

CARB-X Non-Disclosure Agreement

This agreement (“Agreement”) is between the Trustees of Boston University (“BU”) through the “Combating Antibiotic-Resistant Bacteria Biopharmaceutical Accelerator” (“CARB-X”) program, CARB-X Global Funding Partners, Sub-Recipients, Consultants, Funding Applicants and Portfolio Companies, (collectively the “Parties” and each individually, a “Party”).

Definitions

CARB-X Global Funding Partners: All entities providing direct funding for CARB-X, including the U.S. Department of Health and Human Services/Office of the Assistant Secretary for Preparedness and Response/The Biomedical Advanced Research and Development Authority (HHS/ASPR/BARDA), the Secretary of State for Health and Social Care of the United Kingdom (“DHSC”), the Wellcome Trust, Bill and Melinda Gates Foundation, and The German Federal Ministry of Education and Research, and any future CARB-X funders (“Funders”).

Consultants: means individuals or entities that provide subject matter expertise as reviewers or technical advisors to CARB-X or to a Company pursuant to a written agreement with BU;

Funding Applicants: companies that submit an application for funding to CARB-X (each a “Company”).

Portfolio Companies: selected applicants working independently of CARB-X, funded to advance development and innovation of antibacterial medical countermeasures and related technologies (each a “Company”).

Sub-Recipient: Any supplier, distributor, vendor, consultant or firm that executes activity in support of CARB-X through an executed agreement with BU, including members of the CARB-X Global Accelerator Network.

Purpose

CARB-X is administered by BU, and was established to provide a framework for evaluating antibacterial technologies and supporting promising projects, including potential funding, research support services and business support services to Portfolio Companies seeking funding. The terms of funding and support services are the subject of separate agreements between the Parties. In order to achieve the goals established for CARB-X, multiple organizations are required to disclose or receive Confidential Information.

Confidential Information (defined below) may be disclosed and used solely to conduct the following activities in connection with CARB-X (“Purposes”):

- (a) Parties providing and evaluating Company applications, complying with the terms of agreements executed between any Parties, coordinating and facilitating services provided to

Companies among the Parties, reporting internally as required and on an ad hoc basis among the Parties, and any other purpose reasonably related to the functions of CARB-X.

- (b) A Funder making CARB-X-related funding or business decisions consistent with each Funder's governmental or charitable purpose; and
- (c) Any use reasonably related to the functions of CARB-X, including efforts to assess, fund and accelerate CARB-X funded research projects.

Academic Research Purpose. Any former or current BU CARB-X Executive Director may use Confidential Information to conduct and publish anonymized academic research conducted by, or performed in collaboration with, any CARB-X Principal Investigator.

Operative Terms

The Parties hereby enter into this Agreement in accordance with the following terms:

1. A Party ("Disclosing Party") may disclose Confidential Information to any other Party ("Receiving Party") solely for the Purpose as provided herein, except that Company Confidential Information may never be disclosed to any other Company.
2. The Receiving Party will only use the Confidential Information for a function reasonably related to the Purposes, including the Academic Research Purpose.
3. The Receiving Party will not disclose the Confidential Information (defined below) of the Disclosing Party or the Company to any person except its employees, consultants, contractors or volunteer advisors to whom it is necessary and reasonable to disclose the Confidential Information for the Purposes, and any such disclosures shall be under terms substantially similar to those specified herein. In addition, DHSC may disclose Confidential Information to any department, agency or office of the UK government that agrees to be bound by the provisions of this Agreement for any purpose relating to or connected with DHSC's relationship with CARB-X. Funders may disclose the Confidential Information described in Section 3.1.c below as required by their governance structures and subject to the terms of this Agreement. Any of the persons mentioned above who are given access to the Confidential Information shall be informed of this Agreement. The Receiving Party shall protect the Confidential Information to the greatest extent allowable by law and by using the same degree of care, but no less than a reasonable degree of care, as the Receiving Party uses to protect its own confidential information.

3.1 In this Agreement, "**Confidential Information**" may include, subject to Paragraph 3.2, but is not limited to:

- a. Any and all award applications, presentations, peer reviews, due diligence reports, data, results, know-how, show-how, computer software, plans, details of research work, discoveries, inventions, intended publications, intended or pending patent applications, designs, technical information, business plans, minutes of meetings, budgets and strategies, business or financial information or other information (including without limitation, details regarding discussions, agreements, or business relationships with any third party) in any medium and in any form; and

- b. Any physical items, prototypes, compounds, samples, or components and any information pertaining thereto; and
- c. CARB-X confidential strategic assessments, internal policies and its deliberative process in setting strategic, scientific and funding objectives and assessing efforts to meet those objectives.

The Receiving Party's duties under this Agreement shall apply to Confidential Information defined above that has been clearly marked "Confidential" by the Disclosing Party or the Company or which has a strong presumption of confidentiality due to the nature or context of the disclosed information. For oral disclosures, when the confidential nature of the information would be reasonably recognized by the Receiving Party from the subject matter or subject type of the information disclosed, such information shall be deemed Confidential Information under this Agreement.

3.2 **"Confidential Information"** shall not include any information or material which:

- a. Is in the public domain prior to the time of the disclosure by the Disclosing Party or the Company to the Receiving Party or enters into the public domain other than as a result of disclosure by the Receiving Party or any of its representatives in violation of this Agreement;
- b. Becomes known to the Receiving Party by lawful action of a third party without any obligation of confidentiality;
- c. Is in possession of the Receiving Party before the date of disclosure;
- d. Is independently developed by the Receiving Party, without use of the Confidential Information received from the Disclosing Party or the Company;
- e. The owner of the Confidential Information (being Disclosing Party or the Company, as appropriate) expressly authorizes the Receiving Party to disclose without restrictions of confidentiality; or
- f. Is anonymized for the purposes of academic research and publications thereof.

3.3 In the event that a Receiving Party uses or discloses the Confidential Information of a Disclosing Party other than what is permitted by the terms of this Agreement, the Disclosing Party's sole and exclusive recourse shall be against the Receiving Party that improperly used or disclosed the Confidential Information. That Disclosing Party shall have no claim or cause of action of any kind against any other Party to this Agreement, and expressly waives any claim against any other Party. To the extent BU maintains a repository of Confidential Information as a service to facilitate CARB-X activities, those services are subject to the disclaimer of warranties, limitations, indemnification and insurance provisions of any written agreement between BU and any Disclosing Party.

4. Notwithstanding the foregoing, if the Receiving Party or anyone to whom it discloses the Confidential Information in accordance with Paragraph 1 is requested or becomes legally compelled or is required by law, a regulatory body, a court, or parliament to make any disclosure of any Confidential

Information, the Receiving Party shall, to the extent practicable, provide Disclosing Party with immediate notice of such request so that the Disclosing Party may, where applicable, seek an appropriate protective order or other appropriate remedy. Subject to the foregoing, the Receiving Party may furnish that portion of the Confidential Information that the Receiving Party is legally compelled to disclose. In particular, where a Party receives a request for information under the Freedom of Information Act (US), Freedom of Information Act 2000 (UK), or similar sunshine laws in connection with this Agreement or its subject matter, it shall, as soon as reasonably possible, inform the Company whose Confidential Information is sought. Any Party that receives a FOIA request will protect Confidential Information to the greatest extent possible consistent with FOIA. CARB-X and its Funders are also subject to similar FOIA laws in other jurisdictions, including the United Kingdom.

5. The terms of this Agreement will be in effect with respect to Confidential Information of any Disclosing Party disclosed on or after the date of that Disclosing Party's execution ("Effective Date") of the Agreement, and such Confidential Information will be maintained as provided herein until the earlier to occur of (a) five (5) years after the expiry of active participation in CARB-X (the "Term") or (b) the date on which it falls into one of the exceptions stated in Paragraph 3.2 or 4 above.

6. All tangible forms of the Confidential Information, such as written documentation, delivered pursuant to this Agreement shall be and remain the property of the Disclosing Party and all such tangible Confidential Information, all copies thereof and all materials containing any such Information shall be promptly returned or destroyed, upon the earlier of: (a) a written request by the Disclosing Party; or (b) the expiration or termination of the Term of this Agreement. Upon termination, the Receiving Party may retain in its confidential files one (1) copy of written Confidential Information in accordance with its internal retention policy. Additionally, the Receiving Party may keep those irretrievable computer copies of Confidential Information held on a computer system, word processor or other device where such copies occurred in the usual back-ups or archiving of that computer system, word processor or other device capable of containing Confidential Information or which are otherwise not readily and reasonably retrievable, having employed best efforts to destroy retrievable copies.

7. Following BU's signature of this Agreement, BU will coordinate the signature of this Agreement by all Parties. This Agreement shall be binding on each Party (each, a "Signing Party") upon the signature of this Agreement by an authorized representative of the Signing Party, whereupon this Agreement shall take effect as a contract between (i) the Signing Party, (ii) any other Parties whose authorized representatives have signed this Agreement on the date on which the Signing Party signs, and (iii) any other Parties whose authorized representatives sign this Agreement subsequent to the Signing Party.

8. Except as specified herein, this Agreement constitutes the entire understanding among the Parties with respect to the subject matter hereof and merges any and all prior agreements, understandings and representations. This Agreement may not be superseded, terminated, amended or modified except by written agreement executed by the authorized signatories of the Parties. If any provision is found to be unenforceable, such provision will be limited or deleted to the minimum extent necessary so that the remaining terms remain in full force and effect. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

- 8.1 Any Confidential Information disclosed under the CARB-X Non-Disclosure Agreement executed by BU on August 1, 2018, shall remain subject to the terms of that agreement.
- 8.2 If any Party has entered into a separate written agreement concerning CARB-X related activities with another Party, the agreement that is most protective of the Disclosing Party's Confidential Information will govern the disclosure of Confidential Information between those Parties.
9. This Agreement may be executed in counterparts and the counterparts, together, will constitute a single agreement. A facsimile, scanned electronic signature or certified electronic signature shall be as effective as an original signature.
10. BU will store and maintain an executed copy of this Agreement in the current CARB-X document management system.
11. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
12. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture among any of the Parties, constitute any Party the agent, employee or worker of another Party, or authorize any Party to make or enter into any commitments for or on behalf of any other Party and no Party shall hold itself out as the same.
13. No term of this Agreement may be enforced by a third party solely by virtue of the UK Contracts (Rights of Third Parties) Act 1999.
14. Each Party acknowledges to every other Party that it has not been induced to enter into this Agreement by any representation, warranty or undertaking by or on behalf of any other Party or any other person, save for those contained in this Agreement.
15. Subject to the provisions of Section 3.3, each right or remedy of each Party under this Agreement is in addition and without prejudice to any other right or remedy of that Party, whether under this Agreement or at common law or under statute, and in no way limits such rights.
16. Unless explicitly stated otherwise elsewhere in this Agreement, no Party other than the Parties themselves has any rights or remedies under this Agreement.
17. No Party may assign its obligations under this Agreement.

SIGNATURES BEGIN ON THE NEXT PAGE



Agreed by the following:

Organization:

CARB-X Role (BU/CARB-X, Funder, Accelerator,
Consultant, Collaborator or Company)

Printed Name:

Signature:

Title:

Date:

Mailing Address for Notices: