

MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT (“NDA”) is entered into on this ___ day of _____, 20__ (“Effective Date”) by and between Company, Inc., a _____ corporation, with its principal place of business at _____ (“Company”) and Other Party, Inc., a _____ corporation, with a place of business at _____ (“Other Party”).

In consideration of the mutual promises and covenants contained in this Agreement and the disclosure of confidential information to each other, the parties to this Agreement agree as follows:

1.0 DEFINITION

“Confidential Information” means the terms and conditions of this Agreement, the existence of the discussions between the parties, the information described in Section 2 below, and any other information concerning the Purpose defined below, including but not limited to, information regarding each party’s products, product plans, product designs, product costs, product prices, finances, marketing plans, business opportunities, personnel, research and development activities, know-how and pre-release products including: (a) information disclosed by the disclosing party (“Disclosing Party”) to the receiving party (“Receiving Party”) in written or other tangible form which is conspicuously designated as “Confidential,” “Proprietary” or a similar legend, (b) information disclosed orally which is identified as confidential, proprietary or the like at the time of disclosure and is confirmed in writing within thirty (30) days of disclosure and (c) information which the Receiving party knows or should know is intended to be confidential by the Disclosing party.

2.0 SPECIFIC CONFIDENTIAL INFORMATION TO BE DISCLOSED

The Confidential Information to be disclosed by each party under this Agreement is described as follows (do not include source code):

Company A: _____

Other Party: _____

3.0 PURPOSE

The Receiving Party may use the Confidential Information solely for the purpose of (“Purpose”):

Company A: _____

Other Party: _____

4.0 LIMITED DISCLOSURE AUTHORIZATION

The Receiving Party shall use the same degree of care in maintaining the confidentiality of the Confidential Information as it uses with respect to its own information that is regarded as confidential and/or proprietary by such party, but in any case shall at least use reasonable care. The Receiving Party shall not disclose the Confidential Information to any third party other than employees and contractors of the Receiving Party who have a need to have access to and knowledge of the Confidential Information solely for the Purpose authorized above. The Receiving Party shall have entered into non-disclosure agreements with such employees and contractors having obligations of confidentiality as strict as those herein prior to disclosure to such employees and contractors to assure against unauthorized use or disclosure. Further, the Receiving Party may disclose Confidential Information pursuant to a valid order issued by a court or government

agency, provided that the Receiving Party provides the Disclosing Party: (a) prior written notice of such obligation; and (b) the opportunity to oppose such disclosure or obtain a protective order.

5.0 INFORMATION THAT IS NOT CONFIDENTIAL

The Receiving Party shall have no obligation with respect to information which (i) was rightfully in possession of or known to the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party; (ii) is, or subsequently becomes, legally and publicly available without breach of this Agreement; (iii) is rightfully obtained by the Receiving Party from a source other than the Disclosing Party without any obligation of confidentiality; and/or (iv) is developed by or for the Receiving Party without use of the Confidential Information and such independent development can be shown by documentary evidence.

6.0 RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION.

Upon receipt of written demand by the Disclosing Party, the Receiving Party shall: (i) cease using the Confidential Information, (ii) return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party; and (iii) certify in writing that the Receiving Party has complied with the obligations set forth in this Section.

7.0 OWNERSHIP

Each party shall retain all right, title and interest to such party's Confidential Information.

8.0 DISCLAIMERS.

No license under any trademark, patent or copyright, or application for same, which are now or hereafter may be obtained by such party is either granted or implied by the disclosure of Confidential Information.

CONFIDENTIAL INFORMATION IS PROVIDED “AS IS” WITH ALL FAULTS. IN NO EVENT SHALL THE DISCLOSING PARTY BE LIABLE FOR THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION.

None of the Confidential Information disclosed by the parties constitutes any representation, warranty, assurance, guarantee or inducement by either party to the other with respect to the infringement of trademarks, patents, copyrights, any right of privacy, or any rights of third persons nor shall this Agreement nor any disclosure hereunder be construed as creating a commitment as to any product, soliciting any business or incurring any obligation not specified herein, or prohibiting either party from proceeding independently to develop services or product competitive with those involved herein, and/or associating themselves with competitors of the other party for purposes substantially similar to those involved herein, and the Receiving Party agrees to be so limited with respect to all Confidential Information received hereunder.

9.0 EXPORT LAWS

The Receiving Party acknowledges that the Confidential Information may be controlled by the U.S. Department of Commerce Export Administration Regulations or other requirements of the U.S. government and other governmental bodies related to the export of the Confidential Information. Each party agrees that it shall not attempt to, or knowingly, export, re-export, or transfer Confidential Information of the Disclosing Party to any country without first having obtained all authorizations or licenses as required by any such country. If requested, each Disclosing Party also agrees to provide information and/or sign written assurances and other export-related documents as may be required for the Receiving Party to comply with US export regulations or any other governmental regulatory agency requirement with respect to the Disclosing Party’s Confidential Information.

10.0 TERM OF AGREEMENT; TERM OF CONFIDENTIALITY OBLIGATION

This Agreement shall commence on the Effective Date and continue until terminated by a party by giving thirty (30) days written notice to the other party of its intent to terminate this Agreement. Notwithstanding such termination, the obligations of the Receiving Party concerning confidentiality shall terminate five (5) years following receipt of the Confidential Information.

11.0 GENERAL PROVISIONS

11.1 Each party acknowledges that monetary remedies may be inadequate to protect Confidential Information and that injunctive relief may be appropriate to protect such Confidential Information.

11.2 The Receiving Party agrees not to reverse-engineer, decompile, or disassemble any software disclosed to it under this Agreement and shall not remove or obscure any notice of confidentiality, copyright, trademark, logo, legend or other notices of ownership or confidentiality from any originals or copies of Confidential Information it obtains from the Disclosing Party.

11.3 The parties hereto are independent contractors. Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable. A waiver by a party of any term or condition of this Agreement shall not be a waiver of such term or conditions for the future or of any subsequent breach thereof.

11.4 If any term of this Agreement shall be held to be illegal or unenforceable by a court of competent jurisdiction, the remaining terms shall remain in full force and effect. This Agreement may be modified only by a writing signed by both parties.

11.5 This Agreement shall be construed in accordance with the laws of the State of California not including its choice of law provisions.

11.6 This Agreement represents the entire agreement of the parties hereto pertaining to the subject matter of this Agreement and supersedes any and all prior oral discussions and/or written correspondence or agreements between the parties with respect thereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

COMPANY

OTHER PARTY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____