

## CONFIDENTIALITY AGREEMENT

Maine citizens have been appointed to serve as director of the Institute, or member of the Institute's several Technology Boards. These individuals have been chosen because of their significant work experience and prominence in their respective fields consistent with the directives of 5 MRSA section 407 to stimulate and support research and development activity in the State's technology-intensive industrial sectors. These individuals may work for or be associated with competitors of the applicant or with entities that may have interests adverse to the applicant.

In order to carry out its mission, the Institute must receive applications for funding or capital investment. Applicants may share certain confidential and proprietary information relating to the applicant's business or operations in order to permit the Institute to evaluate its application. If the Institute is to be successful in securing the confidence of the technology intensive industrial sectors, it must establish a review process that protects the applicant's confidential and proprietary information submitted in funding applications from improper disclosure, and gives clear guidance to directors, Technology Board members and employees concerning the circumstances under which they may disclose information originally designated as confidential or proprietary in a funding application.

Each Institute Director, Technology Board member, peer reviewer, contractor or employee shall sign this Confidentiality Agreement in order to ensure funding applicants of a review process that protects confidential and proprietary information from improper disclosure.

The undersigned director, member, reviewer, contractor or employee ("Undersigned") of the Maine Technology Institute ("Institute") or its Technology Boards agrees to the following terms and conditions as part of their responsibilities and duties to the Institute:

### 1. Confidential Information

Confidential information shall mean all information, including, but not limited to, a formula, pattern, compilation, program, device, method, technique or process, that:

- A. Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use;
- B. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and

- C. Is clearly designated by the applicant to be confidential information, by means of a stamp, or other prominently displayed label, on each page containing confidential information.

In no event shall the identity of the applicant, the amount of the funding request, or a generic summary of the project provided by applicant as part of the application be considered confidential information, as this information must be used by the Institute for management and audit purposes. Information shall not be considered confidential if it is in the public domain at the time of disclosure or is subsequently made available to the public by the applicant, or any third party with rights to the information.

## 2. Confidentiality Obligations

Except as expressly authorized by prior written consent of the applicant, or its successor in interest, the Undersigned agrees to treat such information as confidential and further agrees:

- A. Not to disclose any confidential information to any party except for Institute directors, members, employees, peer reviewers or contractors who have a need-to-know in connection with the evaluation of the application;
- B. To use all confidential information solely for purposes of evaluating the application and for no other purpose whatsoever; and
- C. Upon request of the Institute, to surrender or destroy copies of all confidential information provided to the Undersigned in connection with the review process, including, but not limited to, all draft and final notes, documents, or other records that contain any information, analyses, or findings related to work by the Undersigned on the application or the Institute peer review process.

## 3. Exceptions to Confidentiality

The obligations of confidentiality and restrictions on use outlined above shall not apply to any confidential information that:

- A. Was in the public domain as of the date that the application was submitted to the Institute or subsequently came into the public domain other than through the Undersigned;
- B. Was lawfully received from a third party free, to the best of the Undersigned's knowledge, of any obligation of confidentiality owed by such third party;
- C. Was already in the lawful possession of the Undersigned prior to receipt thereof, directly or indirectly, from the applicant; and

D. Is required to be disclosed in a judicial or administrative proceeding or otherwise under any law, rule or regulation; provided that the Undersigned must give the Institute as much notice as possible, and the Institute must in turn give the applicant as much advance notice of the possibility of such disclosure as practical, so that the applicant may attempt to stop such disclosure or obtain a protective order concerning such disclosure; and so long as the Undersigned ultimately discloses only such limited part of the confidential information as the Institute advises is legally required to be disclosed.

4. Scope of Agreement.

By signing this Confidentiality Agreement, the Undersigned agrees to be personally bound by same, as an individual in his capacity as an Institute director, member, employee, peer reviewer or contractor. It is acknowledged and understood that this Confidentiality Agreement is not intended to and does not preclude the firm or entity with whom the Undersigned is employed or is associated from representing as a client or from working for a competitor of the applicant or other entity that may have interests adverse to the applicant, so long as reasonable steps are taken to ensure compliance with the personal obligations of the Undersigned under this Confidentiality Agreement. The Undersigned may seek the guidance of the Institute with respect to establishing the reasonable steps necessary to ensure such compliance.

5. Remedies

The Undersigned acknowledges and agrees that any breach or violation of the provisions of this Confidentiality Agreement would irreparably injure the Institute and leave the Institute entitled to injunctive relief and/or specific enforcement of this Agreement upon actual or threatened breach by the Undersigned. Nothing in this Agreement is intended to create a cause of action or remedy for the benefit of any applicant against the Institute or the Undersigned, or to impair the charitable immunity protections afforded the Institute and the Undersigned under law.

In Witness Whereof, the Undersigned has executed this Agreement as of the date below.

Name: \_\_\_\_\_  
(signature/printed name)

By Its: \_\_\_\_\_  
(title/organization)

Date: \_\_\_\_\_