

Non-Disclosure Agreement

THIS AGREEMENT is by and between WICHITA STATE UNIVERSITY, a state educational institution of Kansas, 1845 Fairmount, Wichita, KS 67260-0129 (hereinafter "WSU"), and _____, _____, _____, _____, _____ (hereinafter "_____").

WHEREAS, WSU and _____ (hereinafter referred to individually as a "PARTY" and collectively as the "PARTIES"), desire to exchange and discuss information related to _____ (hereinafter referred to as "TECHNOLOGY"); and,

WHEREAS, during the course of these discussions and evaluations, the PARTIES may disclose certain confidential and proprietary information concerning, without limitation, trade secrets, devices, designs, specifications, plans, or other ideas or inventions relating to the TECHNOLOGY, and desire such information to be treated as PROPRIETARY INFORMATION.

NOW THEREFORE, in consideration thereof, the PARTIES agree as follows:

1. DEFINITIONS.

1.1 "DISCLOSING PARTY" means the PARTY disclosing information to the other in furtherance of the TECHNOLOGY.

1.2 "RECEIVING PARTY" means the PARTY receiving information from the other in furtherance of the TECHNOLOGY.

1.3 "PROPRIETARY INFORMATION" is any information, knowledge or data received by the RECEIVING PARTY from the DISCLOSING PARTY in furtherance of or pursuant to the TECHNOLOGY that is clearly marked with proprietary legends by the DISCLOSING PARTY at the time of disclosure and, if the information is orally or visually disclosed, that is identified as proprietary at the time of said first disclosure and is clearly marked with proprietary legends and/or is reduced to writing within thirty (30) days of oral or visual disclosure.

2. COVENANTS.

2.1 The PARTIES agree, subject to the provisions of the Kansas Open Records Act, K. S. A. 45-215 et seq., as amended, that all documents received from and marked as PROPRIETARY INFORMATION shall be kept confidential and shall not be disclosed to third parties and will be treated by the PARTIES with the same degree of care with which each treats and protects its own PROPRIETARY INFORMATION. In addition, PROPRIETARY INFORMATION shall only be disclosed to those personnel within its organization or affiliates requiring access to perform tasks contemplated by this Agreement, and any such personnel or affiliates shall be made aware of the restrictions imposed on the use of the PROPRIETARY INFORMATION

2.2 RECEIVING PARTY shall use such PROPRIETARY INFORMATION only for the mutual benefit of the PARTIES and in furtherance of the TECHNOLOGY. RECEIVING PARTY shall not use such PROPRIETARY INFORMATION for any other purpose, such as competing with DISCLOSING PARTY.

2.3 In the event that DISCLOSING PARTY furnishes sample products or other equipment or material

("ITEMS") to RECEIVING PARTY, which are suitably marked to identify them as encompassing PROPRIETARY INFORMATION of DISCLOSING PARTY, the ITEMS so received shall be used and the PROPRIETARY INFORMATION derived from said ITEMS shall be treated as PROPRIETARY INFORMATION transferred pursuant to this Agreement. RECEIVING PARTY agrees not to cause or permit the reverse engineering, reverse assembly, or reverse compilation of the ITEMS.

2.4 All PROPRIETARY INFORMATION ITEMS shall remain the property of DISCLOSING PARTY and shall be promptly returned to DISCLOSING PARTY or destroyed upon written request, except for as required by applicable law and/or regulation. The requested action will be at the expense of DISCLOSING PARTY.

2.5 The obligations under this Agreement as to any PROPRIETARY INFORMATION shall continue for five (5) years from the date of first disclosure of such PROPRIETARY INFORMATION to RECEIVING PARTY, notwithstanding any earlier expiration or termination of this Agreement.

2.6 The obligations of confidentiality and non-use under this Agreement do not apply to:

2.6.1 Such information is in the public domain at the time of initial disclosure to RECEIVING PARTY by DISCLOSING PARTY, or subsequently becomes publicly known through no wrongful act of RECEIVING PARTY;

2.6.2 Such information is known to RECEIVING PARTY prior to the time of initial disclosure, as evidenced by competent and contemporaneous written documentation;

2.6.3 Such information is furnished to a third party by DISCLOSING PARTY without confidentiality restrictions substantially similar to those herein;

2.6.4 Such information is rightfully received by RECEIVING PARTY, without restriction as to further disclosure, from a third party that had the lawful right to disclose such information;

2.6.5 Such information is independently developed by RECEIVING PARTY without the use of or reference to PROPRIETARY INFORMATION; or

2.6.6 Such ITEM is required to be disclosed pursuant to applicable law or proper governmental or judicial process, provided that notice of such disclosure is promptly provided to DISCLOSING PARTY in order that it may have every reasonable opportunity to intervene in such process to contest such disclosure.

The identification of any of the occurrences, (2.6.1) - (2.6.6) above, will be promptly communicated between the parties to this Agreement

2.7 DISCLOSING PARTY represents and warrants that it has the full right and authority to enter into this Agreement and to disclose the PROPRIETARY INFORMATION to RECEIVING PARTY pursuant to the terms and covenants of this Agreement.

3. DISCLAIMERS.

3.1 DISCLOSING PARTY does not, by virtue of disclosure of PROPRIETARY INFORMATION to RECEIVING PARTY, grant RECEIVING PARTY any right or license under any patents, copyrights or trade secrets, other than those rights granted to RECEIVING PARTY in Paragraph 2.2.

3.2 Neither party makes any warranty or representation as to the accuracy or completeness of any PROPRIETARY INFORMATION disclosed under this Agreement.

4. TERM. This Agreement shall expire five (5) years after the effective date hereof unless terminated earlier upon the end of a thirty (30) day period after receipt of a written notice by one party from the other. Such termination shall not affect RECEIVING PARTY'S obligations relative to PROPRIETARY INFORMATION received prior to the effective date of such termination, as defined in Paragraph 2.5 above.

5. ASSIGNMENT. This Agreement and the rights and duties hereunder may not be assigned or otherwise transferred by either of the PARTIES without the prior written consent of the other. If this Agreement is so assigned or otherwise transferred, it shall be binding on all successors and assigns.

6. COMPLIANCE. Each Party certifies that to the best of its knowledge neither it nor any of its principals are presently debarred, suspended, proposed for debarment, the subject of an indictment involving the criminal statutes enumerated in 22 Code of Federal Regulations §120.27, or otherwise declared ineligible for the award of contracts by any Federal agency. Parties shall provide immediate written notice to WSU if at any time a Party learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Parties further agree to comply with all U.S. Laws relating to the transfer, export, or re-export of technical data (as defined in the Export Regulations defined herein) that is subject to export controls under the International Traffic in Arms Regulations (ITAR) 22 Code of Federal Regulations Parts 120-130 or the Export Administration Regulations (EAR) 15 Code of Federal Regulations Parts 730-774 without an export license to any employee or other person who is not a U.S. Citizen or permanent resident, as well as to corporations or to any other entity, organization, or group that is not incorporated or otherwise organized to do business in the United States. Disclosing Party shall notify WSU in writing prior to disclosure of any technical data or other items subject to EAR or ITAR to WSU. Disclosing Party will reasonably cooperate with and support WSU in obtaining the correct Export Control Classification Number (ECCN), classification of United States Munitions List (USML) category, and any necessary licenses or authorizations required to complete the SOW.

Disclosing Party agrees that WSU may retain one archival copy of all documents from the project for the purposes of (a) proving what information it did or did not receive hereunder in the event of a future dispute, or (b) complying with governmental regulatory requirements.

7. MISCELLANEOUS.

7.1. The following individuals are designated as the persons to receive PROPRIETARY INFORMATION:

Wichita State University

Attn: _____

1845 N. Fairmount

Wichita, Kansas, 67260-____

Email: _____ @ wichita.edu

Attn: _____

Either party can change the individual designated by written notice to the other. Receipt of PROPRIETARY INFORMATION by any individual other than the designated receiver shall not affect the obligations of the RECEIVING PARTY.

7.2. This Agreement may not be superseded, amended or modified except by written agreement between the PARTIES, and signed by a duly authorized official of each of the PARTIES.

7.3. If any of the provisions of this Agreement are invalid under any applicable statute or rule of law, such provisions or portions thereof are, to the extent invalid, deemed to be omitted without affecting the continued validity of the remaining provisions hereof.

7.4. This Agreement shall be governed by and interpreted under the laws of the state of Kansas.

7.5. This Agreement constitutes the entire understanding between the PARTIES and supersedes all previous understandings, agreements, communications, and representations, whether written or oral, concerning the treatment of PROPRIETARY INFORMATION.

IN WITNESS WHEREOF, the PARTIES hereto have executed this Agreement and/or authorized same to be executed by their duly authorized representatives as of the date shown below the respective signatures said Agreement to be effective as of the later date.

WICHITA STATE UNIVERSITY

By: _____

By: _____

Name: John S. Tomblin

Name: _____

Title: Vice President for Research &
Technology Transfer

Title: _____

Date: _____

Date: _____

WSU ACKNOWLEDGEMENT:

I, the undersigned, having read this Agreement, hereby agree to act in accordance with all the terms and conditions herein and further agree to ensure that all participants of WSU are informed of their obligations under this Agreement.

By: _____

Name: _____

Title: _____

Date: _____