

**THE UNIVERSITY OF ALABAMA
DUAL-PARTY CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This dual-party confidentiality and non-disclosure agreement ("Agreement") is by and between The Board of Trustees of The University of Alabama for and on behalf of its component institution, The University of Alabama ("UA"), located at 152 Rose Administration, Tuscaloosa, Alabama 35487, and _____ ("_____"), located at _____.

Technology, Materials, Process and/or Proposal to which this Agreement applies:
_____.

WHEREAS, UA and ____ desire to engage in discussions concerning a possible collaborative research relationship; and

WHEREAS, UA and ____ are owners of Confidential Information (as hereinafter defined) relative to the above described subject matter which they have developed independently of one another, and some of which they desire to disclose to each other; and

WHEREAS, the Confidential Information of UA and ____ is not public knowledge but is secret and will be disclosed only under the terms of this Agreement; and

WHEREAS, both parties to this Agreement may consider it desirable for each to exchange and to evaluate at least some of the other's information for the purpose of ongoing or possible collaborative research activity.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereby agree as follows:

1. The effective date of this Agreement ("Effective Date") is the date of the last signature of this Agreement.
2. This Agreement controls only Confidential Information (as hereinafter defined) disclosed between the Effective Date and _____ ("Termination Date").
3. For the purpose of this Agreement, the term "Confidential Information" shall mean any and all information, know-how, data, technical and non-technical materials, designs, concepts, processes, product samples and specifications, computer data, documentation, algorithms, software programs and codes, computer programming techniques, financial or business information and other expertise, whether or not patentable, disclosed by a party ("Disclosing Party") and received by the other party ("Recipient"), either directly or indirectly. Confidential Information includes information provided in writing (including graphic material) or orally by the Disclosing Party and/or observed by Recipient, or upon review of information provided by the Disclosing Party with the exception of:
 - (a) information that can be demonstrate to have been in the public domain as of the Effective Date of this Agreement or comes into the public domain during the term of this Agreement through no fault of Recipient; or
 - (b) information that can be demonstrated to have been known to the Recipient prior to the Effective Date of this Agreement and was not acquired, directly or indirectly, from the Disclosing Party or from a third party under a continuing obligation of confidentiality or limited use; or
 - (c) information that can be demonstrated to have been rightfully received by the Recipient after disclosure under this Agreement from a third party who did not require the Recipient to hold it in confidence or limit its use and who did not acquire it, directly or indirectly, from the Disclosing Party under a continuing obligation of confidentiality; or

- (d) information that can be demonstrated to have been independently developed by Recipient; or
 - (e) information that can be demonstrated to have been disclosed by Disclosing Party to a third party without a duty of confidentiality of the third party;
 - (f) information that is required to be disclosed by law, court order, or government regulation; or
 - (g) information that is released in writing from the confidentiality provisions of this Agreement by the Disclosing Party.
4. Disclosing party agrees to make known to Recipient from time-to-time in Discloser's sole discretion, and Recipient agrees to receive Confidential Information for the sole purpose of evaluation of the information and to determine any interest of Recipient in the same. This Agreement does not obligate Discloser to make known to Recipient any information, Confidential Information or otherwise, the timing and nature of such disclosure and the information disclosed being in the sole discretion of the Disclosing Party.
 5. Recipient shall have a duty to protect only that Confidential Information which is either (a) disclosed by the Disclosing Party in writing and is marked as "Internal Data", "Strictly Private", "Proprietary", "Confidential", or with a comparable legend at the time of disclosure, or (b) disclosed by the Disclosing Party in any other manner, identified as Confidential Information at the time of disclosure and is summarized and designated as Confidential Information in a written memorandum delivered to the Recipient representative named in Section 8 of this Agreement within thirty (30) days of disclosure.
 6. Recipient shall have a duty to protect the Confidential Information using the same degree of care, but no less than a reasonable degree of care, as the Recipient uses to protect its own similar confidential information, and to prevent any use not authorized herein, dissemination to any employee of Recipient without a need-to-know, communication to any third party or publication of Confidential Information.
 7. Recipient agrees to hold in confidence any and all Confidential Information disclosed to it by the Disclosing Party and further agrees not to disclose Confidential Information to third parties or to use Confidential Information for three (3) years from the Termination Date of this Agreement, except for discussion and internal evaluation purposes provided by this Agreement or with written permission from the Disclosing Party. However, either party may disclose Confidential Information to any of its own employees and officers who are assisting that party in making an evaluation, provided that such employees and officers shall have agreed to be bound by the terms of this Agreement or have entered into an agreement of similar scope and obligations with his or her employer to protect confidential information of the employer or the confidential information of third parties in the employer's possession.
 8. The points of contact for transmitting and/or receiving Confidential Information are in the case of UA to:

Name:
Title:
Address:
Email:
Telephone: 205.348.____
Fax: 205.348.____

and in the case of ____ to:

Name:
Title:
Address:

Email:
Phone:
Fax:

Amendments, changes or other notices under this Agreement shall be sent in the case of UA to:

Name: Cynthia L. Hope
Title: Assistant vice President for Research
Address: The University of Alabama
Office of Research
152 Rose Administration Building
Box 870104
Tuscaloosa, Alabama 35487-0104
Email: cindy.hope@ua.edu
Telephone: 205.348.5152
Fax: 205.348.8882

With a copy to:

Name: Rick Swatloski
Title: Office for Technology Transfer
Address: The University of Alabama
202 AIME Building
Box 870207
Tuscaloosa, Alabama 35487-0207
Email: richard.swatloski@ua.edu
Telephone: 205.348.3505
Fax: 205.348.3510

And in the case of _____ to:

Name:
Title:
Address:
Email:
Phone:
Fax:

9. Each party represents that it has the right to make the disclosures under this Agreement.
10. Subject to the provisions of paragraph 3 hereof, all proprietary rights (including but not limited to patent rights, copyrights and/or trade secrets) in and to the Confidential Information shall remain the property of the Disclosing Party.
11. The Confidential Information being disclosed to the Recipient pursuant to this Agreement is with the express understanding that neither party will be obligated to enter into any further agreement relating to the Confidential Information, and nothing in this Agreement shall be construed as granting any right, title, grant, option, ownership, interest in or license from one party to the other relating thereto.
12. NEITHER DISCLOSING PARTY MAKES ANY REPRESENTATION WITH RESPECT TO AND DOES NOT WARRANT ANY CONFIDENTIAL INFORMATION PROVIDED UNDER THIS AGREEMENT, BUT SHALL FURNISH SUCH IN GOOD FAITH. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, NEITHER DISCLOSING PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED WITH RESPECT TO THE CONFIDENTIAL INFORMATION WHICH MAY BE PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER DISCLOSING PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM RECEIPT OR USE OF THE CONFIDENTIAL INFORMATION BY THE RECIPIENT.

13. Recipient agrees that no technical data or products received from the Disclosing Party hereunder shall be exported, re-exported or disclosed to any foreign national, firm or country, including foreign national employed by or associated with the receiving party, without first complying with the U.S. Export Administration Regulations and/or U.S. International Traffic in Arms Regulations, including obtaining an export license or technical assistance agreement, if applicable.
14. The validity and interpretation of this Agreement, and legal relations of the parties to it, shall be governed by the laws of the State of Alabama with venue in Tuscaloosa County, Alabama. If one portion of this Agreement is held invalid and unenforceable, such holding shall not affect the validity of the other portions of the Agreement.
15. Nothing in this Agreement shall be construed as a representation that either party will not independently pursue, similar opportunities, provided that the obligations of this Agreement are not breached.
16. This Agreement is not assignable and states the entire agreement between the parties as to its subject matter and merges and supersedes all previous communications with respect to their obligations of confidentiality and no addition to or modification of this Agreement will be binding on either party, unless reduced to writing and signed by each party.
17. This Agreement is binding upon both parties and upon the directors, officers, employees and agents of each. This Agreement may be terminated on thirty (30) days written notice by either party. However, Recipient's obligations of confidentiality and restrictions on use of the Information disclosed by Disclosing Party shall survive termination of this Agreement.

**THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ALABAMA SYSTEM
FOR AND ON BEHALF OF THE UNIVERSITY OF ALABAMA**

Authorized Signature

By: _____
Cynthia L. Hope
Director, Office for Sponsored Programs

Date: _____

Review of Content

Point of Contact for Transmitting and/or Receiving Confidential Information

By: _____

XX

Authorized Signature

By: _____

Name: _____

Title: _____

Date: _____

Review of Content

Point of Contact for Transmitting and/or Receiving Confidential Information

By: _____