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

THIS 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”).

WHEREAS, 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 for the limited purpose of ____________________________ (“Permitted Purpose”), 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 non-public 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 non-public 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. (a) For purposes of this Agreement, “Confidential Information” shall mean (i) any information, whether oral, written or otherwise recorded, disclosed by Discloser to Recipient relating to the Discloser’s Technology and (ii) any information or communications unrelated to the Discloser’s Technology that is disclosed by Discloser to Recipient in the manner set forth in Paragraph 4 hereof. All such information shall be Confidential Information of Discloser, unless such information (i) was already in Recipient’s possession prior to the disclosure thereof by Discloser 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 Recipient from a third party not under any obligation of confidentiality with respect thereto, or (iv) is independently developed by an employee of Recipient without access to or knowledge of Discloser’s Confidential Information.

(b) In the event that such information shall be established to have been known to Recipient prior to the disclosure thereof by Discloser by reference to any publication thereof by Recipient or by reference to any internal writing or other business record maintained by Recipient in the ordinary course of business, such information shall not be deemed to be Discloser’s Confidential Information for purposes of this Agreement following written notification to Discloser of such fact.

4. (a) With respect to any non-oral communication unrelated to Discloser’s technology which is sought by Discloser to be Confidential Information subject to this Agreement, Discloser shall mark such information as “confidential” prior to disclosing it to Recipient.

(b) With respect to any oral communication unrelated to Discloser’s technology which is sought by Discloser to be Confidential Information subject to this Agreement, Discloser shall notify Recipient of such fact at the time of the communication.
(c) Inadvertent disclosures made by mistake, whether oral or non-oral, shall not be deemed to waive the confidentiality of the information.

5. The Confidential Information of each party shall be used by the other party solely for the Permitted Purpose. Neither party shall use or exploit the other party's Confidential Information in any way without Discloser's written agreement. Each shall maintain the other party's Confidential Information in confidence and shall not disclose such information to any person not a party hereto for a period of three (3) years from the date of such disclosure, unless and until such information ceases to be Confidential Information prior to the end of such three-year period through no fault of Recipient, or COMPANY and CWRU enter into a written agreement authorizing same.

6. 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. Recipient shall keep a record of the location of all tangible Confidential Information of the Discloser’s in its possession, and, upon the written request of the Discloser at any time, 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, certify in writing to Discloser that all such 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.

7. Each party 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.

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. 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.

10. 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.

11. 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.

12. No license or property rights including but not limited to the right to use for the creation of inventions or derivatives in any Confidential Information or other hardware design, software or intellectual property of the other party are provided hereunder, either expressly or by implication, estoppel or otherwise. Neither party will directly or indirectly
transmit, by way of trans-shipment, export, diversion or otherwise, any Confidential Information of the other party to any location outside of the United States of America, except with the written consent of Discloser and 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.

13. 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 Paragraphs 5 or 9, or under Paragraph 14 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 CWRU.

14. 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 survive termination or expiration of the Agreement.

15. 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)