

## Confidentiality Agreement Template

Please make a photocopy for your files and return the original to:  
New Mexico Highlands University  
Office of Research and Sponsored Projects, Suite 235  
Las Vegas, NM 87701

Date:  (hereinafter, "Effective Date")

WHEREAS, the Board of Regents of New Mexico Highlands University acting by and through the University Office of Research and Sponsored Projects (hereinafter NMHU) and (*list name of Company or Institution here*,

which includes all its subsidiaries and affiliates (hereinafter, *list as "Company" or "Institution" where appropriate*) having offices at (*list complete address of company here*)

(hereinafter NMHU and Company collectively, the "Parties").

WHEREAS, NMHU owns certain proprietary information relating to (*briefly describe proprietary information here*:

(hereinafter, "*Technology" or other type*.)

[NMHU contacts: (*list name of investigator and Associate VP for Research and Sponsored Projects here*);

and

WHEREAS, *Company* desires to receive information relating to the *Technology* for the purpose of evaluating the commercial potential of the *Technology*;

THEREFORE, to assure NMHU that all its Proprietary Information will be maintained for not less than five (5) years by *Company* under circumstances of strict confidentiality, the Parties acknowledge and agree as follows:

1. "Proprietary Information" shall mean any information relating directly or indirectly to the *Technology* not generally known to the public, which is provided to *Company* by NMHU or its representatives and conveyed in written, oral, or visual form including but not limited to scientific knowledge, know-how, processes, invention, techniques, formulae, products, business operations, customer requirements, data, plans, samples, data, or other records, and or software, and if provided orally reduced to writing within thirty (3) days of oral disclosure and provided to *Company*. All disclosures shall be clearly marked confidential.
2. Proprietary Information does not include information, which the *Company* can demonstrate and document:

- (a) was in its knowledge or possession prior to disclosure by NMHU or its inventors;
  - (b) was public knowledge or has become public knowledge through no fault of the *Company*;
  - (c) was properly provided to the *Company* by an independent third party who has no obligation of secrecy to NMHU or its inventors; or
  - (d) is hereafter independently developed by the *Company* without reference to NMHU information.
3. The *Company* may only use the Proprietary Information under the following restrictions:
- (a) *Company* may duplicate or reproduce that disclosed Proprietary Information; if duplicated or reproduced in whole or in part, the Proprietary Information must carry a proprietary notice stating if is confidential and proprietary of NMHU, and only those employees having a need to know shall be given access to the Proprietary Information.
  - (b) *Company* shall no duplicate or use the disclosed Proprietary Information to manufacture, import or sell products or technologies for commercialization unless a release, option or license granting same is executed with NMHU or its assignee(s) not shall the *Company* use or authorize the use of the Proprietary Information for its own or the benefit of third parties;
  - (c) Any person employed by the *Company* utilizing the Proprietary Information will be advised of, and is subject to, the conditions in this Agreement, and
  - (d) *Company* shall promptly inform NMHU, prior to making any disclosure, of court orders or government regulations requiring *Company* to disclose Proprietary Information, with failure to promptly inform NMHU being considered a material breach of this Agreement.
4. *Company* understands that disclosure of the Proprietary Information could destroy the value of said information, and the *Company* agrees to protect it from further disclosure using at least the same degree of care as it would use with its own proprietary information, but in no case less than a reasonable degree of care.
5. Proprietary Information delivered hereby is experimental in nature. NMHU makes no warranties, representation or undertaking with respect to its utility, efficacy, nontoxicity, safety, or appropriateness for a particular purpose. The *Company* hereby agrees to defend, indemnify and hold harmless NMHU, its employees and agents from any loss, claim, damage or liability, of whatsoever nature, which may arise from possession or use of NMHU's Proprietary Information by the *Company*.

6. Upon completion of *Company's* stated need for Proprietary Information or upon NMHU's written request, *Company* shall discontinue the use of Proprietary Information and written materials embodying that information and destroy all such materials unless otherwise directed by NMHU.
7. Either Party may terminate this Agreement upon thirty (30) days written notice and require the return of all Proprietary Information provided under this Agreement. The requirements of confidentiality commence on Effective Date and shall survive termination and continue for five (5) years from Effective Date.
8. This Agreement shall be governed and construed under the laws of the State of New Mexico. Any action arising out of this Agreement shall be subject to the jurisdiction of the 1<sup>st</sup> Judicial State District Court in Santa Fe, New Mexico, and the Federal District Court in Albuquerque, New Mexico.
9. Nothing in this Agreement shall be construed to constitute the grant of a license to the undersigned under any of NMHU's patents, patent applications, copyrights, trade secrets or the Proprietary Information.
10. *Company* shall, to the best of its ability, comply with all applicable state or federal regulatory requirements governing the subject matter of this Agreement and the use of the Proprietary Information.

IN WITNESS WHEREOF, NMHU and the *Company* hereby accept the terms and conditions of this Agreement and hereby signify their acceptance by the signing of their respective officers hereunto duly authorized on the day and year written above:

THE BOARD OF REGENTS OF NEW MEXICO HIGHLANDS UNIVERSITY

**AUTHORIZED SIGNATURES:**

Printed Name of Authorized Person:	
Title:	

	Date (month/date/year):	
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Director of Research and Sponsored Projects  
New Mexico Highlands University

Printed Name of Authorized Person:	
Title:	

	Date (month/date/year):	
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*Company*

