

“MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT”

[illegible]

WHEREAS, the parties wish to enter into discussions concerning a potential transaction and/or business relationship between them.

WHEREAS, in the course of such discussions each party may disclose to the other party certain business and technical information which the disclosing party deems confidential and proprietary.

THEREFORE, the parties hereby agree as follows (the "Agreement");

1. Each party and its respective Representatives, as defined below (collectively, the “Recipient”) may receive from the other party or its Representatives (collectively, the “Disclosing Party”) oral and written information from the Disclosing Party with respect to the Disclosing Party’s business, assets, financial condition, marketing plans, customers, employees, agents, affiliates, contractors, proprietary processes, operations, products, computer programs, hardware, designs, technical information, specifications, prototypes, algorithms, documentation, prospects and business plans, which information derives economic value from not being known generally to persons other than the Disclosing Party, is related to the subject of the parties’ discussions and therefore is reasonable under the circumstances that they maintain its secrecy and confidentiality (collectively, “Confidential Information”). As a condition to furnishing such Confidential Information each party agrees to treat and to cause its directors, officers, employees, agents, affiliates, financial advisors and legal counsel (collectively, with their respective successors and assigns, “Representatives”) to treat as set forth below, confidentially, the Confidential Information of the other party furnished to it or its Representatives, whether furnished before or after the date of this Agreement; together with analyses, compilations, studies or other documents or records prepared by the Recipient or its Representatives, or the Disclosing Party or its Representatives, which contain or otherwise reflect the Disclosing Party’s Confidential Information. For purposes hereof, such analyses, compilations, studies or other documents or records shall also be deemed Confidential Information.

2. Each party acknowledges and agrees that the Confidential Information of the other party is a valuable asset of such party and has competitive value.

3. For two (2) years following the later to occur of (1) the Recipient's receipt of any item of Confidential Information from the Disclosing Party, or (2) the termination of actual business between the Recipient and the Disclosing Party anticipated under this Paragraph 3e below, the Recipient shall:

- a. Use the Confidential Information for the sole purpose of evaluating and engaging in discussions concerning the potential business relationship between the parties;
- b. Use and require its Representatives to use, at a minimum, the same degree of care to protect the Confidential Information as is used with the Recipient's confidential and proprietary information, but in no event allowing the degree of care to be less than holding the Confidential Information in trust and confidence as a reasonable person will be expected to use. The Recipient further agrees not to copy, reproduce, distribute, transmit, reverse engineer, disassemble or

decompile any Confidential Information without the prior written consent of the Disclosing Party.

c. Restrict disclosure of the Confidential Information solely to those of its Representatives with a need to know and not to disclose the Confidential Information, implicitly or explicitly, to any other individual, firm or corporation without the express prior written consent of the Disclosing Party;

d. Advise Representatives who receive the Confidential Information of the existence and terms of this Agreement and of the obligation of confidentiality hereunder, and ensure that such Representatives agree to be bound by the terms and conditions of this Agreement.

e. Not solicit the other party's employees, or current customers for the purposes of employment, contracting or performing any services or engaging in any business which is in direct competition with said other party. Each party agrees that it shall be responsible for any breach of this Agreement by any of its Representatives.

4. The term "Confidential Information" shall not include information which (a) is or becomes generally available to the public other than as a result of a disclosure by the Recipient or its Representatives, (b) is or becomes available to the Recipient from a source other than the Disclosing Party or its Representatives, provided that such source obtained such information lawfully and is not, and was not, bound by a confidentiality agreement with, or obligation to, the Disclosing Party or any of its affiliates or Representatives.

5. In the event of any loss or unauthorized disclosure of any Confidential Information received, the Recipient shall notify the Disclosing Party immediately and shall confirm in writing the extent and details of the loss or unauthorized disclosure of any Confidential Information.

6. It is acknowledged and agreed that unless and until a definitive written agreement has been executed and delivered with respect to the parties' relationship, neither party nor its respective affiliates and Representatives shall be under any legal or other obligation of any kind, including any obligation to consummate a transaction with the other party except regarding matters specifically agreed to in this Agreement.

7. If a Recipient or its Representatives are requested or required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Disclosing Party's Confidential Information, it will notify the Disclosing Party promptly so that the Disclosing Party may seek an appropriate protective order or take any other action.

8. Nothing contained in this Agreement shall be construed as granting or conferring to either party any rights by license or otherwise in any Confidential Information disclosed hereunder which in all respects shall remain the property of and with the Disclosing Party.

9. Upon the request of the Disclosing Party, the Recipient and its Representative will promptly (within ten (10) business days) return to the Disclosing Party all documents furnished to the Recipient and its Representatives by or on behalf of the Disclosing Party constituting Confidential Information of the Disclosing Party or work product derived therefrom without retaining any copy thereof. In the event such a request is made, the Recipient shall promptly destroy all other documents constituting Confidential Information of the Disclosing Party.

10. Neither Party acquires any intellectual property rights under this Agreement except any limited rights necessary to carry out the purposes as set forth in this Agreement. Subject to the obligations of this Agreement, no Party will be precluded from independently developing technology or pursuing business opportunities

similar to those covered by this Agreement. Each Party retains sole discretion to assign or reassign the job responsibilities of its employees.

11. Each party acknowledges and agrees that the other party makes no representation or warranty as to the accuracy or completeness of any Confidential Information furnished by it and that no liability to the Disclosing Party or its Representatives shall result from the use of any Confidential Information of the Disclosing Party.

12. It is understood and agreed that each party's remedy at law for any breach of this Agreement will be inadequate and that each party shall be entitled to specific performance and injunctive relief as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies for the breach of this Agreement, but shall be in addition to all other remedies available at law or in equity.

13. This Agreement shall survive the termination of any negotiations or discussions between the parties hereto for a period of two years and may not be modified or terminated, in whole or in part, and no release hereunder shall be effective except by means of a written instrument executed by the parties hereto.

14. It is acknowledged and agreed that this Agreement constitutes the legal, valid and binding obligation of the parties hereto and shall be binding upon and inure to the benefit of each party's respective Representatives, successors and assigns.

15. In the event any one or more of the provision(s) of this Agreement shall for any reason be held invalid, illegal or unenforceable, the remaining provisions of this Agreement shall be unimpaired and the invalid, illegal or unenforceable provisions(s) shall be replaced by mutually acceptable provisions(s), which being valid, legal and enforceable come(s) nearest to the intentions of the parties.

16. This Agreement shall be governed by and construed in accordance with the laws and courts of the claimant party's jurisdiction without application of its conflict of laws rules.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to sign this Agreement as of the date first above written.

(Insert Name of Party to the Agreement) (Insert Name of Party to the Agreement)

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____