



CONFIDENTIALITY AGREEMENT

(Two-way for situations where CWRU and Company are both disclosing information)

THIS CONFIDENTIALITY AGREEMENT ("Agreement") made this ___th day of ___, 20___ ("Effective Date") by and between Case Western Reserve University, an Ohio nonprofit corporation having a place of business at 10900 Euclid Avenue, Cleveland, OH 44106-7219 (referred to as "CWRU") and _____, a _____ [State of Incorporation and Profit Status] corporation having a place of business at _____ (referred to as "COMPANY").

COMPANY is interested in working with CWRU and CWRU with COMPANY on various matters. CWRU is willing to disclose to COMPANY certain Confidential Information (as hereafter defined) related to the CWRU Technology and COMPANY is willing to disclose to CWRU certain Confidential Information related to the COMPANY Technology but only in strict accordance with the terms of this Agreement. A party disclosing information is referred to as the "Discloser" and a party receiving information is referred to as the "Recipient".

NOW, THEREFORE, in consideration of the mutual promises contained herein and intending to be legally bound, the parties hereto hereby agree as follows:

1. For purposes of this Agreement, the term "CWRU Technology" shall mean information that relates or refers to _____ including, without limitation, related documents, licenses, sublicenses, correspondence, agreements, technical information, research efforts, practices, data, or findings, patents, patent applications and all related foreign applications, continuations, continuations-in-part and divisional applications, physical models and know-how related to any of the foregoing subjects or material.
2. For purposes of this Agreement, the term "COMPANY Technology" shall mean information that relates or refers to the COMPANY's _____ including, without limitation, related documents, licenses, sublicenses, correspondence, agreements, technical information, research efforts, practices, data, or findings, patents, patent applications and all related foreign applications, continuations, continuations-in-part and divisional applications, physical models and know-how related to any of the foregoing subjects or material.
3. For purposes of this Agreement, Discloser's "Confidential Information" shall mean any information, whether oral, written or otherwise recorded, disclosed by Discloser to Recipient, unless such information (i) was already in Recipient's possession prior to the disclosure thereof by Discloser as demonstrated by written evidence, (ii) has been published or is published hereafter, unless such publication is a breach of this Agreement, (iii) is received by Recipient from a third party not under any obligation of confidentiality with respect thereto, (iv) is independently developed by Recipient without access to or knowledge of Discloser's Confidential Information; or (v) is required by a court or government entity to be disclosed by Recipient, provided Recipient promptly notifies Discloser of such requirement prior to releasing information to enable Discloser reasonable opportunity to dispute such disclosure.
4. The Confidential Information of each party shall be used by the other party solely for the limited purpose of evaluating a possible business transaction between COMPANY and CWRU ("Permitted Purpose") and for no other purpose. Recipient shall not reverse engineer, decompile, disassemble, alter, maintain, enhance, or otherwise modify any information or material received from Discloser, nor remove, overprint or deface notices of copyright or ownership, trademark logo or legend, if any, from any information or material obtained from Discloser.
5. Confidential Information disclosed under this Agreement (including information in computer software or held in electronic storage media) shall be and remain the property of Discloser. Upon completion of the Permitted Purpose and/or the written request of the Discloser at any time, Recipient shall promptly return or destroy (as directed by Discloser) all such tangible Confidential Information of Discloser in its possession, and no such Confidential Information shall thereafter be retained in any form by Recipient. In the event Recipient is directed by Discloser to destroy Confidential Information, Recipient shall, promptly upon such destruction and upon request of Discloser, certify in writing to Discloser that all such Confidential Information has been destroyed. Nothing herein will require Recipient to delete records in electronic backup systems maintained in the normal course of business, provided that Recipient shall maintain confidentiality of any Confidential Information contained in such systems.

6. No intellectual property right or license is hereby granted to a party by this Agreement and the disclosure of Confidential Information shall not result in any obligation to grant a party any rights in or to the subject matter of the Confidential Information. The Recipient shall not have the right to use intellectual property rights embedded in the Confidential Information for any purpose other than the Permitted Purpose. Nothing contained in this Agreement grants the Recipient any right or license to or under any trademark, logo, copyright or patent or other intellectual property right of the Discloser. Neither party shall use the other party's name or disclose the existence of this Agreement without the prior written consent of the other party.
7. Each party shall disclose Confidential Information of the other party to only those of its employees or representatives who have a need to know such Confidential Information for the Permitted Purpose. Each party shall hold the other party's Confidential Information in confidence and shall exercise all reasonable precautions to prevent the disclosure of the other party's Confidential Information by its employees or representatives, and in any event shall maintain with respect to such Confidential Information a standard of care which is no less than that standard it maintains to prevent the disclosure of its own confidential information. A party shall notify the other party promptly, in writing if it becomes aware of any unauthorized disclosure in breach of the obligations of this Agreement and, upon request of the other party, take reasonable steps to prevent further disclosure.
8. Each party acknowledges that the other party's Confidential Information is a unique and valuable asset of the other party, and that disclosure of it in breach of this Agreement may result in irreparable injury to the other party which could not be remedied by monetary damages. Therefore, the parties agree that, in the event of a breach or threatened breach of the terms of this Agreement, a party may be entitled to an injunction prohibiting any such breach, or to specific performance or any other equitable remedy available. Any such equitable relief shall be in addition to and not in lieu of any other appropriate relief at law to which a party may be entitled.
9. Confidential Information is provided "as is" and Discloser makes no representations or warranties, express or implied, with respect to the Confidential Information and shall have no liability to Recipient or any other person or entity for any reliance upon Confidential Information by Recipient or any other such person or entity. DISCLOSER SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND THOSE WARRANTIES ARISING FROM A COURSE OF PERFORMANCE, A COURSE OF DEALING OR TRADE USAGE.
10. This Agreement may not be assigned by either party hereto without the prior written consent of the other party. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
11. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, excluding its choice of law provisions. COMPANY consents to the exclusive jurisdiction of the Ohio courts to interpret and enforce this Agreement. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provisions shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties as expressed herein. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which shall constitute the same agreement.
12. All rights of CWRU heretofore and hereafter acquired under the patent and copyright laws of the United States and all foreign countries are hereby expressly reserved to CWRU. All rights of COMPANY heretofore and hereafter acquired under the patent and copyright laws of the United States and all foreign countries are hereby expressly reserved to COMPANY.
13. Unless agreed to in a written agreement executed by authorized representatives of the parties prior to transmission of information, neither party will directly or indirectly transmit information that is subject to restrictions under the United States export control laws and regulations.
14. For purposes of this Agreement, the term "CWRU" shall include inventors and creators of the Technology and those working with or under them (except that none of such persons have the authority to execute an authorizing agreement

under this Agreement) and the term "COMPANY" shall not include any parent or subsidiary of COMPANY unless such parent or subsidiary becomes a party hereto by execution of an amendment to this Agreement executed by an authorized representative of such parent or subsidiary and CWRU.

- 15. This Agreement is effective on the Effective Date as written above and will expire two (2) years from the Effective Date, unless terminated by either Party upon thirty (30) days written notice. Recipient's non-disclosure and non-use obligations shall survive for three (3) years from the earlier of termination or expiration of the Agreement.
- 16. This Agreement constitutes the complete and exclusive agreement between CWRU and COMPANY with respect to the subject matter hereof, and supersedes all prior oral or written understandings, communications, or agreements not specifically incorporated herein. This Agreement may not be amended except in writing and executed by both parties.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year first written above.

COMPANY

By: _____

Name: _____

Title: _____

Date: _____

CASE WESTERN RESERVE UNIVERSITY

By: _____

Name: _____

Title: _____

Date: _____

READ AND ACKNOWLEDGED BY CWRU FACULTY MEMBER:

(Signature) (Date)