

Mutual Nondisclosure Agreement

This agreement is made effective on _____ (date) by and between _____ (first party) and _____ (second party) (collectively, the "Parties"), to ensure the protection and preservation of the confidential and/or proprietary nature of information disclosed or made available or to be disclosed or made available to each other. For the purposes of this agreement, each Party shall be deemed to include any subsidiaries, internal divisions, agents, and employees. Any signing party shall refer to and bind the individual and the entity that he or she represents.

Whereas the Parties desire to ensure the confidential status of the information that may be disclosed to each other.

Now, therefore, in reliance upon and in consideration of the following undertakings, the Parties agree as follows:

1. Subject to limitations set forth in paragraph 2, all information disclosed to the other party shall be deemed to be "Proprietary Information." In particular, Proprietary Information shall be deemed to include any information, marketing technique, publicity technique, public relations technique, process, technique, algorithm, program, design, drawing, mask work, formula, test data research project, work in progress, future development, engineering, manufacturing, marketing, servicing, financing or personal matter relating to the disclosing party, its present or future products, sales, suppliers, clients, customers, employees, investors or business, whether in oral, written, graphic or electronic form.
2. The term "Proprietary Information" shall not be deemed to include information that (i) is now, or hereafter becomes, through no act or failure to act on the part of the receiving party, generally known or available information, (ii) is known by the receiving party at the time of receiving such information as evidenced by its records, (iii) is hereafter furnished to the receiving party by a third party, as a matter of right and without restriction on disclosure, (iv) is independently developed by the receiving party without reference to the information

disclosed hereunder, or (v) is the subject of a written permission to disclose provided by the disclosing party.

Notwithstanding any other provision of this Agreement, disclosure of Proprietary Information shall not be precluded if such disclosure:

- a. is in response to a valid order of a court or other governmental body of the United States or any political subdivision thereof,
- b. is otherwise required by law, or,
- c. is otherwise necessary to establish rights or enforce obligations under this agreement, but only to the extent that any such disclosure is necessary.

In the event that the receiving party is requested in any proceedings before a court or any other governmental body to disclose Proprietary Information, it shall give the disclosing party prompt notice of such request so that the disclosing party may seek an appropriate protective order. If, in the absence of a protective order, the receiving party is nonetheless compelled to disclose Proprietary Information, the receiving party may disclose such information without liability hereunder, provided, however, that such party gives the disclosing party advance written notice of the information to be disclosed and, upon the request and at the expense of the disclosing party, uses its best efforts to obtain assurances that confidential treatment will be accorded to such information.

3. Each party shall maintain in trust and confidence and not disclose to any third party or use for any unauthorized purpose any Proprietary Information received from the other party. Each party may use such Proprietary Information in the extent required to accomplish the purpose of the discussions with respect to the subject. Proprietary Information shall not be used for any purpose or in any manner that would constitute a violation on law regulations, including without limitation the export control laws of the United States of America. No other rights or licenses to trademarks, inventions, copyrights or patents are implied or granted under this Agreement.
4. Proprietary Information supplied shall not be reproduced in any form except as required to accomplish the intent of this Agreement.

5. The responsibilities of the Parties are limited to using their efforts to protect the Proprietary Information received with the same degree of care used to protect their own Proprietary Information from unauthorized use or disclosure. Both Parties shall advise their employees or agents who might have access to such Proprietary Information of the confidential nature thereof and that by receiving such information they are agreeing to be bound by this Agreement. No Proprietary Information shall be disclosed to any officer, employee, or agent of either party who does not have a need for such information for the purpose of the discussions with respect to the subject.
6. All Proprietary Information (including all copies thereof) shall remain the property of the disclosing party and shall be returned to the disclosing party after the receiving party's need for it has expired, or upon request of the disclosing party, and in any event, upon completion or termination of this Agreement. The receiving party further agrees to destroy all notes and copies thereof made by its officers and employees containing or based on any Proprietary Information and to cause all agents and representatives to whom or to which Proprietary Information has been disclosed to destroy all notes and copies in their possession that contain Proprietary Information.
7. This Agreement shall survive any termination of the discussion with respect to the subject and shall continue in full force and effect until such time as Parties mutually agree to terminate it.
8. This Agreement shall be governed by the laws of the United States of America and as those laws that are applied to contracts entered into and to be performed in all states. Should any revision of this Agreement be determined to be void, invalid or otherwise unenforceable by any court or tribunal of competent jurisdiction, such determination shall not affect the remaining provisions of this Agreement, which shall remain in full force and effect.
9. This Agreement contains final, complete, and exclusive agreement of the Parties relative to the subject matter hereof and supersedes any prior agreement of the Parties, whether oral or written. This Agreement may not be changed, modified, amended or supplemented except by a written instrument signed by both Parties.

10. Each party hereby acknowledges and agrees that, in the event of any breach of this Agreement by the other party, including, without limitations, the actual or threatened disclosure of a disclosing party's Proprietary Information without the prior express written consent of the disclosing party, the disclosing party will suffer an irreparable injury such that no remedy at law will afford it adequate protection against or appropriate compensation for such injury. Accordingly, each party hereby agrees that the other party shall be entitled to specific performance of a receiving party's obligations under this Agreement as well as further injunctive relief as may be granted by a court of competent jurisdiction.

11. The term of this agreement is for two (2) years, commencing on the "Effective Date."

AGREED TO:

Signature _____

Printed Name _____

Date: _____

AGREED TO:

Signature _____

Printed Name _____

Date: _____