

**Confidential Disclosure Agreement  
Between the  
University of Kansas  
and  
Company**

This Confidential Disclosure Agreement (this "Agreement") is made effective this \_\_\_\_ day of \_\_\_\_\_, 2008, (or if left blank on the date first written below, the "Effective Date"), by and between **The University of Kansas** and the **KU Center for Technology Commercialization, Inc.** (hereinafter collectively referred to as the "**University of Kansas**") located at 2385 Irving Hill Road, Lawrence, Kansas 66045-7563 ("**KU**") and **Company Name** having its principal place of business at \_\_\_\_\_ ("**Company**").

**KU AND COMPANY HEREBY AGREE AS FOLLOWS:**

**1. Confidential Information.** As used in this Agreement, "Confidential Information" means all information of either party that is not generally known to the public, whether of a technical, business or other nature (including, without limitation, trade secrets, know-how and information relating to the technology, customers, business plans, promotional and marketing activities, finances and other business affairs of such party), that is disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") or that is otherwise learned by the Receiving Party in the course of its discussions or business dealings with, or its physical or electronic access to the premises of, the Disclosing Party, and that has been identified in writing as being proprietary and/or confidential relating to \_\_\_\_\_.

All oral disclosures which are then summarized in writing within thirty (30) days of disclosure and clearly identified and marked "Confidential" are also covered by this Agreement.

**2. Use and Ownership of Confidential Information.** The Receiving Party, except as expressly provided in this Agreement, will not disclose Confidential Information to anyone without the Disclosing Party's prior written consent. In addition, the Receiving Party will not use, or permit others to use, Confidential Information for any purpose other than to further the mutually beneficial opportunities contemplated by both parties related to \_\_\_\_\_.

The Receiving Party will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature. All Confidential Information will remain the exclusive property of the Disclosing Party, and the Receiving Party will have no rights, by license or otherwise, to use the Confidential Information except as expressly provided herein.

**3. Exceptions.** The provisions of Section 2 will not apply to any information that (i) is or becomes publicly available without breach of this Agreement; (ii) can be shown by documentation to have been known to the Receiving Party prior to its receipt from the Disclosing Party; (iii) is rightfully received from a third party who did not acquire or disclose such information by a wrongful or tortious act; or (iv) can be shown by documentation to have been developed by the Receiving Party without reference to any Confidential Information.

**4. Disclosures to Courts and Governmental Entities.** If the Receiving Party becomes legally obligated to disclose Confidential Information by any court or governmental entity with jurisdiction over it, the Receiving Party will give the Disclosing Party prompt written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy. Such notice must include, without limitation, identification of the information to be so disclosed and a copy of the order. The Receiving Party will disclose only such information as is legally required and will use its reasonable best efforts to obtain confidential treatment for any Confidential Information that is so disclosed.

**5. Compliance with Laws; Exportation/ Transmission of Confidential Information.** Both parties will comply with all applicable federal, state, and local statutes, rules and regulations, including, but not limited to, United States export control laws and regulations as they currently exist and as they may be amended from time to time. Disclosing Party will notify Receiving Party of any Confidential Information that is subject to the United States export control laws.

**6. Receiving Party Personnel.** The Receiving Party will restrict the possession, knowledge, development and use of Confidential Information to its employees, agents, affiliates, subcontractors and entities controlled by or controlling it (collectively, "Personnel") who have a need to know Confidential Information in connection with the mutually beneficial business opportunities contemplated by both parties. The Receiving Party's Personnel will have access only to the Confidential Information they need for such purposes. The Receiving Party will use reasonable best efforts to ensure that its Personnel comply with this Agreement and will promptly notify the Disclosing Party of any breach of this Agreement.

**7. Return of Confidential Information.** Upon the Disclosing Party's written request, the Receiving Party promptly will return or destroy (or, in the case of electronic embodiments, permanently erase) all tangible material embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) in its possession or under its control, except for one archival copy.

**8. Independent Development.** The Disclosing Party acknowledges that the Receiving Party may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or

agreement that the Receiving Party will not develop or have developed products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.

**9. Limited Relationship.** This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind, or an obligation to form any such relationship or entity. Each party will act as an independent contractor and not as an agent of the other party for any purpose, and neither will have the authority to bind the other.

**10. Cumulative Obligations.** Each party's obligations hereunder are in addition to, and not exclusive of, any and all of its other obligations and duties to the other party, whether express, implied, in fact or in law.

**11. Entire Agreement; Amendment.** This Agreement constitutes the entire agreement between the parties relating to the matters discussed herein and supersedes all prior oral and written understandings with respect to any information disclosed or received under this Agreement. This Agreement may be amended or modified only with the mutual written consent of the parties.

**12. Term and Termination.** The period of this Agreement is five (5) years from the Effective Date, unless terminated earlier in writing. All obligations of Receiving Party with respect to the use and disclosure of the Confidential Information, except trade secrets, shall terminate five (5) years after the date of last disclosure. The obligations of Receiving Party with respect to the use and disclosure of Confidential Information in the nature of a trade secret shall not expire.

**13. Warranties.** The Discloser does not make any representations with respect to and does not warrant any information provided under this Agreement but shall furnish such in good faith. WITHOUT RESTRICTING THE GENERALITY OF THE FOREGOING, THE DISCLOSER DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES, WHETHER WRITTEN, 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. THE DISCLOSER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM THE RECEIPT OR USE OF THE CONFIDENTIAL INFORMATION BY RECIPIENT.

**14. Nonwaiver.** Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

