

BILATERAL CONFIDENTIAL DISCLOSURE AGREEMENT

AGREEMENT made as of this _____ day of _____, 2002 by and between the University of South Alabama, a not-for profit institution of higher education, having its place of business at 307 University Boulevard, Mobile, AL 36688-0002 (hereinafter referred to as "USA") and _____ (hereinafter referred to as "COMPANY").

Witnesseth

WHEREAS, USA and COMPANY each own and/or represents the owner(s) of certain valuable, proprietary information (hereinafter referred to as "INFORMATION") comprising technology, knowledge, know-how, reagents and/or patent applications concerning (description of technology, information, etc). Such INFORMATION is the basis for potential (description of type of products).

WHEREAS, COMPANY and USA desire to share their INFORMATION in order to evaluate whether COMPANY wishes to acquire the rights from USA to develop and market potential commercial products based on USA's INFORMATION.

WHEREAS, each party is willing to disclose to the other such of the INFORMATION as may be necessary to permit it to complete the aforesaid evaluation.

NOW, THEREFORE, USA and COMPANY, in consideration of the covenants and conditions set forth below, do hereby agree as follows:

1. Each party will provide the other with such of its INFORMATION as it considers necessary for it to complete the aforesaid evaluation.
2. Each party will hold in confidence any and all such INFORMATION disclosed to it by the other party hereunder, regardless of whether such INFORMATION is transmitted in oral, written or other form, provided that information disclosed other than in written form is summarized in writing, marked "confidential" and submitted to the receiving party within thirty (30) days of the disclosure.
3. The recipient of INFORMATION will not use the INFORMATION for any purpose other than for the aforementioned evaluation and for discussions, consultations or negotiations between personnel of USA and COMPANY or other individuals authorized in writing by both USA and COMPANY. Nothing in this Agreement shall be construed to convey to either party any right or license to the other party's INFORMATION.
4. Each party will limit disclosure of the INFORMATION to those of its officers and employees whom it considers necessary to complete the aforementioned evaluation and/or to engage in discussions, consultations or negotiations concerning the INFORMATION. Each party will obligate its employees to treat the other party's INFORMATION with at least the same care and confidentiality as it treats its own, on terms of secrecy and limited use no less comparable in scope and duration than those described herein.
5. Neither party will publish, distribute or, in any way, disclose any INFORMATION to any third party and will use its best efforts to prevent inadvertent disclosure of any INFORMATION to any third party.

6. Obligations with respect to any and all of the INFORMATION, as set forth above, shall continue in full force and effect for a period of five (5) years from the date hereof, unless waived in whole or in part in writing by the disclosing party. Such obligations, however, shall not apply to any INFORMATION disclosed hereunder:

- a. which, at the time of disclosure, is in the public domain; or
- b. which, after disclosure, has become part of the public domain, by publication or otherwise, through no fault of the recipient of the INFORMATION; or
- c. which, at the time of disclosure, already is in the recipient 's possession, the recipient having received same from sources other than the disclosing party which have the right to disclose such INFORMATION, and providing that such prior possession can be properly demonstrated by recipient; or
- d. which is made available to the recipient by an independent third party, provided, however, that such INFORMATION was not obtained by said third party, directly or indirectly, from the disclosing party.

7. All materials, including, without limitation, documents, data, drawings, photographs and lists, furnished to one party hereunder shall remain the property of the disclosing party and/or its associates and shall be returned promptly to them upon request, together with any and all copies thereof. One copy may be retained by the recipient's legal department for archival purposes only, providing notification thereof is given to the other party.

8. General Provisions:

- a. This Agreement will be construed in accordance with the law of the State of Alabama, without giving effect to principles of conflict of laws.
- b. Any notice required to be given under this Agreement will be deemed to have been received three (3) days after mailing if sent by registered or certified mail, postage prepaid and return receipt requested, to the addresses of the parties set forth above or to such other address as either of the parties will have furnished to the other by notice.
- c. In the event of the invalidity of any provision of this Agreement, such invalidity will not affect the validity of the remaining portions of the Agreement and a valid provision which closely approximates the intent of the invalid provision will be substituted for the invalid provision.
- d. This Agreement constitutes the entire agreement between USA and COMPANY and may not be altered, amended or modified in any way except by a written document signed by both parties. The failure of a party to enforce any provision of this Agreement shall not be construed to be a waiver of the right of such party thereafter to enforce that provision or any other provision or right.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed by its authorized representative as of the date first above written.

University of South Alabama
By: _____
Name: _____
Title: _____
Date: _____

COMPANY
By: _____
Name: _____
Title: _____
Date: _____