

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT made this ___th day of ___, 201_ by and between Case Western Reserve University, an Ohio nonprofit corporation having a place of business at 10900 Euclid Avenue, Cleveland, OH 44106-4971 (referred to as "CASE") and _____, a[State of Incorporation and Profit Status]_____ corporation having a place of business at _____ (referred to as "COMPANY").

WHEREAS, CASE owns certain Technology, including all developments, patents, marketing and licensing rights in and related to Technology (as defined in paragraph 1 of this Agreement and which are hereafter referred to as the "Technology"); and

WHEREAS, COMPANY is interested in working with CASE on various matters related to the Technology and CASE is willing to disclose to COMPANY certain CASE Confidential Information (as hereafter defined) related to the Technology for the limited purpose of _____ ("Permitted Purpose"), but only in strict accordance with the terms of this Agreement.

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

1. 1. For purposes of this Agreement, the term "Technology" shall mean non-public information that relates or refers to _____ including, without limitation, related documents, licenses, sublicenses, correspondence, and 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. (a) For purposes of this Agreement, "CASE Confidential Information" shall mean (i) any information, whether oral, written or otherwise recorded, relating to the Technology, and (ii) communications relating to or regarding information not related to the Technology that is disclosed to COMPANY in the manner set forth in Paragraph 3 hereof. All such information shall be CASE Confidential Information, unless such information (i) was already in COMPANY's possession prior to the disclosure thereof by CASE as provided in subparagraph (b) hereof, (ii) has been published or is published hereafter, unless such publication is a breach of this Agreement, (iii) is received by COMPANY from a third party not under any obligation of confidentiality with respect thereto, or (iv) can be shown by written records to be independently developed by an employee of COMPANY without access to or knowledge of CASE Confidential Information.
(b) In the event that such information shall be established to have been known to COMPANY prior to the disclosure thereof by CASE by reference to any publication thereof by COMPANY or by reference to any internal writing or other business record maintained by COMPANY in the ordinary course of business, such information shall not be deemed to be CASE Confidential Information for purposes of this Agreement following written notification to CASE of such fact.
3. (a) With respect to any non-oral communication which is not related to the Technology and which is sought by CASE to be CASE Confidential Information subject to this Agreement, CASE shall mark

such information as "Confidential" prior to disclosing it to COMPANY.

(b) With respect to any oral communication, not related to the Technology, which is deemed by CASE to be CASE Confidential Information subject to this Agreement, CASE shall notify COMPANY of such fact at the time of the communication and within thirty (30) days thereafter CASE shall send a memorandum to COMPANY outlining the information deemed to be CASE Confidential Information.

(c) Inadvertent disclosures made by mistake, whether oral or non-oral, shall not be deemed to waive the confidentiality of the information.

4. COMPANY agrees to use CASE Confidential Information solely for the Permitted Purpose. COMPANY agrees to maintain in confidence and not disclose to any person not a party hereto nor shall COMPANY use or exploit in any way any Confidential Information of CASE for a period of three (3) years from the date of such disclosure, unless and until such information ceases to be CASE Confidential Information prior to the end of such three-year period through no fault of COMPANY, or COMPANY and CASE enter into a written agreement authorizing same.
5. CASE Confidential Information disclosed under this Agreement (including information in computer software or held in electronic storage media) shall be and remain the property of CASE. The COMPANY shall keep a record of the location of all tangible CASE Confidential Information in its possession, and, upon the written request of CASE at any time, shall promptly return or destroy (as directed by CASE) all such tangible CASE Confidential Information in its possession, and no such CASE Confidential Information shall thereafter be retained in any form by the COMPANY. In the event the COMPANY is directed by CASE to destroy CASE Confidential Information, the COMPANY shall, promptly upon such destruction, certify in writing to CASE that all such CASE Confidential Information has been destroyed. No licenses or rights under any patent, copyright, or trademark are granted or are to be implied by this Agreement.
6. COMPANY shall exercise all reasonable precautions to prevent the disclosure of CASE Confidential Information by its employees or representatives, and in any event shall maintain with respect to such CASE Confidential Information a standard of care which is no less than that standard it maintains to prevent the disclosure of its own confidential information.
7. COMPANY acknowledges that CASE Confidential Information is a unique and valuable asset of CASE, and that disclosure of it in breach of this Agreement would result in irreparable injury to CASE 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, CASE 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 CASE may be entitled. CASE shall be entitled to recover its reasonable attorneys' fees for having to enforce this Agreement in the event of a breach.
8. 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 assigns.

9. 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.
10. All rights of CASE heretofore and hereafter acquired under the patent and copyright laws of the United States and all foreign countries are hereby expressly reserved to CASE.
11. No license or property rights including but not limited to the right to use for the creation of inventions or derivatives in any CASE Confidential Information or other hardware design, software or intellectual property of CASE are provided hereunder, either expressly or by implication, estoppel or otherwise. COMPANY will not directly or indirectly transmit, by way of trans-shipment, export, diversion or otherwise, any CASE Confidential Information to any location outside of the United States of America, except in accordance with the export control laws and regulations of the U.S. Department of Commerce or other agency or department of the U.S. Government and any amendments to such laws and regulations.
12. For purposes of this Agreement, the term "CASE" 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 Paragraphs 4, or 8, or an amendment under Paragraph 13 of 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 CASE.
13. This Agreement constitutes the complete and exclusive agreement between CASE 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.

[The balance of this page intentionally left blank – signature page to follow]

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

COMPANY

CASE WESTERN RESERVE UNIVERSITY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

Example - Not for execution

Approved by
Office of General Counsel
CWRU - 12/1/2011