



**DECLARATION AND IDENTIFICATION
OF CONFIDENTIAL INFORMATION**

A. Business records and information provided to the Idaho Department of Commerce (“Commerce”) are subject to public disclosure under the Idaho Public Records Law (Idaho Code sections 74-101 through 74-126), and Idaho Code section 67-4708, unless specifically exempt from public disclosure. Commerce shall consider any records or information exempt from public disclosure as confidential (“Confidential Information”).

B. Confidential Information shall not include information which: (1) is or becomes generally available to the public other than as a result of a disclosure by Commerce or any of its directors, officers, employees, agents, counsel, consultants or other representatives, or any other person to whom Commerce discloses such information (whether orally or in writing); (2) was within Commerce’s possession or actual knowledge prior to the information being furnished to Commerce in connection with this pre-application or application, provided that the source of such information was not bound by a confidentiality agreement with, or similar obligation to, the Applicant with respect to such information; (3) becomes available to Commerce on a non-confidential basis from a source other than the Applicant, provided that such source is not bound by a confidentiality agreement with, or similar obligation to, the Applicant with respect to such information; (4) is independently developed by Commerce under circumstances not involving Applicant’s pre-application or application without use or reference to any of Applicant’s Confidential Information; (5) is publicly disclosed pursuant to a lawful requirement or request from a governmental agency acting within its jurisdiction; or (6) is otherwise open to public inspection and copying, unless exempt, under the Idaho Public Records Law Idaho Code sections 74-101 through 74-126, or Idaho Code § 67-4708.

C. The Applicant shall declare and identify each individual document it considers confidential and exempt from public disclosure. The Applicant shall mark each page of all such documents as “confidential – proprietary information”. Commerce will not accept a legend or statement on one (1) page that all, or substantially all, of a document is exempt from disclosure.

D. Applicant, unless Applicant is a state institution within the meaning of Idaho Code section 59-1015, shall indemnify and defend Commerce and the State of Idaho against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring any designation by Applicant of Confidential Information or for Applicant’s failure to designate individual documents as exempt. Applicant’s failure to designate as exempt any document that is released by Commerce shall constitute a complete waiver of any and all claims for damages caused by any such release. If Commerce receives a request for records claimed exempt by Applicant, Applicant shall provide the legal defense for such claim and pay all expenses incurred by Commerce in connection with such request, unless Applicant is a state institution within the meaning of Idaho Code section 59-1015. If Applicant is a state institution within the meaning of Idaho Code section 59-1015, Commerce shall notify Applicant in the event Commerce intends to release any record claimed exempt by Applicant, based on Commerce’s determination that the record is not exempt from disclosure, prior to such release.



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E. Applicant affirmatively warrants and represents it has sufficient authority to provide Commerce with Confidential Information, and any other documents or information for purposes of Applicant's pre-application or application. Applicant, unless Applicant is a state institution within the meaning of Idaho Code section 59-1015, shall indemnify and defend the Commerce and the State of Idaho against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever based upon Commerce's receipt of any information from Applicant.

By signing below and proceeding with its pre-application or application, Applicant acknowledges and agrees to the terms and conditions stated herein.

Name: _____

Title: _____

Date: _____

**The Office of the Attorney General for the State of Idaho maintains an Idaho Public Records Law Manual, which is available to the public and may be useful in completing this Declaration and Identification of Confidential Information form. The manual is available here:*

<https://www.ag.idaho.gov/content/uploads/2018/04/PublicRecordsLaw.pdf>