

Name: **CBU Non-Disclosure/Intellectual Property Schedule**

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# Cape Breton University - Non-disclosure/IP Schedule

## SCHEDULE PERTAINING TO NON DISCLOSURE OF CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

This Schedule, attached to and forming part of the employment contract is effective upon signing of the employment contract by the CBU research assistant / employee hired under non-union research contracts (“**Employee**”) between Cape Breton University (“**CBU**”) and the Employee (each a “**Party**” and together the “**Parties**”).

### RECITALS

WHEREAS:

A) Our mutual objective under this Schedule is to protect Confidential Information while engaging in joint research activities (“**Research Activities**”) or business operations (“**Business Operations**”); and

B) It is therefore necessary for CBU to disclose to the Employee certain Confidential Information deemed proprietary and confidential in connection with any such Research Activities or Business Operations, and for Employee to assign certain intellectual property rights to CBU;

THEREFORE for valuable consideration received the Parties agree as follows:

### TERMS OF AGREEMENT

#### 1. Definitions:

1.1 “**Confidential Information**” shall be defined as any information of a Party or its affiliates not publicly known and of a confidential or proprietary nature, whether disclosed in writing or via electronic media, and whether or not labeled “Confidential” “Proprietary,” or the like. Confidential Information shall include, but not be limited to, Materials (as defined below), technical or business information, designs, plans, drawings, software, data, engineering and design practices, techniques, operating conditions, inventions, equipment, equipment specifications, and prototypes; procedures; operational plans and processes; projections; results; documentation, models, maps, images, reports, letters, notes, minutes; intellectual property strategies and plans; research and other technical information disclosed by CBU to the Employee or material or items for which the Employee has received notice or would be aware (acting reasonably) of its proprietary and confidential nature; and any notes, extracts, minutes, abstracts, analyses, copies or other materials prepared by the Employee, which are copies or derivative works of the Confidential Information.

1.2 “**Foreground Intellectual Property**” (“**FIP**”) means all technical data, including without limitation, all designs, specifications, software, data, drawings, plans, reports, patterns, models, prototypes, demonstration units, practices, inventions, methods, applicable special purpose equipment and related technology, processes or other information conceived, produced, developed or reduced to practice in carrying out the Research Activities and Business Operations, and all rights therein, including without limitation, patents, copyrights, industrial designs, trade-marks, and any registrations or applications for the same and all other rights of intellectual property therein, including any rights which arise from the above items being treated by CBU as trade secrets and/or Confidential Information.

1.3 “**Materials**” means all work arising from and results of the Research Activities and Business Operations, and Materials may include Confidential Information.

1.4 “**Moral Rights**” means noneconomic rights of the creators of copyrighted works, including attribution, right to publish and the right to alter, distort or mutilate the work.

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## 2. Confidentiality:

2.1 The Party disclosing Confidential Information is (check one only):

Employee  CBU  Both Parties

2.2 The Employee shall use the Confidential Information solely for the purpose of consideration, evaluation and execution of Research Activities or Business Operations as authorized CBU, except as permitted by section 3. (Publication). The Employee understands and acknowledges that no other use of the Confidential Information for any other purpose is authorized or allowed under the terms of this Schedule.

2.3 The Employee shall not disclose to any third person, firm, corporation, entity, organization, institution, or party details of the Research Activities or Business Operations.

2.4 The Employee shall use at least the same degree of care (and not less than a reasonable standard of care) in safeguarding, protecting, and preserving the Confidential Information of CBU as it uses for its own confidential and proprietary information.

2.5 The Employee shall promptly notify CBU in writing if it has reason to believe that unauthorized use, possession, acquisition, dissemination or disclosure of any Confidential Information has occurred, and the Employee shall use its reasonable endeavors to cooperate with any appropriate action taken by CBU to protect CBU's proprietary rights, including enforcing the terms of any agreement between the CBU and/or Employee, and the individual(s) responsible for unauthorized use or disclosure.

2.6 Notwithstanding the foregoing, the Employee shall have no obligation to treat as Confidential Information, information, data, or items which:

2.6.1 were in the possession of or known by the Employee at the time of disclosure without an obligation to maintain its confidentiality prior to its receipt;

2.6.2 are or becomes widely known to the public without violation of this Schedule;

2.6.3 are disclosed lawfully to the Employee by a third party having the right to disclose it without breaching an obligation of confidentiality;

2.6.4 can be demonstrated are independently developed by the Employee without use or benefit of the Confidential Information;

2.6.5 are pre-approved in writing by CBU for disclosure; or

2.6.6 are required to be disclosed by the Employee by law or court order or by a regulatory body, provided that the Employee shall, if permissible, promptly notify CBU of such required disclosure and, where this is permissible, an opportunity to oppose or limit disclosure is given to CBU. Any disclosure compelled under such law or court order or pursuant to a regulatory enquiry or demand shall be limited to the minimum acceptable disclosure.

2.7 All Confidential Information shall be and remain the property of CBU.

## 3. Intellectual Property

3.1 All Materials and all results and proceeds of the services provided by Employee in relation to the Materials, and whether developed or occurring at the offices or facilities of CBU or elsewhere, including but not limited to all ideas, concepts, inventions, computer programs, documentation, copyright, trademarks, patents, industrial designs and all other intellectual property and all right, title and interest therein shall be the sole and exclusive property of CBU in perpetuity and are hereby assigned to CBU. Employee agrees that the Materials shall constitute a work made for hire or a work done in the course of employment so that CBU shall be the first owner of the copyright in the Materials in accordance with applicable copyright law.

3.2 Employee waives all moral rights in the Materials in favour of CBU.

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- 3.3 Without limiting the foregoing, CBU may exploit the Materials in all manner and media, whether now known or hereafter devised, throughout the universe in perpetuity, without further consideration of any form to Employee, and CBU may edit or modify the Materials in any way, or may juxtapose the Materials with, or incorporate the Materials into any other works.
- 3.4 Employee agrees that CBU may register intellectual property ownership in the Materials in CBU's name, including any renewals or extensions thereof, in perpetuity worldwide. At the request and expense of CBU, Employee shall do all acts and sign all documentation necessary in order to confirm the assignment and waiver of all rights in the Materials to CBU, and to enable CBU to register patents, copyrights, trademarks, industrial designs and such other protections as CBU requires anywhere in the world. Employee hereby irrevocably constitutes and appoints CBU as its lawful attorney-in-fact (which appointment is a power coupled with an interest) to do all acts and things permitted and/or contemplated by the terms of this Schedule.

## **4. Publication**

- 4.1 Any publications resulting from the Research Activities or Business Operations, that may refer to Confidential Information, shall prior to any publication or distribution be subject to review by CBU in accordance with this Schedule.
- 4.2 Subject to the terms of this section 4, the Parties agree that neither Party shall be restricted from presenting at symposia, national, or regional professional meetings, or from publishing in abstracts, journals, theses, or dissertations, or otherwise, whether in printed or in electronic media, the methods and results of the Research Activities or Business Operations. The Parties acknowledge that in doing so, s/he shall recognize the contributions of the other Party in the publication or presentation.
- 4.3 The Party shall provide to the other Party copies of any proposed publication or presentation arising from his/her work on the Research Activities or Business Operations at least forty five (45) days prior to its intended release to anyone not a party to this Schedule. The receiving Party may, within thirty (30) days of receipt of a proposed publication or presentation, object in writing to the proposed presentation or proposed publication on the grounds that it contains Confidential Information, or potentially patentable FIP.
- 4.4 In the event that the receiving Party makes such objection on the basis of Confidential Information, the sending Party shall ensure that s/he removes such Confidential Information immediately from the proposed presentation or publication, after which the sending Party may proceed with said presentation or publication.
- 4.5 In the event that the receiving Party makes such an objection on the basis of potentially patentable FIP, the sending Party shall refrain from making such publication or presentation for a period not to exceed forty five (45) days from the date of the objection, after which s/he may proceed with said presentation or publication. Should the sending Party opt to remove the references to potentially patentable FIP, s/he may proceed with publication or presentation sooner, upon the receiving Party being satisfied that its objection has been addressed.
- 4.6 In the event that the receiving Party is precluded from securing adequate legal protection for the patentable FIP contained in the sending Party's proposed publication or presentation within the timeframe allotted above, the receiving Party shall provide written notice to the sending Party that it requires a further thirty (30) day extension to secure such protection, and the sending Party shall refrain from presenting or publishing the material until such time as the receiving Party advises that adequate legal protection has been secured for the patentable FIP, **or the further (30) day extension period allotted above has expired, whichever occurs first.**
5. **Accuracy of Information:** Neither Party makes any representation or warranty with regard to the accuracy of any of the Confidential Information and Materials and neither Party shall have any liability to the other in this regard.

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6. **Duration:** Except as otherwise agreed between the Parties, this Schedule shall remain in effect for a period of ten (10) years from the Date that Confidential Information is disclosed, but for greater certainty such limited term shall not limit CBU's rights to any intellectual property in accordance with this Schedule.
7. **Return of Confidential Information:** Each Party agrees that the Confidential Information disclosed or provided to it shall remain the exclusive property of CBU. The Employee shall promptly return all Confidential Information disclosed, or provided by or to CBU with all copies and excerpts, if any, upon completion of the Research Activities or Business Operations or, upon reasonable written demand by CBU.
8. **Information Disclosure:** The Employee agrees not to make any publicity release, general disclosures to others, or other announcements concerning the nature of the activities under evaluation without the written approval of CBU.
9. **Future Relationships:** Neither this Schedule nor anything disclosed and/or provided hereunder shall be construed in any manner to create an obligation or expectation or right to enter into any contract, agreement, joint activity, or business arrangement with the other Party or its affiliates.
10. **Remedies:** Employee acknowledges that damages may not be an adequate remedy for any breach of this Schedule. Therefore Employee agrees that CBU shall be entitled to pursue injunctive relief to restrain the Employee from breaching this Schedule, which right shall be cumulative and in addition to any other remedy which may be available to CBU.
11. **Assignment:** Employee shall not assign or otherwise transfer any interest in this Schedule without the prior written consent of CBU. Any purported assignment without such consent is null and void.
12. **Commercialization:** In the event that CBU commercializes the results of the Research Activities and the Employee is found to be a named inventor in such results CBU will, in good faith, negotiate a separate agreement to determine an equitable compensation appropriate to the level of contribution by the Employee.
13. **Amendment:** No change or modifications of any terms or conditions herein shall be valid or binding on either Party unless made in writing and signed by the authorized representatives of the Parties.
14. **Notices:** Any and all notices, consents, demands or other communications required or permitted to be given by one Party to the other under this Schedule shall be in writing and either delivered by hand or registered mail to the last known addresses for the Employee and / or the CBU Dean of Research and Graduate Studies.
13. **Choice of Law and Remedies:** Regardless of where this Contract shall be entered into or performed, the laws of the Province of Nova Scotia shall control the interpretation and the performance of this Contract and any further agreements which may result from it. Any claim arising out of or relating to this Contract or the breach thereof shall, if not finally settled by mutual agreement of the parties hereto, be settled by arbitration before a single arbitrator sitting at Sydney, Nova Scotia under the Commercial Arbitration Act (Nova Scotia).
15. **Entire Agreement:** This Schedule merges all prior discussions between the Parties and constitutes the complete and entire understanding of the Parties with respect to the matters contained in this Schedule. If a portion of this Schedule is declared null and void by the operation of law, only that part found to be in contravention of law shall be voided and the remainder of this Schedule shall continue in full force and effect so as to provide the maximum allowable protection to the confidential and proprietary information of the Parties.

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Employee Signature

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Date

*NB: It is agreed by all parties to this agreement that, in the absence of an assignment of IP to CBU by the faculty member, the research referenced under this NDA and completed by the student/RA is governed by the appropriate Collective Agreement or research policy.*