

University of Idaho

MUTUAL CONFIDENTIALITY AGREEMENT

1. PARTIES. THIS AGREEMENT is made and entered into as of [DATE] ("EFFECTIVE DATE") by and between The Regents of the University of Idaho ("UNIVERSITY"), a public corporation, state educational institution, and a body politic and corporate organized and existing under the Constitution and laws of the state of Idaho, and [COMPANY] ("COMPANY"), organized and existing under the laws of the State of [STATE], (collectively referred to as PARTIES).

The primary contacts for disclosing or receiving confidential material and information of the PARTIES under this AGREEMENT are as follows:

Primary Contact Person (name, address for exchanging material/information)	
For UNIVERSITY	For COMPANY
Name:	Name:
Addr:	Addr:
Phone:	Phone:
Email:	Email:

In consideration of the mutual promises and conditions herein, the PARTIES agree as follows.

2. PURPOSE. COMPANY and UNIVERSITY desire to exchange information and materials. In the course of such exchanges, it may be necessary for each PARTY to disclose to the other certain information relating to **insert brief description of the subject of discussion/potential research project**, and which the disclosing PARTY deems to be confidential information, as defined herein.

3. CONFIDENTIAL INFORMATION. "Confidential information" ("CI") shall mean any information: that belongs to and is disclosed by one PARTY ("DISCLOSER") to the other PARTY ("RECIPIENT"); that the PARTY disclosing the information, is of a scientific, technical, or specialized nature, has value to the DISCLOSER; that is not in the public domain; and that has generally been considered and treated by the DISCLOSER as confidential prior to the time of disclosure. CI includes, but is not limited to, technical data, financial data, plans, programs, plants, processes, products, costs, equipment, operations, customers and other information or experience pertaining to the previously mentioned subject matter.

3.1 CI shall not include information that: (a) is shown to have been known or is subsequently developed by RECIPIENT independent of any disclosure by DISCLOSER; or (b) is or becomes available to the public through no breach of this AGREEMENT; or (c) is lawfully obtained from a third PARTY without restriction and without breach of this or any other AGREEMENT; or (d) is required by court order, law, or other governmental regulation or authority, including but not limited to Idaho Public Records Act, I.C. § 9-337 *et seq*, to be disclosed, provided DISCLOSER receives reasonable notice to allow it to request a protective order and RECIPIENT reasonably cooperates with DISCLOSER's efforts to receive a protective order (this section shall not be construed to require RECIPIENT to pursue any claim, defense, cause of action, or legal process or proceeding on behalf of DISCLOSER); or (e) is ascertained by UNIVERSITY or COMPANY to create a risk to trial subject or to public health and safety.

3.2 To be protected under this AGREEMENT, CI disclosed in written or other tangible form must be labeled "Confidential". Oral or visual disclosures for which protection is sought must be identified at the time of disclosure as being disclosed in confidence, and a written instrument confirming that the information disclosed orally and/or visually should be held in confidence must be delivered to RECIPIENT within five (5) working days of such oral and/or visual disclosure. E-mail is one form of "written instrument" for the purpose stated in this section.

4. CARE AND LIMITATIONS ON USE OF DISCLOSER CI. RECIPIENT shall hold in trust and confidence the DISCLOSER's CI and shall not disclose such CI to any third PARTY, except as agreed by DISCLOSER in writing. RECIPIENT may only disclose such CI to employees, officers, directors, agents or students of RECIPIENT who need to receive the information in the furtherance of the Purpose, as defined in Section 2. RECIPIENT shall use the DISCLOSER's CI solely for the Purpose.

5. PUBLICATION. The PARTIES acknowledge that UNIVERSITY, as a state institution of higher education, engages only in research that is compatible, consistent, and beneficial to its academic role and mission. Therefore, significant results of research activities must be reasonably available for publication. The PARTIES acknowledge that either PARTY shall have the right to publish data, information and results relating to the same subject matter as the CI. The PARTIES agree that with respect to publication by either PARTY, during the term of this AGREEMENT and for three (3) years thereafter, RECIPIENT shall submit to DISCLOSER any proposed publication, and DISCLOSER shall have 30 days to review and comment on any such proposed publication. The PARTIES agree that any CI supplied by the other PARTY under this AGREEMENT will not be included in any published material without prior approval by the DISCLOSER.

6. OWNERSHIP OF CI. Any CI provided by DISCLOSER shall remain the property of DISCLOSER. CI provided by DISCLOSER to RECIPIENT shall be in the nature of a loan. Nothing in this AGREEMENT shall restrict DISCLOSER from using, disclosing or disseminating its own CI in any way. The PARTIES recognize and agree that nothing contained in this AGREEMENT shall be construed as a grant of any property rights to RECIPIENT, by license or otherwise, to any CI disclosed pursuant to this AGREEMENT, or to any invention or any patent right that has been issued or that may be issued, based on the CI.

7. TERM. In the absence of terms governing confidentiality in another relevant AGREEMENT and provided that such other AGREEMENTs do not specifically reference, supersede, and replace this AGREEMENT, this AGREEMENT shall, with respect to the Purpose of this AGREEMENT, govern the disclosure of CI between the PARTIES commencing on the EFFECTIVE DATE and terminating on the earliest of (a) conclusion of the Purpose, (b) one (1) year from the EFFECTIVE DATE, or (c) the date on which a PARTY terminates in a manner consistent with Section 8. The obligations hereunder with respect to each item of confidential information shall endure for three (3) years from the date of initial disclosure thereof and survive any earlier termination or expiration of the AGREEMENT.

8. TERMINATION. Either PARTY may terminate this AGREEMENT by giving sixty (60) days written notice in accordance with the Notice provisions of this AGREEMENT. Termination of this AGREEMENT for any reason shall not relieve a PARTY from its obligations incurred prior to the termination date. Within ten (10) days following the termination of this AGREEMENT, or upon written request of DISCLOSER, RECIPIENT, subject applicable record retention laws, shall return all CI and any copies thereof to DISCLOSER; RECIPIENT may retain one copy of the CI solely for the purpose of monitoring its obligations under this AGREEMENT.

9. NOTICES. All notices and other correspondence related to this AGREEMENT, except were otherwise specified, shall be in writing and shall be delivered by certified mail, return receipt, or by facsimile transmission if a fax number is shown below and notice of receipt is provided, addressed as follows:

If to University:
Office of Technology Transfer
Attn: NDA/MTA Coordinator
875 Perimeter Drive MS 3010
Moscow, ID 83844-3010
Tel: 208.885.4550
Fax: 208.885.4551
E-mail: _____

If to Company:
(Name) _____
(Dept) _____
(Street) _____
(City, State, Zip) _____
Tel: _____
Fax: _____
E-mail: _____

10. NO WARRANTY. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." DISCLOSER MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS, SUITABILITY, OR PERFORMANCE.

11. NO AGENCY OR FUTURE COMMITMENT. Nothing in this AGREEMENT shall be construed as creating an agency, joint venture, partnership, exclusive relationship, or other business relationship or association between the PARTIES hereto, or obligating either PARTY to purchase or provide any goods or services to the other PARTY. For

the purposes of the Cooperative Research and Technology Enhancement Act of 2004, the PARTIES agree that this AGREEMENT is not considered a joint research AGREEMENT.

4.12 This AGREEMENT is not assignable or delegable in whole or in part by either PARTY without the written consent of the other PARTY. This AGREEMENT shall inure to the benefit of and be binding upon the PARTIES, their successors, and assigns.

12. EXPORT CONTROL. Each PARTS covenants and warrants that it will not disclose to the other any information, technology, data, or item, including but not limited to CI, identified on any U.S. export control list, including the Commerce Control List at 15 C.F.R. 774 and the U.S. Munitions List at 22 C.F.R. 121, unless and until it obtains the written consent of the other PARTY, which consent must be provided on behalf of UNIVERSITY by the Vice President for Research and Economic Development. In the event any information or item is export-controlled, the DISCLOSER shall provide RECIPIENT with written notice containing the nature of the export-control and the applicable classification, prior to any exchange of export-controlled Confidential Information.

13. Governing Law and Venue. This AGREEMENT shall be governed and construed by the laws of the State of Idaho, without reference to conflict of laws principles. Any legal proceeding instituted between the parties shall be in the courts of the County of Latah, state of Idaho, and each of the parties agrees to submit to the jurisdiction of such courts.

14. ENTIRE AGREEMENT/AMENDMENT. This AGREEMENT supersedes all previous and contemporaneous communications, transactions and understandings, whether oral or written, and constitutes the sole and entire AGREEMENT pertaining to the subject matter mentioned previously in this AGREEMENT. No modification or addition of these terms shall be binding unless made in writing and signed by an authorized representative of both PARTIES. Any waiver of compliance with the terms of this AGREEMENT must be in writing, and any waiver in one instance shall not be deemed a waiver in any future instance.

15. COUNTERPARTS. This AGREEMENT may be executed in any number of counterpart originals, each of which shall be deemed an original instrument for all purposes, but all of which shall comprise one and the same instrument. This AGREEMENT may be delivered by facsimile and a facsimile of this AGREEMENT shall be binding as an original.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT.

UNIVERSITY

COMPANY

By: _____

By: _____

Name: Gene Merrell

Name: _____

Title: Associate Vice President for Research

Title: _____

Date: _____

Date: _____