnify the University of Victoria, its Board of Governors, officers, directors, agents, employees, faculty, students and postdoctoral fellows from and against any loss, cost or damage and any claim arising from any use of the Confidential Information by Sponsor, its employees, successors and assigns, including legal fees and disbursements on a solicitor and own client basis.

11. SURVIVAL.

Termination of the undertakings and covenants of a Party to this Agreement, be it actual, implied, constructive, or otherwise will not affect the non-disclosure and non-use obligations (including, without limitation, section 5 of this Agreement) of Receiver, and such obligation will survive termination of the Agreement for a period of two (2) years.

12. BREACH.

It is understood that monetary damages may not be a sufficient remedy for any breach of the Agreement, and it is agreed that each Party will be entitled to specific performance as a remedy for any such breach by the other party, in addition to all other remedies available, at law or in equity.

13. TERM.

This Agreement will be effective as of the date first written above, and will continue in force during the term of the Project and for a period of two (2) years thereafter unless terminated earlier in accordance with section 8 of this Agreement.

14. NOTICE.

Any notice, request, demand, consent or other communication (“**Notice**”) provided or permitted by this Agreement will be in writing and given by personal delivery, registered mail or transmitted by facsimile, to the address first written above. Notice will be deemed to have been received on the date on which it was delivered or transmitted by facsimile. A Party may change its address for Notice by a written request sent in accordance with this Section 14.

15. JURISDICTION.

This Agreement shall be construed and the rights of the Parties shall be governed and enforced in accordance with the laws of British Columbia (without regard to any conflict of laws principles) and in accordance with any applicable law of Canada. The Parties irrevocably consent and agree that any legal action, suit or proceeding arising out of or in any way in connection with this Agreement, shall be instituted or brought in the British Columbia Supreme Court, and by execution and delivery of this Agreement, the parties irrevocably accept and submit to, for themselves and in respect of their respective property, generally and unconditionally, the exclusive jurisdiction of such court, and to all proceedings in such court. The Parties further agree that final judgment against either of them in any such legal action, suit or proceeding shall be conclusive and may be enforced in any other jurisdiction, within or outside Canada, by suit on the judgement in accordance with the rules and procedures of such other jurisdiction, and a certified copy of such final judgment shall be conclusive evidence of the fact and amount of liability.

16. WAIVER.

No term, covenant or condition of this Agreement will be deemed waived by either Party and no breach excused, unless such waiver or consent excusing the breach is in writing and signed by both Parties.

17. AMENDMENT.

This Agreement may be amended or otherwise modified only by the written agreement of the Parties.

18. RELATIONSHIP.

The exchange of any Confidential Information between the Parties is not intended to be interpreted that the Parties have formed or will form a partnership, joint venture or other relationship. Any business relationship between the parties, if any, must be governed by separate agreement.

19. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the Parties, and supersedes all prior representations, understandings and agreements between the Parties with respect to the Confidential Information. In the event that any term, covenant or condition of this Agreement is declared indefinite, invalid, illegal or unenforceable by a court having jurisdiction this Agreement with respect to the enforceable terms, covenants or conditions will continue in force.

20. FURTHER ASSURANCES.

Each Party will execute and deliver to the other Party, on request, such further assurances and documents, and do such further things, as may reasonably be required to give full force and effect to this Agreement.

21. ENUREMENT.

This Agreement will enure to the benefit of and will bind the successors, heirs and assigns of each Party.

22. NO ASSIGNMENT.

This Agreement and the benefits, advantages and entitlements of the Parties under this Agreement cannot be assigned or transferred, in whole or in part, directly or indirectly, by either Party, without first obtaining the written consent of the other Party.

23. HEADINGS.

The headings appearing in this Agreement have been inserted for reference and as a matter of convenience and will not, for any purpose whatsoever, be deemed part of this Agreement.

24. COUNTERPARTS.

This Agreement may be executed in counterparts either through original or facsimile signatures, which together shall form an Agreement. An executed copy of the Agreement delivered by facsimile or other electronic means shall constitute valid execution and delivery of this Agreement.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed on the day, month and year first above written.

SPONSOR, _____ :

Signature: _____
Name: _____
Title: _____

Signature: _____
Name: _____
Title: _____

UNIVERSITY OF VICTORIA:

Per: _____
Dr. Rachael Scarth
Associate Vice-President Research - Operations

The undersigned each hereby acknowledge having read and understood the terms of the Reciprocal Non-Disclosure Agreement made between the University of Victoria and the Sponsor (the "Agreement"). In consideration of access to the Confidential Information pursuant to the Agreement:

- 1. I agree to comply with and to be bound by the terms of the Agreement as if a party thereto; and**
- 2. I acknowledge and agree that I have had or been provided with the opportunity to seek independent legal advice with respect to this agreement.**

Intern:

Faculty Advisor:

Signature

Signature

Print Name

Print Name

Date: _____

Date: _____