

# MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

This Mutual Confidential Disclosure Agreement (the "Agreement") is effective as of the date of full execution (the "Effective Date") and is by and between MULTI-HEALTH SYSTEMS INC. addressed at 3770 Victoria Park Avenue, Toronto, Ontario, M2H 3M6, Canada (hereinafter "MHS") and \_\_\_\_\_ addressed at \_\_\_\_\_ (hereinafter the "Recipient").

For and in consideration of each Party's disclosure of *Confidential Information* (defined below) to the other, the mutual covenants set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

## DEFINITIONS

1.1 "**Confidential Information**" means any and all information disclosed by or on behalf of a Party to the other Party, in any written, oral, visual, or electronic form, whether disclosed before or after the *Effective Date*, and whether or not the information is marked, described, or designated as confidential, secret, or proprietary. *Confidential information* may include, but is not limited to, Test concept and all material and information, related to and including, but not limited to test items, patterns and directions, training materials, services, trainings, algorithms, and includes all versions, derivatives and translations relating thereto; author information, theoretical framework, financial statements and information, business and marketing plans, timelines and strategies, customer lists and information, forecasts, delivery options, publishing plans and dates, data collection related information, business partners and/or affiliates, vendors, purchase requirements, sales figures, pricing and pricing strategies, cost of goods, intellectual property, specifications, research, formulations, drawings, designs, inventions, trade secrets or know-how. *MHS Confidential Information* includes information regarding MHS or its affiliates. When used in this Agreement, *Confidential Information* may mean *MHS Confidential Information*, *Company Confidential Information*, or both, as the context requires.

1.2 "**Purpose**" means \_\_\_\_\_

## ARTICLE 2 DISCLOSURES AND CONFIDENTIALITY OBLIGATIONS

2.1 For a period of three (3) years from the date of disclosure, each Party shall treat as confidential and shall not directly or indirectly use or disclose the other Party's *Confidential Information* for any purpose other than for the *Purpose*, as directed in writing by the disclosing Party, or as required by law. Notwithstanding the foregoing, financial information regarding MHS or its affiliates must be treated as confidential indefinitely and shall never directly or indirectly be used or disclosed for any purpose other than for the *Purpose*, as directed in writing by MHS, or as required by law. Nothing in this Agreement is intended to limit the Parties' rights under applicable law relating to the protection of trade secrets, and *Confidential Information* that constitutes a trade secret within the meaning of applicable law shall be protected under this Agreement for as long as such information remains a trade secret.

2.2 The receiving Party may only disclose the disclosing Party's *Confidential Information* to the receiving Party's employees, officers, agents, attorneys, accountants, auditors, or consultants (the "**Representatives**") who have a need to know related to the *Purpose* and who are subject to obligations of confidentiality that are no less stringent than the terms and conditions herein. The receiving Party will be

responsible for any breach of this Agreement by its Representatives.

**2.3** The receiving Party shall take reasonable measures of a technological or administrative nature to restrict access to the *Confidential Information* to its Representatives who have a need to know such information, and then only to the extent necessary to carry out the *Purpose* stated above and to exclude unauthorized personnel and visitors from areas where the disclosing Party's *Confidential Information* is or may be available or observable.

**2.4** The receiving Party shall use at least the same standard of care in protecting the confidentiality of the disclosing Party's *Confidential Information* as it uses in protecting its own information of a similar nature and, in any event, no less than a reasonable standard of care. The receiving Party must notify the disclosing Party promptly upon discovery that any of the disclosing Party's *Confidential Information* has been accessed by, acquired by, or otherwise disclosed to an unauthorized Party through an act or omission of the receiving Party or its Representatives.

**2.5** The receiving Party shall not use the disclosing Party's *Confidential Information* in any way to compete with the disclosing Party.

### **ARTICLE 3 EXCEPTIONS**

**3.1** *Confidential Information* does not include information that: **(i)** was rightfully in the receiving Party's possession prior to the date of initial disclosure; **(ii)** is published or becomes otherwise available to the public or part of the public domain through no act or failure to act of the receiving Party; **(iii)** is received by the receiving Party from a third party who had a *bona fide* right to make such information available; or **(iv)** is independently developed by the receiving Party without reference to the disclosing Party's *Confidential Information*, in each case, as may be evidenced in writing by the receiving Party.

**3.2** If the receiving Party or any of its Representatives are required by law or requested in any judicial or regulatory proceeding or by any governmental authority to disclose any of the disclosing Party's *Confidential Information*, the receiving Party shall, or shall cause its Representatives to, if permitted under applicable law, promptly notify the disclosing Party of the existence, terms and circumstances of such request or requirement so that the disclosing Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. If, in the absence of a protective order or the receipt of a waiver hereunder, the receiving Party or its Representatives are compelled to disclose the *Confidential Information*, the receiving Party and its Representatives may disclose only such of the *Confidential Information* to the Party compelling disclosure as is required by law.

### **ARTICLE 4 RETURN OF MATERIALS**

**4.1** Upon the written request of the disclosing Party, the receiving Party shall cease using the disclosing Party's *Confidential Information* and, within ten (10) business days of such request, shall promptly return or destroy the originals and any copies in any form of the disclosing Party's *Confidential Information* in its possession or control and certify in writing that it has complied fully with the provisions of this Article. Such return or destruction of *Confidential Information* does not terminate the receiving Party's obligations pursuant to this Agreement. Notwithstanding the foregoing, legal counsel for the receiving party may retain one copy of the disclosing Party's *Confidential Information* in its files for archival purposes only, provided that such information is not used by the receiving Party for any other purpose and remains subject to the confidentiality obligations set out in this *Agreement*.

**ARTICLE 5  
TERM AND TERMINATION**

5.1 This *Agreement* shall commence on the *Effective Date* and shall remain in full force and effect until terminated by either Party upon thirty (30) days written notice to the other Party. Termination of this *Agreement* shall not affect the rights and obligations arising under this *Agreement* with respect to *Confidential Information* disclosed prior to the *Effective Date* of termination.

**ARTICLE 6  
NO LICENSES; WARRANTIES**

6.1 Nothing in this *Agreement* shall be construed as a grant of any interest, title, right or license or an offer to grant any interest, title, right or license by either Party to the other with respect to the *Confidential Information* exchanged hereunder.

6.2 The disclosing Party warrants that it has the right to disclose the *Confidential Information* to the receiving Party. The disclosing Party makes no other warranties in respect of the disclosing Party's *Confidential Information* and provides all information on an "as is" basis without express or implied warranties or representations of any kind, including, but not limited to, non-infringement, accuracy or completeness.

**ARTICLE 7  
NOTICES**

7.1 All notices or other communications to be given under this *Agreement* shall be in writing and delivered by hand or courier, or sent by prepaid mail, to the Parties as follows:

If to MHS:

**Multi-Health Systems Inc.**  
3770 Victoria Park Avenue  
Toronto, Ontario, M2H 3M6, Canada  
**Attention: Hazel Wheldon, MA**  
*C.E.O.*

If to the Company:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**Attention:** \_\_\_\_\_  
\_\_\_\_\_

Any notice or other communication, if delivered by hand or by courier, will be deemed to have been given when delivered, and if sent by mail, will be deemed to have been given three (3) business days following mailing. Either Party may change its address by notice to the other Party.

**ARTICLE 8  
GENERAL**

8.1 Nothing contained in this *Agreement* shall be construed to restrict or prevent a party from working internally or with other parties in or on, or from acquiring other parties that work in or on, fields, products or processes similar or identical to or competitive with the other Party. This *Agreement* does not obligate either Party to make any disclosure of *Confidential Information* or require the parties to enter into any business relationship or further agreement.

8.2 It is further understood and agreed that monetary damages would not be a sufficient remedy for any breach or threatened breach of this *Agreement* and that the non-breaching party shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach. Such remedy shall not be

deemed to be the exclusive remedy but shall be in addition to all other remedies available at law or equity to the non-breaching Party. In the event that the non-breaching Party seeks to enforce its rights hereunder and prevails in such enforcement, it shall be entitled to recover all reasonable costs and expenses incurred in connection with such proceeding, including reasonable attorney's fees.

**8.3** Neither Party is permitted to assign this *Agreement* or any rights or obligations hereunder without the prior written consent of the other Party hereto, which consent may be withheld in its sole discretion. Notwithstanding the foregoing, either party may assign this *Agreement* to an affiliate or a successor-in-interest through a merger or sale of all or substantially all of the assets or ownership interest upon notice to the other Party. This *Agreement* is binding upon and will enure to the benefit of the Parties and their respective successors and permitted assigns.

**8.4** This *Agreement* shall be interpreted and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable in that province. The Parties irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario and all courts competent to hear appeals therefrom.

**8.5** Failure by a Party to enforce its rights on one occasion will not result in a waiver of those rights on any other occasion. The waiver of any one breach or default will not waive any subsequent breach or default of the same or different kind.

**8.6** If any covenant, obligation or agreement in this *Agreement* is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this *Agreement* shall not be affected thereby and each other covenant, obligation and agreement in this *Agreement* will continue in full force and effect. Each provision of this *Agreement* is hereby declared to be separate, severable and distinct.

**8.7** This *Agreement* constitutes the entire agreement between the Parties and supersedes any previous oral or written understandings, commitments or agreements pertaining to the exchange of *Confidential Information* in connection with the *Purpose*. This *Agreement* will not in any way change, amend, modify or nullify any other agreement between the Parties not related to the exchange of *Confidential Information* in connection with the *Purpose*. This *Agreement* may not be modified or amended except in writing signed by an authorized representative of both Parties.

**8.8** This *Agreement* may be executed by electronic or digital signature and shall be deemed as legally binding.

**8.9** The Parties acknowledge that they have expressly required that this *Agreement* and all related documents be prepared in English. *Les parties reconnaissent avoir expressément exigé que la présente convention et tous les documents connexes soient rédigés en anglais.*

**IN WITNESS WHEREOF**, the Parties hereto have caused this *Agreement* to be signed by their duly authorized representatives as of the *Effective Date*.

**MULTI-HEALTH SYSTEMS INC.**

**RECIPIENT**

\_\_\_\_\_  
Hazel Wheldon, MA  
C.E.O.

\_\_\_\_\_  
ASO Name:  
ASO Title:

Date : \_\_\_\_\_

Date : \_\_\_\_\_