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07 Confidentiality & Non-Use Agreement 3-8-10

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CONFIDENTIALITY AND NON-USE AGREEMENT

This Agreement is entered into and is effective as of the 8th day of March, 2010 by and between the iCare Academic (iCare), LLC with offices at 2450 E. J. Chapman Drive, Knoxville, TN 37996 (hereinafter referred to as "iCare"), and Delmar Cengage Learning, with offices located at 5 Maxwell Drive, Clifton Park, NY 12065 (hereinafter referred to as "Cengage").

WHEREAS, iCare possesses certain confidential and proprietary information, software, and know how (Confidential Information); and

WHEREAS, the parties desire to exchange such Confidential Information for the purpose of evaluating the possibility of entering into a business relationship related to the Confidential information and related technology developed by iCare; and

WHEREAS, iCare is willing to disclose and Cengage is willing to receive such Confidential Information under the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. "Confidential Information" shall mean any and all information, data or know-how, whether technical or non-technical, as well as any sample or model ("Sample"), that is disclosed by iCare to Cengage.

2. For a period of five (5) years from the date of termination of this Agreement, agrees, with respect to iCare's Confidential Information:

(a) not to use such Confidential Information for any purpose other than for the purpose of evaluating the possibility of entering into a business relationship with iCare related to the technology developed by iCare;

(b) to maintain such Confidential Information as confidential; and

(c) to prevent the disclosure of such Confidential Information to any third party without the prior written consent of iCare.

With respect to a Sample included in the Confidential Information, the Receiving Party further agrees that, without limiting its other obligations under this Paragraph 2, it will not:

- (i) analyze the code of any such Sample;
- (ii) attempt to determine how such Sample functions;
- (iii) attempt to replicate or making derivatives of such Sample; or
- (iv) use any Sample for commercial purposes.

3. The terms of this Agreement shall not apply to Confidential Information which:

- (a) was known to Cengage prior to receipt hereunder; or
- (b) is independently developed by Cengage by persons who have not had access to or knowledge of the Information disclosed hereunder; or
- (c) at the time of disclosure, was generally available to the public, or which after disclosure hereunder becomes generally available to the public through no fault attributable to Cengage; or
- (d) is hereafter made available to Cengage for use or disclosure by Cengage from any third party having a right to do so; or
- (e) is required to be disclosed pursuant to a judicial or governmental order, provided that the Cengage gives iCare sufficient notice to permit iCare to seek a protective order or other similar order with respect to such Confidential Information.

Disclosures made under this Agreement which are specific in nature shall not be deemed to be within the foregoing exceptions merely because they are embraced by more general information in the public domain or in the possession of Cengage.

4. Upon the written request of iCare, Cengage shall return or destroy all copies of the Confidential Information.
5. Cengage shall only disclose the Confidential Information to those employees of Cengage that need to know such Confidential Information for the above-stated purpose. Cengage shall make all such employees aware of this Agreement and the obligations and restrictions imposed herein and be responsible for such employees' compliance with the terms and conditions set forth in this Agreement.
6. Nothing herein shall be construed as (i) giving Cengage any license, right, title, interest in or ownership to the Confidential Information; (ii) granting any license or right under any intellectual property rights; or (iii) representing any commitment by either party to enter into any additional agreement, by implication or otherwise. The parties acknowledge that the execution of this Agreement does not obligate any party to disclose Confidential Information to another party.
7. Neither party shall (i) issue a press release or make any other public statement that references this Agreement, or (ii) use the other party's name or trademarks for publicity or advertising purposes, except with the prior written consent of the other party.
8. Either party's failure to require the other party to comply with any provision of this Agreement shall not be deemed a waiver of such provision or any other provision of this Agreement.

9. Neither party may assign this Agreement without the prior written consent of the other party, except that either party may assign this Agreement, without the consent of the other party, to an entity which acquires all or substantially all of its assets or business.

10. If any provision of this Agreement is held to be wholly or partially invalid, illegal or unenforceable, this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

11. This Agreement shall constitute the entire understanding between the parties with respect to the subject matter hereof and may only be modified in writing signed by both parties.

12. This Agreement shall have as its effective date the date first written above.

13. The parties acknowledge that irreparable injury and damage may result from disclosure of the Confidential Information.

14. This Agreement shall terminate for the purpose of disclosure **twelve (12) months** from effective date. Either party may earlier terminate this Agreement on twenty (20) days written notice. Termination shall not terminate the confidentiality obligations which shall remain in force as set forth in Section 2 above.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the respective dates written below.

iCare Academic, LLC

Delmar Cengage Learning

By: _____

By: _____

Print Name

Print Name

Title

Title

Date

Date