

BOISE STATE UNIVERSITY
NON-DISCLOSURE AGREEMENT
(University Disclosing)

1. Parties: In consideration of the mutual promises and conditions contained herein, this agreement is entered as of the date signed below, by and between Boise State University, an Idaho state institution of higher education (hereinafter “University”) and

_____.

2. Purpose: The parties to this Agreement contemplate that they may enter into one or more collaborative relationships involving the exchange of scientific, technical, or other information which is considered by the party owning such information (the “Disclosing Party”) to be proprietary and confidential (the “Confidential Information”), further defined below. Each party is willing to disclose its Confidential Information to the other Party (the “Recipient”) **only for the purposes of discussing potential collaborative efforts to promote the increase of useful knowledge and/or carrying out negotiations for future contracts and/or collaborations between them.** Confidential Information shall not be used as any part of commercial, research or academic endeavors unless agreed to in writing by the Disclosing Party. The parties desire to preserve and protect their respective rights in the Confidential Information.

3. Confidential Information Defined: Confidential Information may include, but is not limited to, biological materials, computer source codes, diagrams, electronic files, trade secrets, theories, methods, material composition, invention disclosures, patent applications, technical and scientific information, research data, draft publications, technical reports, research plans, business plans, financial reports, projections, and agreement terms provided by _____ of Boise State University.

Confidential Information shall not include any information which Recipient can establish by competent written proof

(a) was in the public domain upon execution of this Agreement or comes into the public domain during the term of this Agreement through no fault of Recipient;

(b) was known to Recipient prior to execution of this Agreement and was not acquired, directly or indirectly, from Disclosing Party or from a third party under a continuing obligation of confidentiality or limited use;

(c) was independently developed by Recipient without substantive knowledge of or assistance from the Confidential Information; or

(d) was lawfully disclosed to Recipient from a third party who did not require Recipient to hold it in confidence or limit its use and who did not acquire it, directly or indirectly from Disclosing Party under a continuing obligation of confidentiality.

4. Term: This agreement is effective as of the date it is fully executed by all parties, and shall continue for a term of five years, unless sooner terminated as provided herein or extended by mutual, written agreement of the parties.

5. Non-Disclosure Obligation: Recipient will not use any Confidential Information of Disclosing Party for any reason other than the Purpose identified herein without the prior written

consent of Disclosing Party. Recipient will not disclose the Confidential Information of the Disclosing Party, except as is expressly authorized in writing by the Disclosing Party. Recipient may disclose the Confidential Information of Disclosing Party to its own employees assisting in making an evaluation of the Confidential Information; provided, however, that such employees are advised of the confidentiality and non-use obligations hereunder and are legally obligated by written agreement or otherwise to maintain the confidentiality and non-use of the Confidential Information. In no event will Recipient disclose Confidential Information to third parties unless it obtains the prior written consent of Disclosing Party, provided that, prior to any such disclosure, Recipient shall first obtain a written non-disclosure agreement from such third party containing terms and conditions substantially similar to those set forth herein. If requested, a copy of such executed agreement will be provided to Disclosing party.

If Recipient is legally required by court order, law or other governmental regulation or authority to disclose certain Confidential Information received from Disclosing Party, such disclosure may be made only after giving written notice to disclosing Party of such legal requirement plus a reasonable opportunity for Disclosing Party to object to such disclosure and to seek a protective order; and in any extent, the disclosure shall be limited to only that portion of the Confidential Information which is legally required to be disclosed.

6. Intellectual Property: Neither the disclosure of Confidential Information nor the execution of this Agreement shall be considered the grant of a license nor conveyance of any intellectual property rights including those rights under any patents or patent applications. None of the present or potential patent rights of either party in existing Confidential Information shall be affected by this Agreement. The Confidential Information shall remain the property of the Disclosing Party and no rights are granted to the Recipient except the limited right to use the Confidential Information as set forth above.

7. Termination, Default and Remedies: Either party may terminate this Agreement, without cause, by giving sixty (60) days written notice to the other party. Termination of this Agreement for any reason shall not relieve a party from its obligations incurred prior to the termination date. In the event of any default of this Agreement, the non-defaulting party, upon written notice to the defaulting party, may terminate this Agreement as of the date specified in the notice, and /or may obtain such other and further relief as may be provided by law, including injunction or restraining order as required to prevent unauthorized disclosures of Confidential Information. In any such action, it shall be presumed that a breach, or threatened breach, of this Agreement will result in irreparable harm to the non-defaulting party. Within fifteen (15) days following termination of the Agreement, each party shall return to the other all documentation, copies, notes, diagrams, computer memory media and other materials containing any portion of the Confidential Information, or shall confirm to the Disclosing Party, in writing, the destruction of such materials. Notwithstanding the foregoing, Recipient may retain one archival copy of the Confidential Information received from Disclosing Party in a secure location to be used solely to determine its obligations under the Agreement.

8. No Warranty: All Confidential Information is provided "AS IS" and without warranty, express or implied, of any kind, including without limitation, any warranty of merchantability or of fitness for a particular purpose. Disclosing Party shall not be liable for any special, incidental or

consequential damages of any nature whatsoever resulting from receipt or use of the Confidential Information by Recipient.

9. Compliance with Laws - U.S. Export Compliance: The parties acknowledge that performance of the Agreement is subject to compliance with applicable United States laws, regulations, or orders including those that may relate to the export of technical data and equipment, such as International Traffic in Arms Regulations (“ITAR”) and/or Export Administration Act/Regulations (“EAR”), as may be amended, and agree to comply with all such laws, regulations or orders. No party will export, directly or indirectly, any Confidential Information without first obtaining any required export license or governmental approval and, in the case of Confidential Information disclosed by the University, without first obtaining permission from its Office of Sponsored Programs.

10. Notices: All notices related to this Agreement shall be in writing and shall be delivered by (i) certified mail with return receipt, (ii) hand delivery with signature or certification, (iii) fax transmission if verification of receipt is obtained, or, (iv) e-mail with return receipt, to the designated representative of the party as indicated below. Notice shall be deemed effective on the date received. A party may change its designated representative for notice purposes at any time by written notice to the other party.

11. Other Provisions:
(a) This agreement constitutes the entire agreement between the parties and supersedes any previous contracts, understandings or agreements of the parties, whether verbal or written, concerning the subject matter of this Agreement. No amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representative of the parties.
(b) In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.
(c) This Agreement shall be governed by and construed under the laws of the State of Idaho. Venue for any action arising under this Agreement shall be exclusively in the District Court in Ada County, Idaho.

IN WITNESS WHEREOF, the parties have executed this Agreement:

BOISE STATE UNIVERSITY

By: _____ Date: _____
Mary Givens

By: _____ Date: _____
Recipient