# MODEL CONFIDENTIALITY DISCLOSURE AGREEMENT (mCDA)

**Between**

● [**INSERT** NAME OF COMPANY AND REGISTERED ADDRESS OF COMPANY]

**“The Company”**

and

● [**INSERT** NAME OF RECIPIENT ORGANISATION and ADDRESS OF RECIPIENT ORGANISATION]

**“The Recipient”**

Each of which shall be a **“Party”** and collectively the **“Parties”**.

**Whereas**:

1. The Company [as an independent contractor on behalf of [**insert** Sponsor name and registered address] (the “Sponsor”)] is willing to disclose certain Confidential Information (as hereinafter defined) to the Recipient for the purpose of discussions relating to the feasibility of the Recipient undertaking the research project entitled “[**add** protocol title]” with the protocol number “[**insert** protocol number]” [**delete** if not relevant to this study] (“Research Project”); (the “Purpose”).
2. The Company wishes to protect such Confidential Information and accordingly the Parties have agreed to the terms and conditions of protection contained in this Agreement (the “Agreement”).

NOW THEREFORE THE PARTIES HAVE AGREED AND DO HEREBY AGREE AS FOLLOWS:

1. In this Agreement:
	1. **Affiliate** means any business entity that controls, is controlled by or is under the common control with the Company [or Sponsor], save where there are contractual arrangements in place to exclude such affiliate. For the purposes of this definition, a business entity shall be deemed to control another business entity if it owns, directly or indirectly, in excess of 50% of the voting interest in such business entity or the power to direct the management of such business entity, by contract or otherwise.
	2. **Agent** shall include but is not limited to, any person (including any proposed investigator, nurse or other healthcare professional) providing services to the Recipient under a contract for services (commonly known as an honorary contract) or otherwise any such person’s principal employer in the event that it is not the Recipient and/or any contracted third party providing services to a Party under a contract for services or otherwise.
	3. **Confidential Information** means in each case in connection with the Purpose all information provided by or made available by the Company or Affiliate obtained as a result of this Agreement, including but not limited to, information on current or proposed research projects, results, data, conclusions, draft or proposed protocols, feasibility questionnaires and / or information on clinical research and development, procedures, technologies, strategy, science, finance, business, know-how and intellectual property of the Sponsor and / or their Agents or Affiliates, whether disclosed orally, electronically or in any other way whatsoever of representing or recording information.
	4. **EIR** means either the Environmental Information Regulations 2004 or the Environmental Information (Scotland) Regulations 2004, as applicable to the place of constitution of the Recipient.
	5. **FOIA** means either the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2002, as applicable to the place of constitution of the Recipient.
2. In order to enable the Parties to engage in discussions for the Purpose, the Company may disclose Confidential Information to the Recipient subject to the terms and conditions of this Agreement. The Company may disclose to the Recipient such Confidential Information within its possession or control, as it deems necessary and appropriate, for the Purpose. The Recipient shall accept and hold such Confidential Information in strict confidence in accordance with the provisions of Clause 3 below.
3. The Recipient undertakes for so long as the Confidential Information remains confidential in character:
	1. to keep all Confidential Information confidential and to take reasonable endeavours, consistent with the steps it takes to protect its own comparable confidential information, to ensure that copies including the original received of the Confidential Information made by or on behalf of the Recipient are protected against theft or other unauthorised access;

not to communicate or otherwise make available any such Confidential Information to any third party except with specific prior written consent from the Company, save where disclosure is required by a regulatory authority or by law (including any disclosure required to ensure compliance, by the Recipient, with the applicable FOIA and / or EIR in accordance with Clause 5 of this Agreement). The Recipient shall inform the Company, within a reasonable time prior to being required to make the disclosure (and, where appropriate, in accordance with Clause 5), of the requirement to disclose and the information required to be disclosed, and the Recipient shall disclose the minimum amount of Confidential Information which are strictly required to abide with the compulsory disclosure;

* 1. to disclose Confidential Information only to such Agents of the Recipient who have a specific need to receive such Confidential Information for the Purpose, and who are bound by obligations of confidentiality towards Recipient that are substantially similar to those under this Agreement. The Recipient remains responsible for the compliance of its Agents; and
	2. not to use, or allow to be used, Confidential Information other than solely for or in relation to the Purpose, unless (and then only to the extent to which) any other use shall have been specifically authorised in writing by the Company.
1. The obligations in Clause 3 shall not apply, or shall cease to apply, to such Confidential Information as the Recipient can show to the reasonable satisfaction of the Company [and/or Sponsor]:
	1. has become public knowledge other than through any fault of the Recipient;
	2. which Recipient can show by written record was already known to the Recipient prior to disclosure by the Company and without any obligation of confidence;
	3. which Recipient can show by written record was independently developed by the Recipient without recourse to or use of any Confidential Information; or
	4. has been received by the Recipient from a third party [who is not the Sponsor and] who, as far as the Recipient is aware, did not acquire it in confidence from the Company or any Affiliate, or someone owing a duly known duty of confidence to the Company or any Affiliate.
2. The Company [and Sponsor] acknowledges that the Recipient is subject to the applicable EIR and FOIA. This includes associated guidance and codes of practice.
	1. If the Recipient or its Agent(s) receive a request under the FOIA and/or EIR to disclose information relating to this Agreement, or the Research Project, it will notify the Company as soon as is reasonably practicable, and in any event, no later than five (5) working days after receiving the request. The Recipient will consult with the Company in accordance with all applicable guidance.
	2. The Company acknowledges that subject to Clause 5.2.1, the decision on whether any exemption applies to a request for disclosure of recorded information under the FOIA and/or EIR is a decision solely for the Recipient.
		1. The Company shall cooperate with the Recipient and shall use its reasonable endeavours to respond within ten (10) working days of the Recipient’s reasonable request for assistance.
	3. Where the Recipient determines that it will disclose Confidential Information pursuant to FOIA and/or EIRs, notwithstanding any objections from the Company, it will notify the Company in writing, giving at least four (4) working days’ notice of its intended disclosure.
3. The Recipient may make only such copies of Confidential Information as are strictly necessary for the Purpose and must ensure that all such copies are clearly marked as confidential and can be clearly separated from the Recipient’s own information. Any copy so made shall also constitute Confidential Information. The Recipient shall, upon the Company’s written request and at the expense of the Company, return to the Company all Confidential Information as is in tangible form (together with all copies thereof within its possession or control) or make such other disposal thereof as may be stipulated by the Company. Notwithstanding the foregoing, the Recipient may retain one (1) copy of the Confidential Information for audit purposes. The Recipient shall not be required to destroy any electronic back-up that has been created solely by its automatic or routine archiving and back-up procedures, to the extent created and retained in a manner consistent with its standard archiving and document retention policies. Any Confidential Information retained in accordance with the foregoing exceptions shall continue to be protected by the Recipient in accordance with the provisions of this Agreement.
4. Except as expressly provided, nothing in this Agreement nor the subsequent disclosure of Confidential Information pursuant to this Agreement shall be construed as any partnership or joint venture between the Parties and the signing of this Agreement shall not be construed as a commitment or obligation, whether express or implied, on the part of either Party to conduct further negotiations or to enter into any further agreement with the other.
5. The rights and obligations of the Parties under this Agreement are personal and may not be assigned or otherwise transferred at any time without the prior written consent of the other Party which consent shall not be unreasonably withheld, except that Company may have the option of assigning rights (though not obligations) to one or more of its Affiliates; provided that it shall be a requirement in all cases of assignation that the assignee undertakes to perform all outstanding obligations of the assignor as though the assignee had been an original Party hereto.
6. This Agreement is intended by the Parties hereto as the final expression of their understanding with respect to the subject matter hereof and is the complete and exclusive statement of the terms hereof notwithstanding any oral representations or statements to the contrary heretofore made.
7. This Agreement shall commence on the last date of execution hereof and shall continue in force to receive confidential information for [two (2) years **OR INSERT PERIOD**]. The obligations regarding the received Confidential Information related to this Agreement shall remain in force for ten (10) years from the last date of execution hereof. The obligations of confidentiality in this Agreement shall apply to all Confidential Information disclosed by the Company or any Affiliate for the Purpose, whether disclosed on or after the date or dates of execution of this Agreement. In the event that the Parties elect to enter into a separate clinical trial programme or study agreement in relation to the Research Project, this Agreement shall terminate and rights and obligations in relation to the Confidential Information shall be as specified in such clinical trial programme or study agreement.
8. The terms of this Agreement may only be amended or modified by written agreement signed by the authorised representatives of the Parties.
9. The Recipient’s use of any Confidential Information provided to it pursuant to this Agreement shall be conducted at the Recipient’s own risk and the Company shall have no liability with respect thereto.
10. Where the Recipient is constituted in England, Wales or Northern Ireland, in the event of breach of this Agreement, money damages may be inadequate to remedy any such breach. As a result, the Company may seek, and a court of competent jurisdiction may be requested to grant, an order for performance, or injunctive relief or any other relief as a remedy for any breach of this Agreement. Such remedy may be in addition to all other remedies, including money damages, available to the Company at law or at equity.

Where the Recipient is constituted in Scotland, in the event of breach of this Agreement, money damages may be inadequate to remedy any such breach. As a result, the Company may seek, and a court of competent jurisdiction may be requested to grant, an order for specific implement, an interdict or interim interdict or any other relief as a remedy for any breach of this Agreement. Such remedy may be in addition to all other remedies, including money damages, available to the Company at law.

1. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument and may be exchanged via electronic mail in portable document format (“pdf”) or using electronic signatures.
2. [Nothing in this Agreement is intended to confer on any person any right to enforce any term of this Agreement which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999 or Contracts (Third Party Rights) (Scotland) Act 2017.] **OR** [Both parties agree that the Sponsor is a third-party beneficiary of this Agreement and may enforce its rights hereunder under the Contracts (Rights of Third Parties Act 1999 or Contracts (Third Party Rights) (Scotland) Act 2017.]
3. The furnishing of Confidential Information to the Recipient shall not constitute any grant, option or license to same under any patent or other rights now or hereinafter held by Company or held by any third party from whom Company receives information protected by a confidentiality agreement, [including Sponsor] and Company reserves all rights and privileges therein, excluding as outlined in this Agreement.
4. If any clause or part of this Agreement is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from this Agreement and shall be ineffective without, as far as possible, modifying any other clause or part of this Agreement and shall not affect any other provisions of this Agreement which shall remain in full force and effect.
5. Where the Recipient is constituted in England then this Agreement shall be governed and construed in accordance with the laws of England and Wales and the Courts of England and Wales shall have exclusive jurisdiction to hear any dispute relating to this Agreement.

Where the Recipient is constituted in Wales then this Agreement shall be governed and construed in accordance with the laws of England and Wales as applied in Wales and the Courts of England and Wales shall have exclusive jurisdiction to hear any dispute relating to this Agreement.

Where the Recipient is constituted in Scotland, this Agreement shall be governed and construed in accordance with the laws of Scotland and the Courts of Scotland shall have exclusive jurisdiction to hear any dispute relating to this Agreement.

Where the Recipient is constituted in Northern Ireland, then this Agreement shall be governed and construed in accordance with the laws of Northern Ireland and the Courts of Northern Ireland shall have exclusive jurisdiction to hear any dispute relating to this Agreement.

IN WITNESS WHEREOF this Agreement is executed as follows:

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| Signed for and on behalf of [**INSERT** name of Company]:Signature:Print name:Title:Date: | Signed for and on behalf of [**INSERT** name of Recipient]:Signature:Print name:Title:Date: |

*N.B. It is a requirement in Scotland, and best practice throughout the UK, that the signature pages of the Agreement are part of the body of the Agreement. Please therefore ensure that the last clause of the Agreement appears on the same page as the signature block.*