



CONFIDENTIALITY AGREEMENT - 2

THIS CONFIDENTIALITY AGREEMENT ("Agreement") is made and entered into this [date], by and between (i) [_____] and (ii) [_____] who, intending to be legally bound, hereby agree as follows:

RECITALS

WHEREAS, representatives of each party wish to communicate for the purpose of evaluating the prospect for future cooperation, subject to the parties' agreement to hold the existence and substance of such communications in confidence in accordance with this Agreement; and

WHEREAS, each party agrees to hold the substance and existence of communications between their representatives in confidence;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

- 1) This Agreement shall apply to all information disclosed by the parties to each other, including but not limited to all product designs, capabilities, specifications, program code and information regarding future technical business and marketing plans and product strategies, and the identity of actual and potential customers and suppliers (hereinafter referred to as "Proprietary Information"). Proprietary Information may be owned by Party, by any affiliate of Party, or by any third party which has disclosed such information to any of the foregoing subject to a nondisclosure obligation. Proprietary Information shall not include information which (a) was already known to the receiving party prior to disclosure by the other party, (b) is in or has entered the public domain through no breach of this Agreement or other wrongful act of the receiving party, (c) has been rightly received from a third party who is not under any obligation of confidentiality with respect to such information, or (d) has been approved for release by written authorization of the disclosing party.
- 2) The parties understand and agree that each will be deemed to be in a fiduciary relationship of confidence with the other party regarding the confidentiality of the Proprietary Information. Each party acknowledges that the disclosure of the Proprietary Information, including but not limited to the existence of communications between the parties, or use of the Proprietary Information for any purpose other than the business purpose identified on Exhibit A (the "Business Purpose") could result in irreparable injury to the business and goodwill of the other party, whether such disclosure occurs during the course of such communications or after their completion or abandonment. Accordingly, each party agrees that it will keep the Proprietary Information in strictest confidence and will not disclose the Proprietary Information to any third party. In addition, each party shall take all steps necessary to protect the Proprietary Information from unauthorized or inadvertent disclosure, including without limitation all steps such party takes to protect the confidentiality of its own proprietary information.

- 3) Upon the completion or abandonment of the communications contemplated hereby, and in any event upon the written request of the disclosing party at any time, whether during the course of communications or after their completion or abandonment, each party shall immediately return to the other party all items of Proprietary Information and all copies thereof and shall destroy any notes or personal memoranda which include or make reference to the Proprietary Information.
- 4) Each party shall be deemed the owner of all Proprietary Information disclosed by it to the other party hereunder, including without limitation all patent, copyright, trademark, trade secret and other proprietary rights and interests therein, and each party recognizes and agrees that nothing in this Agreement shall be construed as granting any rights, by license or otherwise, in or to any Proprietary Information.
- 5) Each hereby acknowledges that unauthorized disclosure, use or disposition of any Proprietary Information would cause irreparable harm and significant injury to the other party which would be difficult to ascertain. Accordingly, each party agrees that the other party shall have the right to seek an immediate injunction against any breach, threatened breach or attempted breach of this Agreement, in addition to any other remedies that may be available at law or in equity.
- 6) Each party further acknowledges and agrees that:
 - a) The termination of its communications with the other party shall not in any way affect the obligations set forth herein;
 - b) This Agreement and the obligations set forth herein shall expire [___] years after the effective date first set forth above.
 - c) This Agreement constitutes the entire agreement between the parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions between the parties, whether oral or written.
 - d) The validity, construction and performance of this Agreement shall be governed by and construed in accordance with the substantive law of [_____], without regard to conflicts of law provisions, and any action or claims by or between any of the parties hereto concerning the Proprietary Information, whether asserted on the basis of contract, tort (including negligence and strict liability) or otherwise, shall be resolved exclusively under the law of such jurisdiction. If any provision of this Agreement or the application of any such provision shall be held by a tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this Agreement shall remain in full force and effect to the maximum extent permissible.
- 7) This Agreement will provide a period of [___] days exclusivity to allow [_____] to conduct due diligence on the Company, during which time, the Company will not conduct any proceedings to sell any part of the Company to any other third parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

[_____]

[_____]

By:

By:

Title:

Title:

Exhibit A

Business Purpose

The Propriety Information disclosed pursuant to this Agreement may be used by either party or any affiliate of either party for the purpose of conducting due diligence with respect to the proposed investment in a [_____].