

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 Purpose for exchanging Confidential Information must be filled. The University Contacts must be employees 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. Signed PDF documents should be sent to the Technology Transfer and Agreements Assistant 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 the Technology Transfer and Agreements Assistant at 519.824.4120 x58882 or via email at ipadmin@uoguelph.ca with your suggested edits using tracked changes in a separate word document who will then coordinate review by the UofG legal team.
8. Once the UofG has received a properly completed and partially executed NDA, an authorized official from the Research Innovation Office 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 UofG 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 "**clearly marked Confidential Information**" or emails confirming the date and general topic of a discussion which the Parties want to be included as Confidential Information.
12. All University of Guelph employees are encouraged to be familiar with the [Guidelines for Categorization and Security of Research Data & Information](#) as well as [Information Security](#) tips and tools.

INCOMING - NON-DISCLOSURE AGREEMENT WITH TRADE SECRET

This Agreement between UNIVERSITY and COMPANY (individually Party and collectively Parties) is made effective on the (day-month-year) **date** (“Effective Date”). This Agreement shall terminate no later than two (2) years following the Effective Date, unless terminated sooner. UNIVERSITY’s obligation not to disclose the COMPANY’s Confidential Information expires five (5) years after the Effective Date and UNIVERSITY’s obligation not to disclose the COMPANY’s Trade Secrets does not expire, subject to the exceptions as described in Section 3 of this 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 Research Innovation Office, 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(s) are employee(s) of University of Guelph who will be coordinating, sending and receiving the Confidential information:
Name: Derek Vella Phone: 1.519.824.4120 x58894 Email: dvella@uoguelph.ca Dept: Guelph Food Innovation Centre – Department of Food Science

The **Purpose** for obtaining COMPANY’s Confidential Information is:
Please describe the purpose of the engagement

COMPANY is **company name** which is a corporation with administrative offices at: **company address**
(Legal Notices will be sent to this address)

COMPANY manager coordinating legal review is: **company manager**
Phone: **company manager phone** Email: **company manager email**

COMPANY CONTACT is **company contact**
who is an employee of COMPANY responsible for coordinating/sending the Confidential information
Phone: **company contact phone** Email: **company contact email**

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

Signed by COMPANY: _____ Date: _____
Name and Title: **company signed**

Signed by UNIVERSITY: _____ Date: _____
Steve De Brabandere, Director, Technology Transfer & Industry Liaison

1. DEFINITION OF CONFIDENTIAL INFORMATION

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

2. DEFINITION OF TRADE SECRET

“Trade Secret” or “Trade Secrets” means information, including a formula, pattern, compilation, program, device, method, technique, or process that (i) derives economic value from not being known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use and (ii) is the subject of reasonable efforts to maintain its secrecy, which is identified by the COMPANY as a trade secret at the time of disclosure and is marked as “trade secret” using clear labels or written markings; or if orally or visually disclosed, then confirmed by COMPANY in writing or other tangible medium as a trade secret within fifteen (15) days of the disclosure.

3. EXCEPTIONS TO CONFIDENTIAL INFORMATION and TRADE SECRETS

This Agreement does not apply to information that:

- i. was available to the public at the time of disclosure, or subsequently became available to the public without fault of UNIVERSITY;
- ii. was known to UNIVERSITY at the time of disclosure or was independently developed by UNIVERSITY, provided there is adequate documentation to confirm such prior knowledge or development;
- iii. was received by UNIVERSITY from a third Party and such third party did not have a duty of confidentiality to COMPANY in respect of the information;
- iv. is used or disclosed by UNIVERSITY with COMPANY’s prior written approval;
- v. COMPANY no longer maintains in confidence in the case of Confidential Information or no longer makes reasonable efforts to maintain its secrecy in the case of Trade Secrets; or
- vi. is required to be disclosed by law, provided that UNIVERSITY provides COMPANY sufficient prior written notice of any pending disclosure to allow COMPANY to contest the disclosure. Any action taken by COMPANY to contest the disclosure must not compromise the obligations of UNIVERSITY under the order to disclose or cause UNIVERSITY to be subject to any fine, penalty or prosecution.

4. DESIGNATED REPRESENTATIVES

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

5. USE OF CONFIDENTIAL INFORMATION AND TRADE SECRETS

UNIVERSITY may only use the Confidential Information and Trade Secrets for the Purpose. UNIVERSITY must not use the Confidential Information or Trade Secrets for any other purpose without the prior written approval of COMPANY.

6. NON-DISCLOSURE

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

7. STANDARD OF CARE

UNIVERSITY must use at least the same standard of care in protecting the confidentiality of the Confidential Information or Trade Secrets as it uses in protecting its own information of a similar nature and, in any event, no less than a reasonable standard of care. UNIVERSITY must notify COMPANY

promptly upon discovery that any Confidential Information or Trade Secret has been accessed or otherwise acquired by or disclosed to an unauthorized person.

8. **RETURN OF CONFIDENTIAL INFORMATION AND TRADE SECRETS**

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

9. **NO LICENCE OR OTHER RIGHTS**

All Confidential Information and Trade Secrets remains the property of COMPANY and no license or any other rights to the Confidential Information or Trade Secrets is granted to UNIVERSITY under this Agreement. This Agreement does not obligate the COMPANY to make any disclosure of Confidential Information or Trade Secret to the UNIVERSITY or require the Parties to enter into any business relationship or further agreement.

10. **LIMITED WARRANTY & LIABILITY**

COMPANY warrants that it has the right to disclose the Confidential Information and Trade Secrets to UNIVERSITY. COMPANY makes no other warranties in respect of the Confidential Information or Trade Secrets 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 use or receipt of the Confidential Information or Trade Secrets by UNIVERSITY.

11. **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** – UNIVERSITY agrees that damages may not be an adequate remedy for any breach or threatened breach of the UNIVERSITY's obligations under this Agreement. Accordingly, in addition to any and all other available remedies, COMPANY 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** – The 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 Trade Secrets 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.