

MUTUAL CONFIDENTIALITY

This Agreement is made and entered into, as of _____, (“Effective Date”), by and between _____ (“Company”), having a principal place of business at _____ and _____, a(n) individual, partnership, limited liability partnership, corporation, limited liability company (check the appropriate box), having a principal place of business at _____ (“Other Party”)

1. Definitions. Company and Other Party recognize that there is a need to disclose to one another certain confidential information of each party for the purposes of evaluating whether to enter into a business relationship, and if they do, in carrying out their rights and obligations under that business relationship (the “Business Purpose”), and to protect such confidential information from unauthorized use and disclosure. The term “Confidential Information” shall mean any confidential, proprietary and trade secret information of the disclosing party which is (a) delivered in a tangible form that bears a “confidential,” “proprietary,” “secret,” or similar legend, and (b) discussions relating to such information whether those discussions occur concurrent with, or following disclosure of the information.

2. Obligations of Receiving Party. For two (2) years following initial disclosure of any Confidential Information, the receiving party (“Recipient”) shall (a) hold the other party’s (“Discloser”) Confidential Information in confidence, (b) not disclose the Confidential Information to third parties, and (c) not use any Confidential Information for any purpose except for the Business Purpose. The Recipient will treat all of Discloser’s Confidential Information with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances. The Recipient may disclose the Confidential Information to its employees and contractors with a bona fide need to know in order to fulfill the Business Purpose, and who have signed a nondisclosure agreement

at least as protective of the disclosing party’s rights as those terms and conditions applicable to Recipient under this Agreement; provided that it is understood that barring a separate written agreement, access to Discloser’s Confidential Information shall not restrict Recipient’s assignment of any employees or contractors or restrict in any way Recipient’s product plans. The Recipient will not make any copies of the Confidential Information received from Discloser except as necessary for its employees and contractors with a need to know to carry out the Business Purpose. Any copies which are made will be identified as belonging to the disclosing party and marked “confidential” or with a similar legend.

3. Exclusions from Obligation of Confidentiality. The Recipient will not be liable for the use or disclosure of any Confidential Information which: (a) is now, or hereafter becomes, through no act or failure to act on the part of Recipient, generally known or available to the public; (b) is rightfully acquired by Recipient before receiving the information from Discloser and without restriction as to use or disclosure; (c) is hereafter rightfully furnished to Recipient by a third party, without restriction as to use or disclosure; (d) is independently developed by employees of Recipient without reference to Discloser’s Confidential Information; or (e) is generally made available to third parties by Discloser without restriction on disclosure. A disclosure by Recipient in response to either a valid order by a court or other governmental body, or as otherwise required by law, shall not be considered to be a breach of this Agreement; provided that Recipient provided Discloser prompt prior written notice of the intended disclosure sufficient to enable Discloser to seek a protective order or otherwise prevent such disclosure, and provided further that Recipient provides all cooperation to Discloser at Discloser’s request and expense to prevent such disclosure.

4. No Obligation of Disclosure. Neither party has any obligation to disclose Confidential Information to the other. Either party may, at any time: (a) cease giving Confidential Information to the other party without any liability, and/or (b) request in writing the return of all or part of its Confidential Information previously disclosed, and all copies thereof, and Recipient shall promptly comply with such request. Recipient shall provide Discloser written certification of Recipient's compliance with Recipient's obligations under this Section within thirty (30) days of such request.

5. Termination. Either party may terminate this Agreement at any time without cause upon written notice to the other party and Recipient's rights to use or disclose any of Discloser's Confidential Information shall terminate; provided that each party's obligations with respect to Confidential Information disclosed during the term of this Agreement will survive any termination or expiration of this Agreement.

6. Ownership. All Confidential Information of each party, as Discloser, shall remain the property of such party and no license or other rights to such party's Confidential Information is granted or implied hereby.

7. Warranty. All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding such Confidential Information's completeness, accuracy or performance.

8. Injunctive Relief. A breach by Recipient of any of the promises or agreements contained herein may result in irreparable and continuing damage to Discloser for which there will be no adequate remedy at law, and

Discloser shall be entitled to injunctive relief and/or a decree for specific performance, and such other relief as may be proper (including monetary damages if appropriate).

9. General. Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party, and any attempted assignment or transfer without such prior written consent shall be null and void. If any provision of this Agreement is held by a court of law to be illegal, invalid or unenforceable that provision shall be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision. This Agreement will be governed by the laws of the State of California without reference to conflict of laws principles. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in California, as applicable, for any matter arising out of or relating to this Agreement. Recipient will obtain any licenses or approvals the U.S. government or any agency thereof requires prior to exporting, directly or indirectly, any technical data acquired from Discloser pursuant to this Agreement or any product utilizing any such data. This Agreement constitutes the entire agreement with respect to the Confidential Information disclosed hereunder and supersedes any and all prior or contemporaneous oral or written agreements, negotiations, communications, understandings and terms, whether express or implied regarding the Confidential Information. No subsequent alteration, waiver, amendment, change or addition to this Agreement ("Amendment") will be binding and valid unless in writing and signed by the parties, and then such Amendment shall be effective only in the specific instance and for the specific purpose stated.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

“Company”

“Other Party”

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____