

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement ("Agreement") is entered into as of this ____ day of _____, 200__ ("Effective Date") between _____, a _____ corporation with principal offices at _____ ("____"), and _____, a _____ with principal offices at _____ ("Company").

In consideration of the mutual promises contained in this Agreement and the mutual disclosure of Confidential Information, the parties hereto agree as follows:

1. Purpose. The purpose ("Purpose") of this Agreement is to _____
_____.

2. Confidential Information and Exclusions. In this Agreement, "Confidential Information" means all information or material disclosed by one party hereto ("Discloser") in any manner, whether orally, visually or in tangible form, to the other party hereto ("Recipient"), or otherwise discovered by or made available to Recipient. Confidential Information includes, but is not limited to, the following types of information: software (in various stages of development), designs, drawings, specifications, models, source code, object code, know-how, techniques, documentation, diagrams, flow charts, marketing and development plans, business plans, financial information, customer lists, and other similar information and intellectual property that is proprietary to and confidential information of Discloser, and all copies, descriptions and summaries thereof, whether created by Discloser or Recipient. In the course of disclosing Confidential Information to the Recipient, Discloser shall endeavor to identify such information as "confidential", but failure to so identify such information as confidential shall not relieve the Recipient of its obligations hereunder. Confidential Information shall not include information that: (a) is already known to Recipient without restriction on use or disclosure prior to receipt of such information from Discloser; (b) is or becomes part of the public domain other than by breach of this Agreement by Recipient; (c) is developed by Recipient independently of and without us of or reference to any of Discloser's Confidential Information; or (d) is received by Recipient from a third party who is not under any obligation to Discloser to maintain the confidentiality of such information.

Except as otherwise indicated in this Agreement, the term "Discloser" and "Recipient" includes all Affiliates of such parties. An "Affiliate" means

any person, partnership, joint venture, corporation, or other form of enterprise, domestic or foreign, including subsidiaries that directly or indirectly control, are controlled by, or are under common control with a party.

3. Ownership. All Confidential Information disclosed by Discloser shall remain the sole property of Discloser. Nothing herein shall be construed as a grant by Discloser to Recipient or any third party of any license, directly or by implication, estoppel or otherwise, in any Confidential Information. Nothing contained herein shall create any obligation on the part of Discloser to provide Recipient with any Confidential Information.

4. Obligations Regarding Confidential Information. (a) Recipient shall use Confidential Information only for the purposes of evaluating Discloser's technology, software, products, services and any proposed business transaction between the parties in furtherance of the Purpose. Except as expressly permitted herein, Recipient shall protect and maintain the Discloser's Confidential Information in the strictest confidence and shall prevent the disclosure of such information by Recipient or its employees and consultants. Recipient shall use the same degree of care to keep confidential the Confidential Information as it uses to keep confidential its own confidential information, but in no event less than a reasonable degree of care.

(b) Recipient may disclose Confidential Information only to its employees and consultants on a need to know basis and who are under written or legal obligations of confidentiality.

(c) Recipient shall notify Discloser immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Recipient or its employees or consultants, and will cooperate with Discloser in every reasonable way to help Discloser regain possession of the Confidential

Information and prevent its further unauthorized use or disclosure.

(d) Recipient shall refrain from disclosing any Confidential Information of Discloser to third parties for three years following the date of expiration or termination of this Agreement for any reason.

(e) Recipient shall refrain from creating derivative works from, or reverse engineering, decompiling or disassembling any software code and/or pre-release hardware devices disclosed by Discloser to the Recipient under the terms of this Agreement, except as expressly permitted by applicable law.

(f) Notwithstanding any other provision of this Agreement, Recipient may disclose Confidential Information in response to a valid order to a court, regulatory agency, or other governmental body in the United States or any political subdivision thereof, but only to the limited extent and for the limited purposes stated in such order; provided, however, that Recipient shall first notify Discloser in writing of the order and cooperate with Discloser if Discloser desires to seek an appropriate protective order.

5. Return of Information. All Confidential Information, copies and summaries thereof shall be returned to Discloser within 10 days of Discloser's request. At Discloser's option, Confidential Information, including all copies, may instead be destroyed by Recipient, provided Recipient certifies such destruction in writing to Discloser within five days of Discloser's instructions to Recipient. This obligation survives expiration or termination of this Agreement.

6. No Assignment. Neither party may assign any of its rights or delegate any of its duties, in whole or in part, without the prior written consent of the other party. Any attempted assignment or delegation shall be void.

7. Severability. If any provision of this Agreement should be held to be invalid in any way or unenforceable, it shall be severed and the remaining provisions shall not in any way be affected or impaired. This Agreement shall be construed so as to most nearly give effect to the intent of the parties as originally executed.

8. Term and Termination. The term of this Agreement shall commence on the Effective Date and, unless terminated sooner in accordance with the express terms of this Agreement, shall continue for a period of two years. Either party may terminate this Agreement without cause upon 30 days advance written notice to the other party. The term of this Agreement may be extended upon the express written agreement of the parties.

9. Governing Law. This Agreement shall be construed according to and governed by the laws of the State of _____. Recipient agrees that any judicial proceeding that may be brought with respect to this Agreement may be brought in a federal or state court in _____ and, by execution and delivery of this Agreement, each party (a) accepts, generally and unconditionally, the non-exclusive jurisdiction of such courts, and (b) waives all defenses of lack of personal jurisdiction and that such court is an inconvenient forum.

10. Notices. Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or recognized overnight delivery services to the parties' addresses first set forth above. Except as otherwise provided herein, such notices shall be deemed given when received. Copies of all notices to shall be sent to the attention of a party's President and Legal Department.

11. Entire Agreement. This Agreement contains the entire understanding between the parties concerning the subject matter hereof and supersedes all prior and contemporaneous communications and agreements with respect to such subject matter. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the parties other than as expressly set forth in this Agreement. No provision of this Agreement can be waived or cancelled, and this Agreement cannot be changed, modified or amended, except by an instrument in writing executed by both parties.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original Agreement for all purposes and which collectively shall constitute one and the same Agreement. A facsimile copy of any

such executed counterpart shall be deemed an executed original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

_____ INCORPORATED

COMPANY

By _____
Name:
Title:

By _____
Name:
Title:

