

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “Agreement”) is entered into and made effective as of the later of the two signature dates below by and between (NAME OF COMPANY) (“XYZ” (ADDRESS OF COMPANY), and Tennessee Technological University, with its principal office at One William L. Jones Dr., Derryberry Hall 305, Cookeville, TN 38505 (“TTU”).

WHEREAS, in connection with certain business discussions between XYZ and TTU, XYZ and TTU may disclose and reveal to each other, either orally, in writing or otherwise, certain materials, trade secrets, proprietary information and other confidential information relating directly or indirectly to their respective products and businesses.

NOW, THEREFORE, in consideration of the disclosure of Confidential Information (as defined below) by each party, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of all of which is hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Disclosure of Confidential Information.

(a) For purposes of this Agreement, “Confidential Information” means any and all information (including, without limitation, all business, financial, commercial and technical information and data), in whatever form transmitted, whether tangible or intangible, that is disclosed, furnished or otherwise provided or made available by the disclosing party to the receiving party prior to or after the date of this Agreement. “Confidential Information” includes, without limitation, design documents, trade secrets, files, marketing and business plans, documentation, reports, projections, interpretations, forecasts, records (including information regarding the disclosing party’s businesses, customers, strategies, operations, finances, technology, data, processes, methodologies, know-how, existing or future products, services, applications and methods of operation (including how such methods are developed, conducted or operated)) and all other information, whether in written, oral, encoded, electronic or other tangible or intangible form, and whether or not labeled, marked or otherwise identified as “Confidential” upon disclosure thereof, relating to the disclosing party’s products and businesses, and any other information that would, if disclosed to any actual or potential competitors of the disclosing party, give or increase those competitors’ advantage over the disclosing party or directly or indirectly harm the disclosing party’s business.

(b) Any trade secrets will be entitled to all of the protections and benefits of applicable trade secret laws and any other applicable laws. For avoidance of doubt, the parties acknowledge and agree that, in the event a court of competent jurisdiction determines that information the disclosing party deems to be a trade secret is not a trade secret under applicable law, such information will nevertheless be deemed to be Confidential Information for purposes hereof, provided such information falls within the description set forth in Section 1(a).

(c) Notwithstanding the foregoing, “Confidential Information” shall not mean information that, as demonstrated by the receiving party, is (i) in the public domain prior to the date of this Agreement through no wrongful act of the receiving party or its agents or employees, (ii) independently developed by the receiving party without any use of, or reference to, Confidential Information, (iii) rightfully furnished to the receiving party by any third party without violation or breach of any confidentiality restriction, or (iv) authorized in writing for release by the disclosing party.

2. Obligations Regarding Confidential Information.

(a) Subject to the Tennessee Public Records Act, Section 10-7-5-1 et seq., at all times during the term of this Agreement and thereafter, the receiving party shall:

- (i) refrain from disclosing, directly or indirectly, any Confidential Information of the disclosing party to third parties, and hold all Confidential Information received from the disclosing party in trust and strict confidence, subject to the terms of this Agreement;
- (ii) take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the disclosing party's Confidential Information and avoid disclosure, loss or misuse of the Confidential Information; and
- (iii) refrain from using any of the disclosing party's Confidential Information for any purpose not specified hereunder (including, without limitation, in its own business or for its own benefit) without the prior written consent of the disclosing party.

(b) Subject to the Tennessee Public Records Act, Section 10-7-5-1 et seq., without the written consent of the disclosing party, the receiving party will not disclose the disclosing party's Confidential Information to any person other than the receiving party's officers, directors, owners, employees, agents and representatives (i) with a valid need to know such Confidential Information and (ii) that have an enforceable agreement with the receiving party containing confidentiality obligations substantially similar to those terms and conditions applicable to the receiving party under this Agreement.

(c) In the event that the receiving party is legally required to disclose any Confidential Information of the disclosing party, the receiving party shall give the disclosing party prompt written notice of such request or requirement so that the disclosing party may seek an appropriate protective order or other remedy and/or waive compliance with the provisions of this Agreement, and the receiving party will reasonably cooperate with the disclosing party (at the disclosing party's expense) to obtain such protective order. In the event that such protective order or other remedy is not obtained or the disclosing party waives compliance with the relevant provisions of this Agreement, the receiving party will furnish only that portion of the Confidential Information that is legally required to be disclosed.

(d) The receiving party shall give prompt written notice to the disclosing party upon discovery of any loss, misuse, misappropriation or disclosure of the disclosing party's Confidential Information, and will reasonably cooperate with the disclosing party to help regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

(e) Upon the disclosing party's request, all documents, materials and other items containing the disclosing party's Confidential Information (including without limitation, all originals, copies, and reproductions of the Confidential Information) shall be promptly returned to the disclosing party without retaining a copy thereof, and the receiving party shall provide a certification, signed by an officer, as to the completeness of the return of such materials. Upon such request, the receiving party also shall destroy all documents, materials and other items embodying or summarizing the disclosing party's Confidential Information in whatever format, and shall provide a similar certification as to the completeness of the destruction of such materials. Compliance with this Subsection 2(e) shall not relieve the receiving party of its obligations under this Agreement.

3. Ownership. The disclosing party's Confidential Information shall remain the property of the disclosing party. No license under any patent, trademark, copyright or other intellectual property or proprietary right is granted or implied to any information furnished by or on behalf of either party to the other party, whether or not Confidential Information. Each party acknowledges that the other party's Confidential Information is highly valuable, confidential and proprietary to the other party and has been developed through the investment of significant time, effort and expense, and that maintaining the confidentiality of this Confidential Information is essential for the general successful operations of TTU and Company.

4. Miscellaneous.

(a) Neither the holding of discussions nor the exchange of material or Confidential Information shall be construed as (i) obligating a party to enter into any agreement with the other party hereto; (ii) a commitment or obligation by a party to develop, sell or contract with respect to any products or services offered by the other party; or (iii) a license, partnership or joint venture between the parties.

(b) The parties acknowledge and agree that all Confidential Information is provided "AS-IS" and without any warranty, express, implied or otherwise, regarding such Confidential Information's accuracy or completeness. Each party understands and agrees that neither party shall have any liability whatsoever to the other party relating to or resulting from such party's use of the Confidential Information or any errors therein or omissions therefrom.

(c) This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Tennessee as executed and performed in that state without regard to conflicts of laws principles. This Agreement shall not be assignable by either party, in whole or in part, without the prior written consent of the other party; provided, however, that a party may assign this Agreement without consent in the event of a sale of securities or assets, merger or change of control of such party. Any assignment in violation of this Subsection 4(d) shall be null and void. Subject to the foregoing, this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against the successors and permitted assigns of each party to this Agreement.

(d) Failure or delay in exercising any right, power or privilege under this Agreement will not operate as a waiver thereof. In the event that any provision of this Agreement is found invalid or unenforceable, it will be enforced to the extent permissible and the remainder of this Agreement will remain in full force and effect. This Agreement contains the entire agreement between the parties concerning the Confidential Information disclosed hereunder and supersedes any prior agreements or understandings between the parties concerning the Confidential Information, and no modifications of this Agreement or waiver of the terms and conditions hereof will be binding upon either party unless approved in writing by each party. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same agreement. Signatures to this Agreement transmitted by facsimile transmission, by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

(e) This Agreement shall be deemed to have been drafted by each party hereto. This Agreement shall not be construed against any party by reason of the drafting or preparation, and the parties expressly agree not to assert that any inference should be drawn against either party on the basis of which party drafted this Agreement.

(g) Either party may terminate this Agreement with or without cause upon ninety (90) days prior written notice to the other party. All sections of this Agreement relating to the rights and obligations

of the parties concerning Confidential Information disclosed during the term of the Agreement shall survive any such termination.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

COMPANY

TENNESSEE TECHNOLOGICAL UNIVERSITY

By: _____

By: _____

(Authorized Signature)

Title: _____

Title: _____

Date: _____

Date: _____