

CONFIDENTIAL DISCLOSURE AGREEMENT
(One-way Disclosure)

This AGREEMENT, with an effective date as of this ___ day of _____, 20__ (“Effective Date”) is between The University of South Florida Board of Trustees, a public body corporate (Discloser) having an address at 3802 Spectrum Boulevard, Suite 100, Tampa, Florida 33612 and _____ (Recipient) having an address at _____.

Discloser is willing to furnish Recipient certain confidential information in particular, but not limited to, _____ for analysis by Recipient for the purposes of intellectual property review and discussion and/or licensing technology (Purposes).

Recipient is desirous of receiving confidential information from Discloser for such Purposes on the terms hereinafter set forth;

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

1. Discloser has or shall furnish to Recipient Confidential Information (defined below) relating to the Purposes, such Confidential Information being owned by the Discloser. “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and engineering material (in any format), works of authorship, inventions, research and scientific information or data, unpublished patent applications, and any other information, materials, or data that are of a proprietary nature.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 Discloser, 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 Discloser’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 Discloser 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. 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 Purposes. Recipient agrees that, without the written consent of the Discloser, 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 Purposes. 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, Recipient agrees that it shall not use any Confidential Information 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 Discloser's 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 Discloser's Confidential Information.
5. This Agreement shall NOT be construed to prevent 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 Discloser prior to the disclosure, if possible, and also shall cooperate with the Discloser in any efforts to contest or limit such a disclosure.
6. Recipient agrees neither to make nor retain copies of any tangible or written Confidential Information supplied by Discloser without Discloser's written permission. Upon expiration or termination of this Agreement, or upon written demand by Discloser, Recipient agrees to return to Discloser all Confidential Information, including written notes, photographs or memoranda taken by it, 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.
7. 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 Purposes.
8. 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.
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 Discloser's Confidential Information disclosed prior to expiration or termination of this Agreement shall continue for a period of five (5) year(s) after expiration or termination of this Agreement.
10. The Discloser covenants and warrants that it will not disclose to the Recipient any Confidential Information that contains information, technology or data identified on any U.S. export control list, including the Commerce Control List at 15 CFR 774 and the U.S. Munitions List at 22 CFR 121, unless and until it obtains the written consent of the Recipient.
11. 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.
12. This Agreement may not be assigned by either party without the other party's prior written consent.

13. 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.
14. 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.
15. 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 Discloser's materials. It 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.

RECIPIENT Binding Signatory

RECIPIENT's representative receiving and reviewing Confidential Information

By: _____
 Name:
 Title:

By: _____
 Name:
 Title:

University of South Florida

Signature: _____

Name: Michele Tyrpak, J.D.

Title: Associate Director,
 Technology Transfer Office