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OREGON INSTITUTE OF TECHNOLOGY

OFFICE OF INNOVATION AND TECHNOLOGY TRANSFER

**Mutual Confidential Disclosure Agreement**

This Mutual Confidential Disclosure Agreement (“Agreement”) is by and between the OREGON INSTITUE OF TECHNOLOGY, a State of Oregon public university having a main campus located at 3201 Campus Drive, Klamath Falls, OR 97601 (“University”) and [ENTER COMPANY NAME] [a/an Entity Type] with a principal place of business located at [Enter Company Address] (“Company”).

Recitals:

1. University and Company are each in possession of non-public, confidential or proprietary information which may include data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, samples, reports, customer lists, price lists, studies, findings, inventions, methods, discoveries, trade secrets, software, prototypes, ideas, or any other confidential intellectual property (collectively, “Information”), and will be making such Information available to the other for possible collaboration.
2. Each party regards Information that it may disclose pursuant to this Agreement to be confidential and proprietary Information.
3. The parties are willing to disclose their respective Information to each other upon the terms set forth below. Company is responsible for clearly identifying confidential information and making best efforts to keep the confidential information to a minimum.

Agreement:

Now therefore, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Notwithstanding any other term of this Agreement, the University’s obligations under this Agreement are subject to the limitations and conditions of the Oregon Public Records Law, Oregon Revised Statutes (ORS) 192.410 - 192.505.
2. The receiving party agrees to receive in confidence, Information (defined in Recitals above) disclosed to it by the disclosing party. Internal dissemination of the disclosing party's Information by the receiving party shall be limited to those employees whose duties justify their need to know such Information and then only on a basis of a clear understanding by those employees of their obligation to maintain the confidential status of such Information and to restrict the use of such Information solely to the limited use agreed upon between the parties and not disclose such Information to a third party.
3. The amount of Information to be disclosed is completely within the discretion of the disclosing party.
4. Information shall only be used by the receiving party or parties for the following purpose: discussion and possible implementation of research proposal(s).
5. The Information may be supplied to the receiving party in written, oral or electronic form. The Information shall be identified as being confidential and disclosed under this Agreement. Any Information, which is disclosed in oral form, shall be confirmed in written summary form within thirty (30) days after the date of the oral disclosure.
6. The effective date of this Agreement shall be [DATE] (“Effective Date”) and shall expire one (1) year from the Effective Date, provided that either party may terminate this Agreement at any time by providing thirty (30) days’ written notice to the other party. Notwithstanding anything to the contrary herein, each party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of three (3) years from the date of such expiration or termination, even after the return or destruction of Information by the receiving party.
7. Nothing in this Agreement shall deprive the receiving party of the right to use or disclose any of the Information:
	1. which is, at the time of disclosure, generally known to the trade or to the public;
	2. which becomes at a later date generally known to the trade or to the public through no fault of the receiving party and then only after said later date;
	3. which is possessed by the receiving party as evidenced by the receiving party’s written or other tangible evidence, before receipt thereof from the disclosing party; or
	4. which is disclosed to the receiving party in good faith by a third party who has an independent right to such Information.
8. The receiving party acknowledges that all Information received from the disclosing party is the exclusive property of the disclosing party, and that this Agreement does not grant a license or option to the receiving party under any patent or other intellectual property rights held by the disclosing party.
9. Company acknowledges that University may have students or employees who are foreign nationals who may be working with the Information Company provides to University. Company agrees to inform University, before providing any Information, whether the Information is subject to Export Administration Regulations or International Traffic in Arms Regulations and if so what Commerce Control List number(s) or U.S. Munitions List number(s) it is controlled under. University shall have the right to decline or limit the receipt of such Information. The parties acknowledge University operates under the fundamental research exemption from export controls. While University currently maintains its Information as confidential for the purpose of protecting future patentability, University’s intent is to publish results in a timely manner.
10. Any disclosure by the receiving party or its representatives of any of the disclosing party's Information pursuant to applicable federal, state or local law, regulation or a valid order or other legally supported data request issued by a court or governmental agency of competent jurisdiction (a "Legal Order") shall be subject to the terms of this Section. Prior to making any such disclosure, the receiving party shall provide the disclosing party with:
	1. to the extent reasonably possible and not prohibited by law or Legal Order, prompt written notice of such requirement so that the disclosing party may seek, at its sole cost and expense, a protective order or other remedy; and
	2. reasonable assistance, at the disclosing party’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure.
	3. If, after providing such notice and assistance as required herein, the receiving party remains subject to a Legal Order to disclose any Information, the receiving party (or its representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the Information which, such Legal Order specifically requires the receiving party to disclose. The receiving party shall not be in breach of this Agreement or liable to disclosing party for any disclosure made pursuant to this Section.
11. Upon request of the disclosing party and in any event, upon the termination of the relationship between the parties, the receiving party will deliver to the disclosing party all memoranda, notes, records, tapes, documentation, disks, manuals, files of other documents, and all copies of the same, concerning or containing Information that are in the receiving party’s possession, whether made or compiled by the receiving party or furnished to the receiving party by the disclosing party. One copy of Information may be required for archival purposes only.
12. Neither the disclosing party nor any of its representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Information disclosed to the receiving party hereunder. Neither the disclosing party nor any of its representatives shall be liable to the receiving party or any of its representatives relating to or resulting from the receiving party's use of any of the Information or any errors therein or omissions therefrom.
13. The parties agree that neither party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. Either party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other party, and may pursue a similar purpose without the involvement of, or liability to, the other party, provided that the obligations of this Agreement are not breached.
14. Any invalidity, should it arise, of one or more sections(s) of this Agreement shall not affect the enforceability of any or all of the other sections within this Agreement.
15. This Agreement shall be governed and construed in accordance with the internal laws of the State of Oregon without giving effect to any choice or conflict of law provision or rule (whether of the State of Oregon or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Oregon. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated hereunder shall be instituted exclusively in the federal courts of the United States or the courts of the State of Oregon in each case located in the County of Marion, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or forum non conveniens. Service of process, summons, notice or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action or other proceeding brought in any such court.
16. Neither party may assign any of its rights hereunder without the prior written consent of the other party. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning party of any of its obligations hereunder. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
17. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege
18. This Agreement embodies the entire understanding between the parties with respect to the subject matter described within this Agreement. This Agreement shall supersede all previous communications, representations or undertakings, either verbal or written, between the parties with regard to Information. This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto.

18. Please return a signed copy of this Agreement to:

 OFFICE OF INNOVATION AND TECHNOLOGY TRANSFER

 OREGON INSTITUTE OF TECHNOLOGY

 27500 SW Parkway Ave.

 Wilsonville, Oregon 97070

 (503) 821-1291 • (503) 218-1126 fax • Email: oitt@oit.edu

**This Agreement shall be effective when signed below or in counterpart. Photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original.**

[Signature Page Follows]

**OREGON INSTITUTE OF [COMPANY NAME]**

**TECHNOLOGY**

Name: Date Name: Date

Title: Title:

 Phone Number:

Primary contacts for receiving or disclosing Information for University:

**University Contact** **University Student**

##### I have read and understand this I have read and understand this

Agreement Agreement

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**Signature Date Signature Date**

Print Name: Print Name:

**Title:**