

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “**Agreement**”) is hereby entered into by and between [NAME OF PARTY 1], a [____] corporation, and [NAME OF PARTY 2], a [____] corporation, as of [____], 20[____] (the “**Effective Date**”).

WHEREAS, the parties believe that they would mutually benefit by exchanging certain Confidential Information (as defined in Section 1 of this Agreement), and believe it is in their mutual interests to ensure that all the Confidential Information will be safeguarded, carefully protected and only used by the party receiving it (the “**Recipient**”) for the purposes authorized herein;

NOW THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows:

1. Acknowledgment of Confidentiality. Each party to this Agreement hereby acknowledges that it has been or may be exposed to confidential and proprietary information belonging to the other party or relating to its affairs (the “**Confidential Information**”), including the following categories of material:

(a) technical information, including research programs and methods, product development plans, functional and technical specifications, technology, inventions, ideas, concepts, designs, drawings, analysis, research, methods, techniques, processes, computer software, data, patent applications, and other technical know-how and materials;

(b) business information, including business plans, sales and marketing research, materials and plans, accounting and financial information, cost data, customer information, personnel records and the like; and

(c) other valuable information of Disclosing Party (as defined in Section 2 of this Agreement) designated as confidential expressly or by the circumstances in which it is provided.

Confidential Information does not include information already known or previously independently developed by a Recipient, information in the public domain through no wrongful act of such Recipient, or information previously received by such Recipient from a third party who was free to disclose it.

2. Restrictive Covenant. Each party hereby agrees that in its role as Recipient, it may use the Confidential Information only for internal evaluation purposes or in support of tasks requested in writing by an authorized representative of the disclosing party (the “**Disclosing Party**”). A Recipient shall neither commercialize the Confidential Information nor disclose it to any person or entity, except (a) to its own employees having a “need to know” such information in connection with a task requested in writing by the Disclosing Party and (b) to such other recipients as the Disclosing Party may approve verbally or in writing; provided, however, that all such recipients pursuant to either clause (a) or clause (b) hereof shall have first executed a confidentiality agreement in a form acceptable to Disclosing Party. A Recipient may also disclose Confidential Information if required by law or court order, or if required to enforce its

rights under this Agreement, but only if such Recipient first gives written notice to the Disclosing Party and cooperates fully in restricting the scope of use of such Confidential Information and unnecessary disclosure thereof. A Recipient shall use at least the same degree of care in safeguarding the other party's Confidential Information as it uses in safeguarding its own confidential and proprietary information, but in no event shall a Recipient exercise less than reasonable diligence and care.

3. Proprietary Rights Legend. Neither party shall alter or remove from any Confidential Information any proprietary rights legend, copyright notice, trademark or trade secret legend, or any other mark identifying the material as Confidential Information.

4. Breach of Covenant. Each party shall promptly notify the other if it learns of or reasonably suspects any actual or threatened violation of this Agreement. Each party acknowledges that any violation of this Agreement would cause irreparable harm to the other and that remedies at law would be inadequate to redress any actual or threatened violation thereof. Each party agrees that, in addition to other relief, the foregoing restrictions may be enforced by temporary and permanent injunctive relief without necessity of posting bond. Any award of relief to either party in its role as Disclosing Party shall include such party's costs and expenses of enforcement (including reasonable attorneys' fees). The remedies set forth herein are cumulative and not exclusive.

5. Term and Termination. This Agreement shall be effective as of the Effective Date and shall continue in full force and effect for a term of [____] year(s). Unless otherwise agreed in writing, this Agreement shall govern Confidential Information disclosed by either party to the other prior to (as well as after) the effective date hereof. Immediately upon termination of this Agreement or at any time upon request, each party shall fully account for and return the Confidential Information and proprietary information it received from the other party, destroy any remaining copies in its possession or under its control, and cease all further use thereof.

6. Certain Third-Party Rights. Each party to this Agreement represents and warrants that disclosure of its Confidential Information to the other party will not violate or infringe any third-party intellectual property rights and each party agrees to defend, indemnify and hold the other party harmless from any costs, damages, liability and expenses (including legal fees) arising from any third-party claim to the contrary. Each party agrees that if any confidential or proprietary information of a third party is disclosed to such party under this Agreement, then the Disclosing Party of such information shall be considered a third-party beneficiary of this Agreement entitled to enforce its provisions directly against such party.

7. Miscellaneous.

7.1 No Assignment. Neither this Agreement nor any rights or obligations hereunder may be transferred or assigned without the other party's prior written consent and any attempt to the contrary shall be void.

7.2 Governing Law. This Agreement will be construed in accordance with and governed by the laws of the [____], without giving effect to the conflict of law principles of the [____].

7.3 Successors and Assigns. Except as otherwise expressly provided in this Agreement, this Agreement will be binding on, and will inure to the benefit of, the successors and permitted assigns of the parties to this Agreement. Nothing in this Agreement is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights or obligations under or by reason of this Agreement, except as expressly provided in this Agreement.

7.4 Notices. All notices and other communications required or permitted hereunder will be in writing and will be delivered by hand or sent by overnight courier, fax or e-mail to:

if to [PARTY 1]:

fax: _____

e-mail: _____

Attention: _____

if to [PARTY 2]:

fax: _____

e-mail: _____

Attention: _____

Each party may furnish an address substituting for the address given above by giving notice to the other parties in the manner prescribed by this Section 7.4. All notices and other communications will be deemed to have been given upon actual receipt by (or tender to and rejection by) the intended recipient or any other person at the specified address of the intended recipient.

7.5 Severability. In the event that any provision of this Agreement is held to be unenforceable under applicable law, this Agreement will continue in full force and effect without such provision and will be enforceable in accordance with its terms.

7.6 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (d) “including” has the inclusive meaning frequently identified with the phrase “including but not limited to” or “including without limitation,” and (e) references to “hereunder,” “herein” or “hereof” relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time.

7.7 Disputes. Any controversy, claim or dispute arising out of or relating to this Agreement, shall be settled by binding arbitration in [CITY/STATE]. Such arbitration shall be conducted in accordance with the then prevailing commercial arbitration rules of [NAME OF ARBITRATOR], with the following exceptions if in conflict: (a) one arbitrator shall be chosen by [ARBITRATOR]; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the Arbitrator's rules and regulations) of the proceeding has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator shall be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims or disputes shall be settled in this manner in lieu of any action at law or equity, provided however, that nothing in this subsection shall be construed as precluding bringing an action for injunctive relief or other equitable relief. The arbitrator shall not have the right to award punitive damages or speculative damages to either party and shall not have the power to amend this Agreement. IF FOR ANY REASON THIS ARBITRATION CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO

7.8 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements and understandings other than this Agreement relating to the subject matter hereof.

7.9 Disclosure. Except to the extent required by law, neither party shall disclose the existence or subject matter of the negotiations or business relationship contemplated between the parties.

7.10 Amendment and Waiver. This Agreement may be amended only by a written agreement executed by the parties hereto. No provision of this Agreement may be waived except by a written document executed by the party entitled to the benefits of the provision. No waiver of a provision will be deemed to be or will constitute a waiver of any other provision of this Agreement. A waiver will be effective only in the specific instance and for the purpose for which it was given, and will not constitute a continuing waiver.

7.11 Counterparts. This Agreement may be in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the undersigned have executed this Confidentiality Agreement as of the date first above written.

[NAME OF PARTY 1]

By: _____
Name: _____
Title: _____

[NAME OF PARTY 2]

By: _____
Name: _____
Title: _____