

MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (this “Agreement”) is entered into as of [Date] (the “Effective Date”), by and between [CUSTOMER NAME] (“CUSTOMER”), having a place of business at [Customer Address] and Fujitsu Network Communications, Inc. (the “Company”), having a place of business at 2801 Telecom Parkway, Richardson, TX 75082. Each of [Customer] and the Company may be referred to in this Agreement as a “Party”, and collectively, as the “Parties”.

WHEREAS, certain financial, technical and non-technical, business and other information, including, but not limited to, business plans, analyses, forecasts, predictions, projections, intellectual property, trade secrets, contracts, proposals, documents, mechanical and electronic design drawings, specifications, software, technical or engineering data, test procedures, schematics, writings, materials, methods, operations, procedures, know-how, financial information, financial statements and other business data and other information (hereinafter collectively referred to as “Data and Information”), some of which may be Confidential Information (as defined below), may be disclosed: (a) by [Customer] itself and/or through its Representatives (as defined below) to the Company itself and/or its Representatives; and/or (b) by the Company itself and/or its Representatives to [Customer] itself and/or through its Representatives, in the case of each of clause (a) and (b), the Party disclosing such information (through itself or its Representatives) being the “Disclosing Party” and the Party receiving such information (through itself or its Representatives) being the “Receiving Party”. For purposes of this Agreement, “Affiliate” means, with respect to a Party, any person or entity directly or indirectly controlling, controlled by or under common control with such Party.

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

1. This Agreement confirms the understanding between the Parties concerning a Receiving Party's obligation of strict confidentiality with respect to Confidential Information (as defined below) furnished by the Disclosing Party to a Receiving Party. For purposes of this Agreement, “Confidential Information” means any and all Data and Information received by a Receiving Party from the Disclosing Party, whether before or after the Effective Date, and whether written or oral, and if written, however produced or reproduced, which Data and Information is marked “Confidential” or “Proprietary” or bears a marking of like import, or the Disclosing Party states is to be considered confidential or proprietary, or would logically be considered confidential or proprietary, and any and all information generated therefrom.

2. This Agreement shall expire on the third (3rd) anniversary of the Effective Date, unless sooner terminated, renewed or extended in accordance with the terms of this Agreement. Either Party may, at any time and in its sole and absolute discretion for any reason or no reason whatsoever, terminate this Agreement upon prior written notice to the other Party. Notwithstanding the expiration or termination of this Agreement (for any reason or no reason), cessation of discussions, or the successful completion of a potential business relationship, for a period of three (3) years following the date of disclosure of Confidential Information by the

Disclosing Party to a Receiving Party (the “**Non-Disclosure Period**”), such Confidential Information shall not be disclosed to any third parties, and release of and/or access to such Confidential Information shall be restricted to those employees, officers, agents and representatives of the other Party's organization who have a need to know such Confidential Information (its “**Representatives**”, which term shall include such Party's Affiliates and the employees, officers, agents and representatives of such Party's Affiliates). For clarity, expiration or termination of this Agreement (for any reason or no reason) shall not affect the Non-Disclosure Period. All of a Party's Representatives shall be informed of the confidential nature of the Confidential Information and the restrictions of this Agreement. Any act or omission of a Party's Representatives that would be a breach of this Agreement if committed by the Party itself shall be deemed to be a breach of this Agreement by the Party. In the event that the Receiving Party determines that it must disclose the Disclosing Party's Confidential Information to third parties other than its Representatives, then all such third parties must enter into a separate agreement directly with the Disclosing Party prior to any disclosure of the Disclosing Party's Confidential Information to such third parties by the Receiving Party. The Receiving Party shall use the same degree of care to protect the secrecy and confidentiality of the Confidential Information as it uses to protect its own confidential information and in all events at least a reasonable degree of care.

3. The original and all copies of all or any part of the Disclosing Party's Confidential Information (including, without limitation, any and all tangible embodiments of Confidential Information that are in the Receiving Party's possession or under its control, including, without limitation, any Confidential Information that may be found in analyses, compilations, evaluations, studies or other documents based on, containing or referencing the Confidential Information provided by the Disclosing Party and/or prepared by or for the Receiving Party, whether in hard-copy or machine-readable form), shall be returned to the Disclosing Party or destroyed by the Receiving Party, in either case, promptly following written request by the Disclosing Party, except that a Receiving Party may retain a single complete copy of the Confidential Information in the exclusive possession of its General Counsel's office. In the event that the Receiving Party destroys the Confidential Information of the Disclosing Party, then a Receiving Party shall: (a) take commercially reasonable steps to ensure the destruction of any and all such Confidential Information, including, without limitation, deletion of any and all such Confidential Information from any electronic file or archival file, computer, word processor or other device that has at any time contained or stored such Confidential Information and instructing its Representatives to delete any and all such Confidential Information from any electronic file or archival file, computer, word processor or other device that has at any time contained or stored such Confidential Information; and (b) certify in writing to the Disclosing Party that any and all copies of such Confidential Information have been destroyed. Notwithstanding the foregoing return and destruction obligations, the Receiving Party may retain copies of Confidential Information, subject to the terms and conditions set forth in this Agreement, to the extent: (i) required to be retained by applicable law, regulation and/or audit requirements; or (ii) created in the ordinary course of business pursuant to the Receiving Party's standard policies with respect automated archiving or back-up procedures, so long as such copies cannot be deleted using commercially reasonable efforts. Other than to the extent permitted pursuant to the foregoing clauses (i) and (ii), the Receiving Party shall only make a reasonable number of copies of the Confidential Information of the Disclosing Party. All copied or

reproduced Confidential Information shall also be considered Confidential Information owned exclusively by the Disclosing Party, shall be subject to the terms and conditions of this Agreement and shall be treated identically to any other Confidential Information in all respects.

4. The obligations imposed upon the Parties shall not apply to Confidential Information that is:

(a) or becomes generally available to the public through no wrongful act of the Receiving Party;

(b) already lawfully in the possession of a Receiving Party and not subject to an existing agreement of confidentiality between the Parties;

(c) received from a third party without restriction and without breach of this Agreement; or

(d) independently developed by the Receiving Party.

In addition to and without limitation of the foregoing, the Receiving Party may release Confidential Information of the Disclosing Party pursuant to the binding order of a government agency or a court so long as prior to any such release the Receiving Party provides the Disclosing Party with the greatest notice permitted under the circumstances, so that the Disclosing Party may seek a protective order or other appropriate remedy, and in any such event, the Receiving Party will disclose only that portion of such Confidential Information that is legally required to be disclosed and will exercise commercially reasonable efforts to obtain confidential treatment for any such Confidential Information being disclosed.

5. No furnishing of Confidential Information and no obligation set forth in this Agreement shall be construed to obligate any Party (through itself or others) to:

(a) enter into any further agreement or negotiation with or make any further disclosure to any other Party and/or other parties;

(b) refrain from entering into any agreement or negotiation with any other party; or

(c) refrain from pursuing its business in whatever manner it elects even if this involves competing with any other Party and/or any other party.

Any Confidential Information containing estimates or forecasts shall not constitute binding commitments.

6. In addition to and without limitation of the restrictions on the disclosure of Confidential Information set forth in this Agreement, neither Party (nor its respective Representatives) shall make any Public Announcements or other disclosures relating to its discussions, negotiations, and/or the terms of any potential agreement or relationship with any

other Party or any of its Representatives without the prior written approval of the other Party. For purposes of this Agreement, “**Public Announcement**” shall mean the disclosure to any person or entity other than its Representatives by any means including, but not limited to, a press release; a written or oral statement made to the media, trade publications or any other public audience or unauthorized third party; a written or oral statement published on a website or on another Internet site or chat room and/or distributed by facsimile, email, voicemail, regular mail, private delivery service, newsletter and/or recorded message.

7. Neither Party is responsible or liable for any business decisions made or inferences drawn by the other Party and/or others in reliance on actions taken or disclosures made pursuant to this Agreement absent a separate written agreement to the contrary. Neither Party solicits any change(s) in the business practices of the other Party, and no obligations are incurred with regard to the accuracy of the observations of either Party. Discussions between the Parties and/or their Representatives should not be construed as an encouragement for either Party to expend funds in the purchase, development or modification of any services, products or facilities.

8. Nothing in this Agreement is intended to or shall grant any interests or rights, by license or otherwise under any patent, copyright, trademark, service mark, trade name, trade secret or other intellectual property right of either Party or its Representatives, nor shall this Agreement grant any Party any rights in or to the other Disclosing Party’s Confidential Information.

9. No failure or delay by any Party in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege under this Agreement.

10. In the event that either Party institutes a legal action to enforce or interpret this Agreement, then the prevailing Party shall be entitled to reimbursement by the non-prevailing Party for all costs, expenses and reasonable attorneys’ fees incurred in that action.

11. Both Parties recognize, acknowledge and agree that the unauthorized disclosure by the Receiving Party of any Confidential Information disclosed by the Disclosing Party would cause irreparable injury to the Disclosing Party and will entitle the Disclosing Party to injunctive relief as well as reimbursement by the Receiving Party for legal and other costs and expenses as a remedy. Such remedy shall not be deemed to be the exclusive remedy for a breach of this Agreement but shall be in addition to all other remedies available at law, in equity, under contract (including, without limitation, this Agreement) or otherwise, all of which are hereby expressly reserved.

12. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes any and all prior or contemporaneous oral or written representations relating thereto. No agent, officer, employee or representative of either Party has any authority to bind such Party to any affirmation, representation or warranty with respect to the Confidential Information of such Party; and, unless the same is specifically

included within this Agreement, no such affirmation, representation or warranty shall be enforceable by other other Party hereto. Each provision of this Agreement shall be construed as separable and divisible from every other provision and the enforceability of any one provision shall not limit the enforceability, in whole or in part, of any other provision. In the event that a court or administrative body of competent jurisdiction holds any provision of this Agreement to be invalid, illegal, void or less than fully enforceable as to time, scope or otherwise, the Parties agree that such provision shall be construed by limiting and reducing it so that such provision is valid, legal, and fully enforceable while preserving to the greatest extent permissible the original intent of the Parties; the remaining terms and conditions of this Agreement shall not be affected by such alteration, and shall remain in full force and effect. In the event that the provisions of this Agreement conflict with the provisions of any other agreement executed between the Parties, then this Agreement shall control, except to the extent that the Parties specifically state otherwise in a signed writing.

13. All notices or requests that are required or permitted to be given pursuant to this Agreement must be given in writing and must be sent by facsimile transmission, or by first-class certified mail, postage prepaid, or by nationally-recognized courier service, charges prepaid, to the Party to be notified, addressed to such Party at the address(es) set forth below, or sent by facsimile to the fax number(s) set forth below, or such other address(es) or fax number(s) as such Party may have substituted by written notice (given in accordance with this Section) to the other Party. The sending of such notice with confirmation of receipt of the complete transmission (in the case of facsimile transmission) or receipt of such notice (in the case of delivery by first-class certified mail or by nationally-recognized courier service) will constitute the giving thereof.

If to be given to the Company:
Fujitsu Network Communications, Inc.

If to be given to [Customer]:
[Customer Name]

If by nationally-recognized courier service:

If by nationally-recognized courier service:

2801 Telecom Parkway
Richardson, TX 75082
Attn: Legal Department

[Customer Address]

If by first-class certified mail:

If by first-class certified mail:

SAME AS ABOVE

[Customer Address]

If by facsimile:

If by facsimile:

14. The validity of this Agreement and any of its terms and provisions, as well as the rights and duties of the Parties, shall be governed, interpreted and enforced in accordance with the laws of the State of Colorado and the United States of America. The federal and state courts in the State of Colorado shall have exclusive jurisdiction to hear and determine any claims, disputes, actions, or suits which may arise under or out of this Agreement. The Parties agree and voluntarily consent to the personal jurisdiction and venue of such courts for such purposes.

15. This Agreement shall not be assigned by either Party, except upon the prior written consent of the other Party, except that either Party may assign this Agreement in whole or in part at any time without the consent of the other Party to its Affiliate, provided that in all cases the assigning Party shall continue to be bound by the terms and conditions of this Agreement with respect to Confidential Information that remains in its possession or control. The Parties agree and acknowledge that neither: (a) a change in ownership of either Party as a result of a merger, consolidation, or reorganization; nor (b) the sale of all or substantially all of the assets of a Party shall be considered an assignment under this Section 15 requiring the other Party's consent and the other Party shall have no right to delay, alter or impede any of the foregoing transactions. Any assignment not in accordance with this Section 15 shall be void.

16. Both Parties acknowledge that the Confidential Information anticipated to be exchanged may contain products, software and technology (including but not limited to services and training) that may be subject to government export and re-export laws and regulations. Each party to this Agreement agrees to comply fully with all relevant export laws, restrictions, national security controls and regulations respective to the applicable party's country's governmental agency or authority to assure that no Confidential Information or any portion thereof is exported, directly or indirectly, in violation of such laws, regulations or restrictions without first obtaining such license or approval from their respective country's governmental agency or authority, both parties' obligations under this section survive the expiration or other termination of this Agreement.

17. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Each Party may deliver an executed copy of this Agreement to the other Party via facsimile or PDF transmission and such copies will be treated as originals and valid and binding for all purposes.

18. The individuals signing this Agreement represent and warrant that they are authorized to and by their signatures intend to bind the company for which they purport to act.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives.

[CUSTOMER]

Signed Name: _____

Printed Name: _____

Title: _____

FUJITSU NETWORK COMMUNICATIONS, INC.

Signed Name: _____

Printed Name: _____

Title: _____