

**TWO PARTY AGREEMENT**

**CONFIDENTIAL INFORMATION AGREEMENT**

**BETWEEN**

**AND**

**TRILLIANT NETWORKS INC.**

**FOR**

**Evaluating the potential to integrate Trilliant mesh  
radio technology with meters**

**DATE**

**September 13, 2006**

## CONFIDENTIAL INFORMATION AGREEMENT

This **CONFIDENTIAL INFORMATION AGREEMENT** (herein the "Agreement") is entered into on this 13th day of September, 2006 between \_\_\_\_\_ (hereinafter \_\_\_\_\_, a corporation organized and existing under the laws of New York and Trilliant Networks, Inc. (herein called "Trilliant"), a company organized and existing under the laws of Delaware. (Trilliant being individually referred to herein after as a "Party" and collectively as the "Parties").

### RECITALS

**WHEREAS**, \_\_\_\_\_ and Trilliant are interested in evaluating the possibilities of developing a relationship in order to design a combined AMR offering consisting of a \_\_\_\_\_ and Trilliant mesh radio technology; and

**WHEREAS**, in connection with the evaluation, information of a confidential or proprietary nature may be disclosed by the Parties; and

**WHEREAS**, the Parties desire to provide an understanding between each other with respect to any disclosures made during or in connection with the evaluation and to avoid any unintended restrictions on the future activities of either Party, all as set forth in this agreement.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants set forth herein, the Parties hereto agree as follows:

1. Any written or oral information disclosed by either Party in connection with the evaluation and designated "confidential" or "proprietary" in writing by the disclosing Party (collectively, "Confidential Information") at the time of disclosure shall be treated as set forth in this Agreement. Oral information which is confidential or proprietary shall be reduced to writing by the disclosing Party within ten (10) working days after disclosure, which writing shall specifically reference the date of disclosure and otherwise conform to the requirements of this paragraph. Any information which is disclosed in any other manner shall be deemed to be non-confidential. Confidential Information includes any information, knowledge or interpretation of whatsoever nature and in whatsoever form, including all data derived therefrom.
2. The receiving Party shall use the Confidential Information only for the purpose of the scope intended in this Agreement and not for any other purpose whatsoever and shall use efforts to protect the confidentiality of such Confidential Information commensurate with those which it uses for the protection of its own confidential information but it shall not be liable for unauthorized revelations of Confidential Information which occur in spite of such efforts.
3. The receiving Party shall not disclose Confidential Information to anyone except its officers, employees and agents, or the officers, employees and agents of its Affiliates, who have a need to know such Confidential Information in order to perform the evaluation contemplated hereby and shall inform such individuals of the confidential nature of the Confidential Information. In the case of independent agents or an Affiliate, the receiving Party shall obtain a written instrument from the independent agent or Affiliate agreeing to be bound by the terms of this Agreement. Affiliates means with respect to any Party, any other entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with that Party. As used herein, control shall mean the ownership, either directly or by attribution, of more than fifty percent (50%) of the combined voting rights attributable to

ownership, either directly or by attribution, of more than fifty percent (50%) of the combined voting rights attributable to the equity interests of the entity or the ability to control the composition of the majority of the board of directors or comparable management body of the entity.

4. Notwithstanding the provisions of the previous paragraphs, (a) the receiving Party shall not be subject to any restriction hereunder with respect to any part of such information which (i) appears in issued patents or publications, (ii) is known or becomes generally known to the relevant public through no fault of the receiving Party, (iii) is independently generated by the receiving Party without use of the Confidential Information, (iv) is furnished to others by the disclosing Party without restriction on disclosure, or (v) was or becomes known to the receiving Party through other sources free of any confidentiality restriction; and (b) any and all restrictions with respect to Confidential Information provided hereunder will expire three (3) years after the date of this Agreement.

5. The receiving Party agrees to promptly notify the disclosing Party of any inquiry or demand made by an governmental agency or authority or any inquiry or demand made as a result of any administrative or judicial proceeding wherein an answer to the same would divulge or tend to divulge any Confidential Information. The receiving Party shall not disclose any such Confidential Information in response to any such inquiry or demand unless required to do so by compulsory process of a court, administrative agency or other governmental body. Prior to any such disclosure, the receiving Party shall allow the disclosing Party a reasonable opportunity to secure confidential treatment of any such Confidential Information by such court, administrative agency or other governmental authority and shall cooperate with the disclosing Party in such effort.

6. The receiving Party will designate in writing one employee who shall be the sole initial recipient of any Confidential Information provided hereunder, and the disclosing Party agrees to provide such Confidential Information only to such designated employee.

7. Upon completion or termination of the evaluation, the receiving Party shall return to the disclosing Party any Confidential Information received from the disclosing Party hereunder and shall destroy all copies of such Confidential Information with the exception of one copy which may be retained exclusively for the purpose of documenting the disclosures made hereunder.

8. Nothing contained herein shall be construed as granting to either Party any license or right under any patent or copyright, nor shall this Agreement impair the right of either Party to contest the scope, validity or alleged infringement of any patent or copyright.

9. Neither the holding of discussions contemplated by this Agreement between the Parties, nor the exchange of Confidential Information, shall diminish or restrict in any way the rights that each Party has to market, lease, sell or otherwise make available its products and services to any customer or third Party.

10. Except as provided above, the Parties agree that the evaluations and disclosures contemplated herein, and any discussions or communications between the Parties relating thereto, shall not restrict either Party's right to take whatever future actions such Party unilaterally determines to be in its best interests, including the right to undertake similar evaluations or to enter into agreements or relationships with third Parties covering subjects related to the matters covered herein.

11. Unless based upon another agreement in writing signed by the Parties hereto, neither Party will rely upon any representation or expectation that the other Party will enter into any relationship or transaction relating to the matters covered herein.

12. Both Parties agree to take such measures as may be necessary to ensure that the disclosure of Confidential Information complies with any export control laws which may govern the disclosure. The receiving Party represents and warrants that no technical data it receives from the disclosing Party which is subject to the export control laws of the United States shall be exported from the United States or re-exported from any other country without first complying with all export control laws and regulations of the United States Government, including the requirement for obtaining any export license, if applicable. The receiving Party shall be responsible for obtaining the appropriate United States export license to export or re-export any such technical data. The receiving Party shall indemnify and hold the disclosing Party harmless for all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from failure of the receiving Party to comply with this clause and/or applicable export control laws and regulations.

13. This Agreement shall be governed by the laws of the State of New York, excluding its conflict of laws rules.

14. This Agreement constitutes the entire written agreement between the Parties and supersedes any prior understandings or representations relating to the subject matter hereof and shall not be subject to change or amendment except by subsequent written agreement signed by authorized representatives of the Parties.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their respective authorized representatives as of the date first written above.

**Trilliant Networks, Inc.**

By: \_\_\_\_\_

By

Name: \_\_\_\_\_

Name:

Title: \_\_\_\_\_

Title: