

DIRECTOR CONFIDENTIALITY POLICY

Effective Date: March 1, 2022
Approved by: RDAR Board of Directors
Approval Date: March 1, 2022

1 OVERVIEW

- 1.1 This Policy addresses the protection and disclosure of Confidential Information by **individual Directors**, not the Board of Directors. An individual Director cannot authorize the disclosure of Confidential Information. A Director acts for RDAR only through a legally constituted meeting of the Board or through an express delegation of authority by the Board.
- 1.2 Directors are not representatives of any particular Class A Member while serving on the RDAR Board. As such, nomination by a Class A Member does not entitle the Director to share Confidential Information with that Class A Member.
- 1.3 The Board of Directors and, if expressly authorized by the Board, the Chair and the Chief Executive Officer, can disclose Confidential Information.
- 1.4 To be accountable to its Members, stakeholders and the general public interested in RDAR's work, RDAR will provide access to such Confidential Information as and when appropriate. This disclosure will enable RDAR's Members, stakeholders and the general public to understand its governance, strategies, policies and activities.
- 1.5 RDAR will make Confidential Information publicly available through authorized press releases, announcements, or posting on the public or Member sections of the RDAR website and social media platforms, including LinkedIn, Facebook and Twitter.
- 1.6 Once disclosed by RDAR, Directors are at liberty to discuss the Confidential Information with others, as that information is, by definition, no longer confidential.

2 DIRECTORS' DUTIES

- 2.1 Under section 148 of the Canada Not-for-profit Corporations Act ("Act"), every Director and officer of a corporation must:
 - 2.1.1 act honestly and in good faith with a view to the best interests of the corporation; and
 - 2.1.2 exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

- 2.2 This obligation requires Directors to subordinate their personal interests to the best interests of RDAR. This duty is owed to RDAR as an entity distinct from its Members and cannot be overridden by agreement or RDAR's Articles of Incorporation or By-laws.
- 2.3 The obligations in section 148 of the Act relate to the Directors' duty of loyalty and duty of care. These two fiduciary duties require Directors to protect and hold confidential all non-public information obtained due to their position on the Board.

3 APPLICATION OF THE POLICY

- 3.1 Unless the situation falls within the scope of RDAR's Whistleblower Policy, this Policy applies even when a Director disagrees with the collective decision of the RDAR Board of Directors or a committee of the Board.
- 3.2 This Policy applies to:
 - 3.2.1 all Confidential Information; and
 - 3.2.2 any disclosure of Confidential Information, whether intentionally, unintentionally, directly or indirectly.
- 3.3 In understanding a Director's obligations concerning confidentiality, it is essential to remember that the decision by an individual Director to disclose Confidential Information cannot be confused with a decision by the RDAR Board of Directors to disclose Confidential Information.
- 3.4 Any person, including an employee who is not a Director but is present at a Board meeting (or part of a meeting), must maintain in confidence all non-public information obtained due to their participation in the meeting.

4 WHAT IS CONFIDENTIAL INFORMATION?

- 4.1 "Confidential Information" means all non-public information (whether written or oral) entrusted to or obtained by Directors, by whatever means, in connection with their position as a Director of RDAR.
- 4.2 "Non-public information" means information that, if disclosed, would significantly affect or would reasonably be expected to have a significant effect on:
 - 4.2.1 the reputation of RDAR and its ability to carry out its mandate;
 - 4.2.2 the ability of RDAR to gain access to sensitive or confidential information from third parties;
 - 4.2.3 RDAR's legal compliance requirements;
 - 4.2.4 the functioning and effectiveness of the Board of Directors;
 - 4.2.5 the ability of Directors and staff to comfortably express their views in meetings and by electronic means on corporate matters honestly and freely without concern that their conversations will be made public;
 - 4.2.6 the level of trust between RDAR, the research community and the Alberta government; and
 - 4.2.7 the level of trust, collegiality, cohesiveness and respect between Directors, the Board and the RDAR staff.

- 4.3 Confidential Information includes but is not limited to non-public information:
- 4.3.1 about the RDAR's financial information and condition, accounting information, projections, forecasts, prospects and plans;
 - 4.3.2 relating to RDAR's funding agreements with the Alberta Government;
 - 4.3.3 relating to research applications and research grant agreements;
 - 4.3.4 about the RDAR's officers, Directors, and employees including, but not limited to, Board and employee dynamics and interactions;
 - 4.3.5 concerning other companies with whom RDAR conducts, has conducted or may conduct business, including information about the RDAR's research strategies, suppliers, consultants or other companies with which RDAR is under an obligation of confidentiality;
 - 4.3.6 about the RDAR's business methods, processes and practices, internal controls, operations, strategies, techniques, trade secrets, know-how, contracts, distribution lists, personal information, employee information, marketing and branding policies;
 - 4.3.7 about meetings, presentations and discussions relating to issues, deliberations and decisions between and among employees, officers and Directors, individually and at Board and committee meetings, and their advisers, including the identity, circumstances and fact of retention of any such advisers;
 - 4.3.8 in Board and Committee meeting agendas and meeting packages and e-mail exchanges and conversations between RDAR employees and Directors and between Directors, but not including Advisory Committee meetings;
 - 4.3.9 about how non-public information is discussed, used and understood within the Board and Committees including but not limited to how Board and committee members view matters under discussion;
 - 4.3.10 received from or sent to third parties, under an explicit requirement or reasonable expectation of confidentiality;
 - 4.3.11 covered by legal privilege or protected from disclosure by legislation; and
 - 4.3.12 about whistleblowers.
- 4.4 Confidential Information also includes other information marked or otherwise identified as confidential or proprietary and information that would otherwise appear to a reasonable person to be confidential or proprietary in the context and circumstances in which the information is known or used.
- 4.5 Failure to mark any Confidential Information as confidential shall not affect its status as Confidential Information under this Policy.

5 DIRECTOR'S OBLIGATIONS REGARDING CONFIDENTIAL INFORMATION

- 5.1 Directors shall treat all Confidential Information as strictly confidential and shall comply with the following restrictions during their service as a Director and indefinitely after that:

- 5.1.1 Each Director shall hold the Confidential Information in the strictest confidence, take all reasonable measures to maintain the confidentiality of the Confidential Information and take all reasonable measures to ensure that no person shall directly or indirectly have access to the Confidential Information. Without restricting the generality of the foregoing, the reasonable steps that a Director shall take include:
- (i) physical security of areas where access may be gained to Confidential Information;
 - (ii) security measures for electronic storage and transmission of data including or derived from Confidential Information;
 - (iii) controls on access to any electronic device where any Confidential Information may be kept;
 - (iv) controls over photocopying, printing, and electronically distributing Confidential Information;
 - (v) limited copying or printing of Confidential Information and removal of Confidential Information from meeting rooms and work areas;
 - (vi) document and electronic device control systems which limit access to the Confidential Information to the Director; and
 - (vii) secure destruction of Confidential Information when it is no longer required.
- 5.1.2 No Director shall directly or indirectly disclose any Confidential Information to any person or entity outside of RDAR, including any RDAR Member, except with prior written consent of the Board of Directors.
- 5.1.3 A Director shall not affirm or deny statements made by others if such affirmation or denial would result in the disclosure of Confidential Information.
- 5.1.4 A Director shall not make statements to the media or the public without prior Board approval.
- 5.1.5 Directors shall not make any video or audio recordings at any RDAR meeting, whether held in person or by electronic means, or of any conversations between themselves and one or more Directors.
- 5.1.6 Directors shall refrain from:
- (i) discussing matters relating to RDAR in public places to avoid the inadvertent disclosure of Confidential Information to non-interested persons;
 - (ii) from leaving written information concerning the operation of RDAR in any place where it may be seen or viewed by persons who otherwise should not have interest in the material; and
 - (iii) holding conversations between Directors over speakerphones where the Confidential Information may be heard by persons who are otherwise not entitled to the Confidential Information.
- 5.1.7 Any Director who is unsure whether information should be kept confidential should check with the Chair of the Board or the Chief Executive Officer before disclosing the information or taking any other action.
- 5.1.8 Directors shall only use Confidential Information for the benefit of RDAR. No Director shall use Confidential Information for their own direct or indirect personal benefit.
- 5.1.9 If a Director is required by law to disclose any Confidential Information, such Director shall:

- (i) provide RDAR with prompt oral and written notice, unless notice is prohibited by law (in which case such notice shall be provided as early as may be legally permissible), of any such requirement;
 - (ii) postpone disclosure for the maximum time permitted under applicable law, and allow RDAR the opportunity to seek a protective order or other appropriate remedies; and
 - (iii) fully cooperate with RDAR in any reasonable efforts to obtain such remedies.
- 5.1.10 Upon request of the RDAR, or once a Director ceases to serve on the Board, a Director (or the Director's personal representative) shall:
- (i) shred all printed records and delete all electronic records retained by the Director concerning or containing Confidential Information that are in Director's possession or control, whether made or compiled by Director or furnished to Director by RDAR; and
 - (ii) provide written certification to RDAR that such materials have been shredded and deleted.
- 5.1.11 In the event of disclosure of Confidential Information, whether inadvertently or otherwise, a Director must immediately inform the Chair and the Chief Executive Officer so that measures can be taken to minimize damage to RDAR.

5.2 All Confidential Information shall be the exclusive property of RDAR. This Policy shall not grant a license or option to any Director to intellectual property rights in the Confidential Information held by RDAR.

5.3 If any Confidential Information is authored by a Director, that Director agrees to assign the copyright in the Confidential Information to RDAR and waive the Director's moral rights in the Confidential Information.

6 SOLICITOR-CLIENT PRIVILEGE; DISCLOSURES REQUIRED BY LAW

- 6.1 Notwithstanding paragraph 14, Directors may engage and share Confidential Information with their legal counsel under solicitor-client privilege in connection with fulfilling their duties as Directors of RDAR, provided that such legal counsel does not have, and does not represent any other person having, interests that are adverse to those of RDAR. In addition, the Directors shall instruct their legal counsel not to use Confidential Information for any purpose other than giving the Directors advice solely in their capacities as a Director of RDAR to assist the Directors in discharging their duties as Directors of RDAR.
- 6.2 Directors shall also instruct their legal counsel to keep Confidential Information confidential and not disclose Confidential Information to any third party other than as required by law. If the Directors or their legal counsel are required by law, to disclose any Confidential Information, the provisions of paragraph 14(j) shall apply.
- 6.3 If, in the absence of a protective order, the Directors or their legal counsel are compelled by law to disclose any Confidential Information, the Directors or their legal counsel may disclose only the part of the Confidential Information required by law to be disclosed. In this case, the Directors or their legal counsel must advise and consult with RDAR and its legal counsel about such disclosure and its nature and wording before disclosing the Confidential Information. The Directors and their legal counsel must use reasonable best efforts to obtain confidential treatment for the information being disclosed.

7 DISCLOSURE IN THE NECESSARY COURSE OF BUSINESS

- 7.1 At times it will be necessary, in the course of RDAR's business, to disclose Confidential Information to certain persons. In such cases:
- 7.1.1 the Confidential Information will only be disclosed with the approval of either the Board or the CEO; and
 - 7.1.2 the recipient of the Confidential Information must sign RDAR's form of confidentiality and non-disclosure agreement, unless an exception is made by the Board or the CEO.
- 7.2 Approvals and exceptions by the Board or the CEO can be made on a case-by-case basis or with respect to certain classes of Confidential Information.

8 WHAT IS NOT CONFIDENTIAL INFORMATION (PUBLIC INFORMATION)?

- 8.1 Confidential Information does not include information or material which:
- 8.1.1 was authorized to be made public by the RDAR Board of Directors, the Chair or the Chief Executive Officer;
 - 8.1.2 was in the possession of, or demonstratively known by, the Director before its receipt during the course of acting as a Director of RDAR;
 - 8.1.3 was in the public domain at the time of its disclosure to the Director, or which thereafter enters the public domain through no action or fault of the Director, but only after it becomes part of the public domain;
 - 8.1.4 was already in the Director's possession or known to the Director prior to being disclosed or provided to the Director by or on behalf of RDAR, provided, that, the source of such information or material was not bound by a contractual, legal or fiduciary obligation of confidentiality to the non-disclosing party or any other party with respect thereto;
 - 8.1.5 was lawfully received by the Director from a third party having the right to disseminate such Confidential Information without restriction on disclosure and who had no reason to believe was not lawfully in possession of such information free of any obligation of confidentiality
- provided that any combination of the information which comprises part of the Confidential Information will not be deemed to be public information merely because individual parts of that information were within the public domain, in the prior possession of the Director, or were so received by the Director unless the combination itself was in the public domain, in the prior possession of the Director, or was so received by the Director.

9 REQUEST FOR ACCESS OR DISCLOSURE OF CONFIDENTIAL INFORMATION

- 9.1 If a request is made to access or disclose Confidential Information, the RDAR Board may resolve to provide access to the Confidential Information on a case-by-case basis. In considering such a request, the Board will have regard to:
- 9.1.1 the importance of maintaining confidentiality to facilitate effective Board and Committee meetings and the effective operation of RDAR;
 - 9.1.2 the importance of complying with the law - including privacy law - and recognizing that the law sometimes creates duties to disclose or protect information;

- 9.1.3 whether the person requesting the document is a Member, and the important role of Members in holding the Board accountable; and
 - 9.1.4 the need to be consistent in how Confidential Information is treated and the consequence of establishing any precedents or expectations.
- 9.2 Nothing in this Policy is intended to prevent the RDAR Board or Committee from seeking confidential scientific, legal, accounting, financial or other expert advice from independent professionals to assist the Board in carrying out its functions.

10 AUTHORIZED PROCESSES AND CHANNELS FOR DISCLOSURE OF CONFIDENTIAL INFORMATION

- 10.1 Directors may only disclose Confidential Information with the consent of the RDAR Board of Directors.
- 10.2 To avoid misunderstandings, any consent by RDAR for the disclosure of Confidential Information must be in writing. Directors cannot rely on implied consent for the release of Confidential Information.
- 10.3 Confidential Information disclosed under paragraph 30 is not a breach of this Policy or the Director's duties to RDAR.
- 10.4 The only exception to this Confidentiality Policy is the disclosure of Confidential Information under and in strict compliance with RDAR Whistleblower Policy.

11 AUTHORIZED SPOKESPERSONS

- 11.1 Unless otherwise authorized by the Board of Directors, only the Chief Executive Officer, the Chair and the Vice Chair are allowed to make public comments related to RDAR's business and activities.
- 11.2 Any Director, other than authorized spokespersons, who is approached by the media or any other member of the public to comment on the affairs of RDAR, must defer the inquiry to an authorized spokesperson or seek approval from the Board of Directors to comment on RDAR's behalf.

12 EXTERNAL SPEECHES AND PRESENTATIONS

- 12.1 Invitations to give external speeches and presentations about RDAR at conferences or other public venues must be pre-approved by the authorized spokespersons, and the content of any speeches and presentations must be reviewed and approved by at least one of the authorized spokespersons.

13 ENFORCEMENT

- 13.1 Compliance with this Policy is fundamental to the reputation and continued success of RDAR. It is the personal responsibility of all Directors to understand and comply with their obligations under this Policy.

- 13.2 The Chief Executive Officer is responsible for developing and implementing strategies and procedures to ensure that principles and practices governing access and protection of Confidential Information are integrated into RDAR's philosophy, culture and operations.
- 13.3 In exceptional circumstances, documents considered highly confidential in the opinion of the meeting chair may be distributed to the Board or Committee in print during a meeting, provided that the Directors are given adequate time, in the opinion of the Directors, to read the material before the discussion. Any confidential documents delivered in print at a meeting will be collected by the meeting chair immediately after the meeting and delivered to the Chief Executive Office for retention in a secure confidential file or destroyed.
- 13.4 If a meeting chair determines that it would be beneficial for Directors to receive the highly confidential documents before the meeting, the meeting chair may direct that the materials be made available in advance in a secure format that appropriately protects the security and confidentiality of the document.
- 13.5 Where a conflict of interest has been identified or declared by a Director, the meeting chair may at his or her discretion withhold from such Director any document which relates to the conflict of interest.
- 13.6 If any provision or any part of any provision of this Policy shall not be valid for any reason, such provision shall be entirely severable from, and shall have no effect upon, the remainder of this Policy.

14 BREACHING CONFIDENTIALITY

- 14.1 There are legal ramifications for some breaches of confidentiality. A damaging leak of Confidential Information could, in certain circumstances, amount to a breach of the Director's fiduciary duties, which could result in personal liability for damages and limit the Director's legal and contractual protections against such liability.
- 14.2 Directors are responsible for reporting any breach of this Policy by themselves or by another Director to the Chair and the Chief Executive Officer. Any breach of this Policy by the Chair or the Chief Executive Officer shall be reported to the Vice Chair and RDAR's legal counsel.
- 14.3 The Board shall record any breach of this Policy. In doing so, one or more of the following methods shall be followed:
- 14.3.1 a Board motion calling for an investigation by an independent third party;
 - 14.3.2 a Board motion calling for the offending Director to appear before the Board or make a written submission;
 - 14.3.3 the Board subjecting the offending Director to censure by way of admonishment, caution or reprimand;
 - 14.3.4 removal of the offending Director from all Committees for a specified period of time; and
 - 14.3.5 subject to the By-laws and the Act, removal of the offending Director from the Board.

- 14.4 The injury that RDAR would suffer in the event of a Director's actual, attempted or threatened breach of this Policy would cause irreparable injury to RDAR, cannot be compensated by monetary damages alone, and therefore RDAR, in addition to, and without limiting, any other remedies or rights which it may have either under this Policy or otherwise, shall be entitled to, without limitation, specific enforcement, a temporary restraining order, injunctive relief or other equitable remedies enjoining any actual, attempted or threatened breach of this Policy, without first being obligated to post any bond or security or show actual damages.
- 14.5 In handling a breach of confidentiality:
- 14.5.1 The Board will take prompt and unequivocal action to address all breaches of this Policy, no matter how insignificant.
- 14.5.2 The Board will not exacerbate the situation by taking any action that would create negative publicity for RDAR.
- 14.5.3 When a serious breach of confidentiality occurs, the Board will ask for the offending Director's resignation. The Board, however, cannot legally demand the Director's resignation.
- 14.5.4 When a request for a Director's resignation fails:
- (i) the offending Director will be removed from any Committee of which the Director is a member; and
 - (ii) the Board may create a special committee for sensitive topics from which the offending Director will be excluded for the Board to have protected conversations. The offending Director will only be provided with such information as may be necessary for the offending Director to fulfill their fiduciary duties.
- 14.5.5 Any Director who the Board has found to have breached this Policy will not be eligible to be re-nominated to run for re-election as a Director.

15 ONGOING COMPLIANCE AND CONFIDENTIALITY AGREEMENT

- 15.1 The nomination form for Directors shall contain a statement by the nominee confirming the nominee's willingness, if elected, to abide at all times with RDAR policies, including this Confidentiality Policy.
- 15.2 A Director, after being elected and after ceasing to hold office as a Director, shall have an ongoing duty to comply with this Policy.
- 15.3 RDAR may require any Director to sign an agreement which acknowledges and further implements the requirements of this Policy with respect to the specific circumstances of such Director as a condition to continued service on the Board.

16 REVIEW

- 16.1 This Policy shall be reviewed during RDAR's regular review of its corporate governance policies. The Chair and Chief Executive Officer may specifically remind directors of their confidentiality obligations when contentious or sensitive situations are at the forefront of board affairs.
- 16.2 As a general matter, the Board Chair should ensure to the best of their ability that directors never lose sight of their shared obligation to fulfill the fiduciary duties they owe to RDAR.

17 QUESTIONS

17.1 Any questions about this Policy should be addressed to the Chair or the Chief Executive Officer.

18 RELATED POLICIES

18.1 The provisions contained in this Policy shall be in addition to the obligations imposed upon each Director under RDAR's other policies or applicable law. RDAR may require any Director or prospective Director to sign an agreement which acknowledges and further implements the requirements of this Policy concerning the specific circumstances of such Director or prospective Director, including as a condition to service or continued service on the Board.

18.2 This Policy is to be read in conjunction with RDAR's:

18.2.1 In-camera Meeting Policy;

18.2.2 Communication Policy;

18.2.3 Code of Conduct;

18.2.4 Conflict of Interest Policy;

18.2.5 Personal Information Protection – Privacy Policy;

18.2.6 Whistleblower's Policy; and

18.2.7 Intellectual Property and Commercialization Policy.