

MUTUAL CONFIDENTIAL DISCLOSURE AGREEMENT

This AGREEMENT, with an effective date as of this ____ day of _____ 20____, is between The University of South Florida Board of Trustees, a public body corporate, ("USF") having an address at 3802 Spectrum Boulevard, Suite 100, Tampa, Florida 33612 and _____ ("*insert reference name of Party 2 here*") having an address at _____.

USF and _____ are willing to exchange Confidential Information for the purposes of discussing _____ in connection with a current or contemplated sponsored research contract or other business activities ("Purpose").

In consideration of the above premises and the mutual undertakings hereinafter set forth, the parties agree as follows:

1. One party ("Recipient") may be provided, shown or observe Confidential Information (defined below) relating to Purpose, such Confidential Information being owned by the other party ("Provider"). "Confidential Information" shall mean any and all proprietary information, materials, and data, in any form (whether or not patentable), provided or disclosed (whether or not purposefully) or otherwise discovered by either party through use of the other party's proprietary information, materials or data, including, without limitation, business and process information, financial information, marketing and sales information, client and customer information, valuation information, technical information and know-how, computer files, computer printouts, computer programs (in any form), computer programming techniques, drawings, specifications, formulas, sketches, design details, ideas, evaluations, findings, methods, processes, descriptions, chemical structures, specifications and engineering material (in any format), works of authorship, inventions, research and scientific information or data, unpublished patent applications, and any other information, materials, or data that are of a proprietary nature.
2. Recipient shall have no obligation with respect to information:
 - which was in Recipient's possession prior to its receipt from Provider, as evidenced by written or electronic records;
 - after such information becomes publicly known or available through no breach of this Agreement by Recipient;
 - after the same information is acquired by Recipient from a third party without notice or restrictions of confidentiality;
 - after the same information is independently developed by or for Recipient personnel to whom Provider's Confidential Information had not been disclosed; or
 - that was not clearly identified and marked as "Proprietary" or "Confidential" at the time of receipt, unless Provider identifies the proprietary nature of the information at the time of disclosure to Recipient and confirms same to Recipient in writing within fifteen (15) days of such disclosure. Failure to do so shall not constitute or be deemed to constitute a waiver of confidentiality with respect to Confidential Information that a reasonable person knowledgeable in the field and under the circumstances would recognize as being confidential. Such confirmation shall describe in detail the information, which is to be treated as Confidential Information.
3. Recipient agrees to hold such Confidential Information in confidence and to use the Confidential Information only for the above stated Purpose. Recipient agrees that, without the written consent of the Provider, it will not disclose the Confidential Information to third parties and that it will restrict disclosure of the Confidential Information within its organization to only those individuals who have a need to know the Confidential Information for carrying out the Purpose. Recipient shall safeguard

the Confidential Information against disclosure to others with at least the same degree of care as it exercises with its own Confidential Information of a similar nature, but not less than a reasonable degree of care. Recipient agrees not to disclose any Information to others, including any employee or consultant, unless such others agree to execute and be bound by the terms of this Agreement.

4. For the avoidance of doubt, neither party shall use any Confidential Information of the other party as a basis upon which (1) to file or have filed a patent application, (2) to design around a claim in a patent application or patent of the other party, (3) to reverse engineer the other party's proprietary Confidential Information, or (4) to develop or have a third party develop a service or product similar to or competing with a service or product contained in the other party's Confidential Information.
5. This Agreement shall NOT be construed to prevent a Recipient from disclosing Confidential Information pursuant to an order or subpoena of a court or other governmental authority as required by law. If such a disclosure is required, Recipient must promptly notify the Provider prior to the disclosure, if possible, and also shall cooperate with the Provider in any efforts to contest or limit such a disclosure.
6. Nothing contained herein shall be construed as granting or conferring, either expressly or impliedly, any rights by license, sublicense, grant, option, transfer, or otherwise in, to, or under any Confidential Information, including without limitation, any U.S. or foreign patent, copyright, know-how, or other intellectual property interest (other than is necessary to carry out the Purpose). It is understood and agreed that neither party solicits any change in the organization, business practice, service or products of the other party, and that the disclosure of Confidential Information shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts.
7. Nothing contained herein shall be construed as a representation and warranty of any kind, either expressed or implied. There are no express or implied warranties of merchantability or fitness for a particular purpose, or representations or warranties that the use of the Confidential Information will not infringe any patent, copyright, trademark, or other proprietary rights.
8. All notices and confirmations shall be addressed to the respective parties as follows:

USF

Technology Transfer Office
University of South Florida
3802 Spectrum Boulevard, Suite 100
Tampa, Florida 33612

Party 2:

9. This Agreement shall expire one (1) year after its date of execution, and either party may terminate this Agreement at any time by giving thirty (30) days written notice to the other party. However, Recipient's obligations with respect to Provider's Confidential Information disclosed prior to expiration or termination of this Agreement shall continue for a period of five (5) year(s) after the expiration or termination of this Agreement.
10. Recipient agrees neither to make nor retain copies of any materials, either tangible or electronic, containing the Confidential Information supplied by Provider without Provider's written permission. After termination of this Agreement, either through expiry or written notice described herein, Recipient shall either destroy or return to the Provider, at the Provider's direction, any materials, either tangible or electronic, containing the Confidential Information, and any copies thereof. However, one copy may be retained by Recipient's legal representatives for reference purposes and in order to comply with the terms of this Agreement.

11. Both parties will comply with all U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR Parts 120 through 130, and the Export Administration Regulations (EAR), 15 CFR Parts 730 through 799, and all embargoes and other restrictions imposed by the Treasury Department's Office of Foreign Asset Controls (OFAC). Should [insert name of Party 2] intend to distribute export controlled technical data or software to University, [insert name of Party 2] must provide the USF Export Control Officer with the appropriate export control designation for such technical data (e.g., ECCN or Munitions List Category) in advance. USF reserves the right to elect not to receive such export controlled technical data. Approval from the USF Export Control Officer is required prior to acceptance of export controlled technical data. Notification of intended release of technical data from [insert name of Party 2] to USF can be made via exportcontrol@usf.edu.
12. The parties do not intend that any agency, partnership, joint venture, or exclusive relationship is created between the parties by this Agreement, and each party is free to pursue relationships and opportunities with others similar to those contemplated by this Agreement. Nothing in this Agreement shall be construed as obligating the parties to enter into any subsequent agreement or relationship.
13. This Agreement may not be assigned by either party without the other party's prior written consent.
14. The provisions of this Agreement are severable. In the event any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions hereof and the provision shall be reformed to be enforceable and reflect as closely as possible the intent of the original provision.
15. Any waiver of compliance with the terms of this Agreement must be in writing, and any waiver in one instance shall not be deemed a waiver in any future instance.
16. This Agreement is the complete and exclusive statement of the understanding between the parties regarding the subject matter hereof, and it supersedes all prior or contemporaneous communications and any proprietary legends on any of Provider's materials. This Agreement may be amended only by a writing signed by both parties. This Agreement shall be interpreted and enforced according to the laws of the State of Florida without regard to its conflicts of law provisions. The forum for any action shall be the courts of Hillsborough County or if a federal proceeding, the United States District Court for the Middle District of Florida.

This Agreement may be signed in two counterparts, each of which is to be considered an original, and taken together as one and the same document. This Agreement may also be signed via facsimile transmission or electronically, and signatures obtained in these manners shall be legal and binding on such parties.

**The University of South Florida
Board of Trustees**

PARTY 2

Signature: _____

Signature: _____

Name: Michele Tyrpak, J.D.

Name: _____

Title: Associate Director,
Technology Transfer Office

Title: _____

