NONDISCLOSURE AGREEMENT

THIS AGREEMENT is made by and between the Chemical Biological Medical Systems Medical Identification and Treatment Systems (CBMS-MITS), part of the United States Department of Defense Joint Program Executive Office for Chemical and Biological Defense, located at 1564 Freedman Drive Fort Detrick, MD 21701-4501, and _____, (an individual or entity) whose principal address is located at

_____

(hereinafter referred to individually as a Party or collectively as the Parties) to facilitate the following described "Stated Purpose" by protecting non-public and proprietary information from misuse and unauthorized disclosure. This Agreement shall become effective upon the date of last signature by the authorized representatives of each of the Parties.

SUBJECT MATTER AND STATED PURPOSE:

a. The general subject of information to be exchanged is the Bioscavenger Bidder's Library.

b. The Stated Purpose of this Agreement is to view the contents of the Bioscavenger Bidder's Library for use in the Request for Proposal (RFP) solicitation response without disclosing any of the Library's information to any other Parties.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND SPECIFIC REQUIREMENTS. As used in this Agreement, the following terms shall have the meanings as defined.

1.1. Information. As used in this Agreement, the term "Information" includes, but is not limited to, knowledge relating to research, inventions, trade secrets, technology (including designs and specifications of components and systems, the composition of matter, methods and processes, machines and articles of manufacture, applications, and performance data), and business and financial records.

1.2. Disclosure of Information. As used in this Agreement, "Disclosure of Information" shall mean the exchange of Information orally, visually, or on any human or machine readable medium including, but not limited to, oral and visual expressions, demonstrations, audio tapes, video tapes, drawings, computer memory devices, models, prototypes and samples.

1.3. Disclosing Party. As used in this Agreement, "Disclosing Party" shall mean the Party making a Disclosure of Information to the other. Under this Agreement, either or both Parties may be a Disclosing Party.

1.4. Receiving Party. As used in this Agreement, "Receiving Party" shall mean the Party receiving a "Disclosure of Information" from the other. Under this Agreement, either or both Parties may be a Receiving Party.

1.5. Protected Information. As used in this Agreement, "Protected Information" shall mean Information provided by a Disclosing Party to a Receiving Party under this Agreement that has been clearly identified through the use of an appropriate marking that puts the Receiving Party on notice that the Disclosing Party considers the Information to be Protected Information under the terms of this Agreement. Protected Information shall not include, and the identification of Information as Protected Information shall not affect the rights of the Parties to use or disclose, Information that:

1.5.1. was available in the public domain at the time of disclosure and receipt, or subsequently becomes available in the public domain from a source other than the Receiving Party, or

1.5.2. was in the possession of or known by the Receiving Party prior to the time of the receipt from the Disclosing Party, or

1.5.3. becomes available to the Receiving Party without restriction as to its disclosure or use from a third party under circumstances permitting its disclosure by the Receiving Party, or

1.5.4. is developed at any time by or for the Receiving Party independently of the Protected Information.

1.5.5. is required to be disclosed by law, regulation or pursuant to legal, judicial or administrative process.

1.6. APPROPRIATE MARKINGS. As used in this Agreement, "Appropriate Markings" shall mean any reasonable method by which a Disclosing Party clearly identifies to a Receiving Party that Information is being disclosed under this Agreement, and is considered by the Disclosing Party to be Protected Information. Protected Information that is disclosed in tangible form shall be clearly marked with a human readable legend, stamp or other written identification prominently affixed or attached to the medium in which the Information is conveyed. This human readable legend, stamp, or other written identification shall reference this Agreement, or shall identify the date that the Receiving Party's obligations with respect to the Protected Information will expire. Use of the marking "Protected Information" is preferred, but the Parties will also recognize other appropriate markings such as "Sensitive Information," "Proprietary Information," "Source Selection Sensitive," "Nondisclosure Information," and "Business Sensitive Information". The terms Confidential, Secret and Top Secret are established security classifications within the U.S. Government and shall not be used to mark or identify Information as Protected Information.

1.6.1. If Protected Information is disclosed orally or visually in an intangible form, the Disclosing Party shall, prior to disclosure, provide oral or written notice to the Receiving Party that it considers the Information to be Protected Information, and the Receiving Party shall treat such intangible Information as Protected Information.. Within thirty (30) calendar days after notice and disclosure, the Disclosing Party shall provide an appropriately marked written summary of the intangible Information to the Receiving Party. If a properly marked written summary is not provided by the Disclosing Party within thirty (30) calendar days, the Information previously conveyed in intangible form will not be Protected Information under this Agreement.

1.6.2. If a Receiving Party has any objection to a marking placed on Information or to any summary of intangible Information transferred to it by the Disclosing Party as Protected Information, the Receiving Party shall, within ten (10) working days of receipt of such Information or summary of intangible Information, bring such objection to the attention of the Disclosing Party. If the Parties are unable to mutually resolve the objection, the Receiving Party shall immediately return the challenged Information or summary to the Disclosing Party.

2. AUTHORIZED ACCESS AND DISCLOSURE.

2.1. A Receiving Party shall not use or disclose Protected Information other than in accordance with the terms and conditions of this Agreement.

2.2. A Receiving Party shall take reasonable and appropriate measures to safeguard Protected

Information from misuse, theft, loss, destruction, and unauthorized disclosure. Such measures shall be no less than that degree of care the Receiving Party normally takes to preserve and safeguard its own proprietary Information. The Parties shall not be liable for the use or disclosure of Protected Information used or disclosed despite the exercise of reasonable care provided that, upon discovery of any unauthorized use or disclosure, it promptly notifies the Disclosing Party in writing and takes action to prevent further disclosure and to recover any Protected Information already disclosed.

2.3. If Protected Information is included in any analyses, reports, or other documents or physical embodiments prepared by the Receiving Party, all such documents and embodiments shall be appropriately protected by the Receiving Party in the same manner as the Receiving Party protects the source Protected Information.

2.4. A Receiving Party may provide access to Protected Information to its own employees who reasonably require such access in order to accomplish the Stated Purpose of this Agreement. Prior to being granted access to Protected Information, all employees of a Receiving Party shall be advised concerning the requirements and restrictions of this Agreement, directed to use and protect the Protected Information properly, and not to disclose Protected Information without proper authorization. The Receiving Party will document which of its employees have been granted access to Protected Information and so advise the Disclosing Party upon request.

2.5. A Receiving Party may provide access to Protected Information to its agents, service contractor employees, collaborators and other non-Parties to this Agreement who reasonably require such access in order to accomplish the Stated Purpose of this Agreement. Before any such non-Party organizations or individuals are granted access to Protected Information, the Receiving Party shall notify and obtain the concurrence of the Disclosing Party. The Receiving Party shall also require non-Party organizations and individuals (other than U.S. Government officers and employees who are prohibited by the Trade Secrets Act, 18 U.S.C. 1905, from making unauthorized use or disclosure of Protected Information) to execute the Supplemental Agreement at Appendix A prior to disclosing any Protected Information.

2.6. A Receiving Party shall not disclose Protected Information to any person (including its own employees), nor shall a Receiving Party export any Protected Information from the United States, if such disclosure or export would violate the Arms Export Control Act, the International Traffic in Arms Regulation (22 C.F.R. Part 121 et seq.), the Export Administration Act, the Department of Commerce Export Regulation (15 C.F.R. Part 770 et seq.), the DoD Industrial Security Regulation (D0D 5220.22-R), or any other law or regulation of the United States. A Receiving Party shall first obtain the written consent of the Disclosing Party before requesting authority to export Protected Information from the United States.

2.7. The following individuals are designated as the principal points of contact for the transmittal and receipt of Protected Information under this Agreement.

For CBMS-JPMO:
Mr. Leo Fratis
110 Thomas Johnson Drive
Fort Detrick, MD 21702
Leo.Fratis@us.army.mil

3. GENERAL PROVISIONS.

3.1. All Protected Information owned by a Disclosing Party shall remain the property of the Disclosing Party. Protected Information in tangible form may be retained in the possession of the Receiving Party

after termination or expiration of this Agreement only to the extent expressly authorized by the Disclosing Party. Within thirty (30) days after termination or expiration of this Agreement, or upon receipt of a written demand from the Disclosing Party for the return of Protected Information, the Receiving Party shall promptly return (or destroy, if so requested) all tangible forms of Protected Information received from the Disclosing Party. If destruction is requested, the Receiving Party will provide written notification to the Disclosing Party certifying that the destruction has been accomplished.

3.2. If samples, models, prototypes, computer programs, or other such embodiments are disclosed as Protected Information, the Receiving Party will not attempt to reverse engineer or otherwise analyze such items unless the written approval of the Disclosing Party is obtained prior to engaging in reverse engineering or analysis.

3.3. Each Party shall bear its own costs and expenses incurred under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract, or other business relationship with the other Party.

3.4. This Agreement shall not be construed as a Teaming Agreement, Joint Venture, or any other such agreement nor shall it be construed as a commitment to procure or provide any specific products or services. Nothing contained herein shall be construed to grant or confer any rights other than to use the Protected Information for the Stated Purpose under the terms of this Agreement, nor shall anything herein be construed to grant license or other rights to any patents, trademarks, copyrights or other intellectual property whatsoever. The Parties expressly agree that this is an Agreement for protecting Information only.

3.5. A RECEIVING PARTY SHALL ACCEPT ALL PROTECTED INFORMATION AND EMBODIMENTS THEREOF ON AN “AS IS” BASIS**.** THE DISCLOSING PARTY MAKES NO WARRANTY OR REPRESENTATION OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE.

3.6. Either Party, upon thirty (30) days written notice to the other Party, may terminate this Agreement.

a. Duration. Unless sooner terminated, this Agreement shall expire three (3) years from its effective date.

b. Effective Period. Notwithstanding the termination or expiration of this Agreement, all obligations incurred by a Receiving Party with respect to protection, use, disclosure and return or destruction of Protected Information shall survive and remain in effect for five (5) years from the date the Protected Information was received.

3.7. This Agreement may not be assigned by either Party without the prior express written authorization of the other Party. All obligations incurred by a Receiving Party under this Agreement with respect to Protected Information shall be binding on its authorized successors and assigns.

3.8. This Agreement shall be governed by the Federal laws of the United States.

3.9. In the event a Receiving Party is subjected to any legal process that seeks to require it to produce Protected Information for inspection or review in a judicial or administrative proceeding, the Receiving Party shall promptly provide notice and a copy of the legal process to the Disclosing Party in order that the Disclosing Party may have an opportunity to challenge the legal process or seek a protective order. If, in the absence of a protective order, a Receiving Party is compelled to produce Protected Information to a tribunal or be found liable in contempt and subjected to a penalty, the Receiving Party may disclose such

Protected Information to the tribunal provided the Protected Information so disclosed is clearly marked as Protected Information.

4. This Agreement constitutes the entire agreement between the Parties, and supersedes any prior or contemporaneous agreements, representations and understandings of the Parties with respect the disclosure of Information covered by this Agreement. It shall not be suspended, modified, or amended except by written agreement of the Parties. The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that any other provision may be found invalid or unenforceable.

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their duly authorized representatives who also warrant their authority to enter into the Agreement on behalf of their respective Parties:

For:	For:
Signature:	Signature:
Name:	Name:
Title:	Title:
Dated:	Dated:

Appendix A

All individuals who are authorized access to Protected Information through the Organization will sign and enter into this Supplemental Non-Disclosure Agreement before being granted access to Protected Information.

IN WITNESS WHEREOF, the Undersigned has hereto subscribed individually and/or as representatives of the named Organization.

_____
Signature

_____
Name (Print or Type)

_____
Name and Address of Organization

_____
Date