

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this "Agreement") is entered into as of _____, 20____ by and between:

_____ [Disclosing party], as a(n) (Check one) Individual Corporation
 Limited Liability Company Partnership Limited Partnership Limited Liability
Partnership, of _____ [Address]

AND

_____ [Receiving party], as a(n) (Check one) Individual Corporation
 Limited Liability Company Partnership Limited Partnership Limited Liability
Partnership, of _____ [Address]

_____ [Disclosing party] and _____ [Receiving party] have indicated an interest in exploring a potential business relationship relating to: _____

_____ (the "Transaction").

In connection with its respective evaluation of the Transaction, each party, their respective affiliates and their respective directors, officers, employees, agents or advisors (collectively, "Representatives") may provide or grant access to certain confidential and proprietary information. The party disclosing its Confidential Information to the other party is hereafter referred to as _____ [Disclosing party]. The party receiving the Confidential Information provided by _____ [Disclosing party] is hereafter referred to as _____ [Receiving party]. In consideration for being furnished Confidential Information, _____ [Disclosing party] and _____ [Receiving party] agree as follows:

1. Confidential Information

Confidential information is: (Check one)

All information shared by Disclosing Party. "Confidential Information" shall mean (i) all information relating to _____'s [Disclosing party] products, business and operations including, but not limited to, financial documents and plans, customers, suppliers, manufacturing partners, marketing strategies, vendors, products, product development plans, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, inventions, sales leads, sales data, customer lists, customer profiles, technical advice or knowledge, contractual agreements, price lists, supplier lists, sales estimates, product specifications, trade secrets, distribution methods, inventories, marketing strategies, source code, software, algorithms, data, drawings or schematics, blueprints, computer programs and systems and know-how or other intellectual property of _____ [Disclosing party] and their affiliates that may be at any time furnished, communicated or delivered by _____ [Disclosing party] to



_____ [Receiving party], whether in oral, tangible, electronic or other form; (ii) the terms of any agreement, including this Agreement, and the discussions, negotiations and proposals related to any agreement; (iii) information acquired during any tours of _____'s [Disclosing party] facilities; and (iv) all other non-public information provided by _____ [Disclosing party] whatsoever. All Confidential Information shall remain the property of _____ [Disclosing party].

Only information marked 'Confidential.' "Confidential Information," exchanged by the parties and entitled to protection hereunder, shall be identified or marked as such by an appropriate stamp or marking on each document exchanged designating the information as confidential or proprietary.

Specific information. The term "Confidential Information" as used in this Agreement shall mean any data or information that is competitively sensitive material and not generally known to the public, including, but not limited to, information relating to any of the following, which _____ [Disclosing party] considers confidential: (Check all that apply)

'Accounting Information' which includes all books, tax returns, financial information, financial forecasts, pricing lists, purchasing lists and memos, pricing forecasts, purchase order information, supplier costs and discounts, or related financial or purchasing information.

'Business Operations' which includes all processes, proprietary information or data, ideas or the like, either in existence or contemplated related to _____'s [Disclosing party] daily and long-term plans for conducting _____'s [Disclosing party] business.

'Computer Technology' which includes all computer hardware, software or other tangible and intangible equipment or code either in existence or development.

'Customer Information' which includes the names of entities or individuals, including their affiliates and representatives, that _____ [Disclosing party] provides and sells its services or goods to, as well as any associated information, including but not limited to, leads, contact lists, sales plans and notes, shared and learned sales information such as pricing sheets, projections or plans, agreements, or such other data.

'Intellectual Property' which includes patents, trademarks, service marks, logos, trade names, internet or website domain names, rights in designs and schematics, copyrights (including rights in computer software), moral rights, database rights, in each case whether registered or unregistered and including applications for registration, in all rights or forms anywhere in the world.

'Marketing and Sales Information' which includes all customer leads, sales targets, sales markets, advertising materials, sales territories, sales goals and projections, sales and marketing processes or practices, training manuals or other documentation and materials related to the sales, marketing and promotional activities _____ [Disclosing party] and their products or services.

'Procedures and Specifications' which includes all procedures and other specifications, criteria, standards, methods, instructions, plans or other directions prescribed by _____ [Disclosing party] for the manufacture, preparation, packaging and labelling, and sale of their products or services.



'Product Information' which includes _____'s [Disclosing party] products which are being contemplated for sale, manufactured, marketed, listed, or sold, including any fixes, revisions, upgrades, or versions, of which consists of all data, software and documentation related thereto.

'Proprietary Rights' which includes any and all rights, whether registered or unregistered, in and with respect to patents, copyrights, trade names, domain names, logos, trademarks, service marks, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, whether protected under contract or otherwise under law, and other similar rights or interests in intellectual property.

'Service Information' which means the services provided by _____ [Disclosing party], including the method, details, means, skills and training, which consists of all data, software and documentation related thereto.

'Software Information' which means the proprietary computer programs of _____ [Disclosing party], including all fixes, upgrades, new versions, new enhancements, modifications, edits, conversions, replacements, or the like, in machine readable form or documentation and materials, and all copies and translations of such computer programs, documentation and materials, regardless of the form or media of expression or storage.

Other: _____

2. Exclusions from Confidential Information

The obligation of confidentiality with respect to Confidential Information will not apply to any information if the information is disclosed by _____ [Receiving party] with the prior written permission and approval by _____ [Disclosing party] OR:

a. If the information is or was received by _____ [Receiving party] from a third party source which, to the best knowledge of _____ [Receiving party] or their Representatives, is or was not under a confidentiality obligation to _____ [Disclosing party] with regard to such information;

b. If the information is or becomes publicly known and available other than as a result of prior unauthorized disclosure by _____ [Receiving party] or any of their Representatives;

c. If the information is independently developed by _____ [Receiving party] prior to disclosure by _____ [Disclosing party] and without the use and benefit of any of the Confidential Information; or

d. If _____ [Receiving party] or any of their Representatives is legally compelled by applicable law, by any court, governmental agency or regulatory authority or by subpoena or discovery request in pending litigation but only if, to the extent lawful, _____



[Receiving party] or their Representatives give prompt written notice of that fact to _____ [Disclosing party] prior to disclosure so that _____ [Disclosing party] may request a protective order or other remedy to prevent or limit such disclosure and in the absence of such protective order or other remedy, _____ [Receiving party] or their Representatives may disclose only such portion of the Confidential Information which it is legally obligated to disclose.

3. Obligation to Maintain Confidentiality

With respect to Confidential Information:

- a. _____ [Receiving party] and their Representatives agree to retain the Confidential Information in strict confidence, to protect the security, integrity and confidentiality of such information and to not permit unauthorized access to or unauthorized use, disclosure, publication or dissemination of Confidential Information except in conformity with this Agreement;
- b. _____ [Receiving party] and their Representatives of _____ [Receiving party] shall adopt and/or maintain security processes and procedures to safeguard the confidentiality of all Confidential Information provided by _____ [Disclosing party] using a reasonable degree of care, but not less than that degree of care used in safeguarding their own similar information or material;
- c. If there is an unauthorized disclosure or loss of any of the Confidential Information by _____ [Receiving party] or any of their Representatives, _____ [Receiving party] will promptly, at their own expense, notify _____ [Disclosing party] in writing and take all actions as may be necessary or reasonably requested by _____ [Disclosing party] to minimize any damage to _____ [Disclosing party] or a third party as a result of the disclosure or loss; and
- d. Upon the termination of this Agreement, _____ [Receiving party] will ensure that all documents, memoranda, notes and other writings or electronic records prepared by it that include or reflect any Confidential Information are returned or destroyed as directed by _____ [Disclosing party].

4. Non-Disclosure of Transaction

Without the prior written consent from _____ [Disclosing party], neither _____ [Receiving party] nor their Representatives shall disclose to any other person, except to the extent, the provisions of Paragraph 2 apply: (a) the fact that Confidential Information has been made available to it or that it has inspected any portion of the Confidential Information; (b) the fact that _____ [Disclosing party] and _____ [Receiving party] are having discussions or negotiation concerning the Transaction; or (c) any of the terms, conditions or other facts with respect to the Transaction.



5. Non-Compete

(Cross out if you do not want to include a non-compete clause)

_____ [Receiving party] agrees that at no time will
_____ [Receiving party] engage in any business activity which is competitive with
_____ [Disclosing party], nor work for any company which competes with
_____ [Disclosing party]: (Check one)

- During the term of _____'s [Receiving party] relationship with
_____ [Disclosing party].
- From the date of this Agreement until _____, 20_____.

6. Non-Solicitation

(Cross out if you do not want to include a non-compete clause)

_____ [Receiving party] agrees not to solicit any employee or independent contractor of _____ [Disclosing party] on behalf of any other business enterprise, nor shall _____ [Receiving party] induce any employee or independent contractor associated with _____ [Disclosing party] to terminate or breach an employment, contractual or other relationship with _____ [Disclosing party]: (Check one)

- During the term of _____'s [Receiving party] relationship with
_____ [Disclosing party].
- From the date of this Agreement until _____, 20_____.

7. Representatives

_____ [Receiving party] will take reasonable steps to ensure that their Representatives adhere to the terms of this Agreement. _____ [Receiving party] will be responsible for any breach of this Agreement by any of their Representatives.

8. Disclaimer

There is no representation or warranty, express or implied, made by _____ [Disclosing party] as to the accuracy or completeness of any of their Confidential Information. Except for the matters set forth in this Agreement, neither party will be under any obligation with regard to the Transaction. Either party may, in its sole discretion: (a) reject any proposals made by the other party or its Representatives with respect to the Transaction; (b) terminate discussions and negotiations with the other party or its Representatives at any time and for any reason or for no reason; and (c) change the procedures relating to the consideration of the Transaction at any time without prior notice to the other party.



9. Remedies

Each party agrees that use or disclosure of any Confidential Information in a manner inconsistent with this Agreement will give rise to irreparable injury for which: (a) money damages may not be a sufficient remedy for any breach of this Agreement by such party; (b) the other party may be entitled to specific performance and injunction and other equitable relief with respect to any such breach; (c) such remedies will not be the exclusive remedies for any such breach, but will be in addition to all other remedies available at law or in equity; and (d) in the event of litigation relating to this Agreement, if a court of competent jurisdiction determines in a final non-appealable order that one party, or any of its Representatives, has breached this Agreement, such party will be liable for reasonable legal fees and expenses incurred by the other party in connection with such litigation, including, but not limited to, any appeals.

10. Notices

All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be sent via one of the following methods: delivery in person, overnight courier service, certified or registered mail, postage prepaid, return receipt requested, addressed to the party to be notified at the below address or by facsimile at the below facsimile number or in the case of either party, to such other party, address or facsimile number as such party may designate upon reasonable notice to the other party.

Disclosing Party

Name: _____

Representative name: _____ Title: _____

Address: _____

Phone number: _____

Fax number: _____

Receiving Party

Name: _____

Representative name: _____ Title: _____

Address: _____

Phone number: _____

Fax number: _____

11. Termination

This Agreement will terminate on the earlier of:

- (a) the written agreement of the parties to terminate this Agreement;
- (b) the consummation of the Transaction; or
- (c) _____ (Check one) months years from the date hereof.

12. Amendment

This Agreement may be amended or modified only by a written agreement signed by both of the parties.



13. General Provisions

The obligation not to disclose Confidential Information shall: (Check one)

Survive the termination of this Agreement, and at no time will _____ [Receiving party] or any of their Representatives be permitted to disclose Confidential Information, except to the extent that such Confidential Information is excluded from the obligations of confidentiality under this Agreement pursuant to Paragraph 2 above.

Remain in effect until _____ (Check one) months years from the date hereof or until the Confidential Information ceases to be a trade secret, except to the extent that such Confidential Information is excluded from the obligations of confidentiality under this Agreement pursuant to Paragraph 2 above.

This Agreement will be governed by and construed in accordance with the laws of the State of _____, without regard to the principles of conflict of laws. Each party consents to the exclusive jurisdiction of the courts located in the State of _____ for any legal action, suit or proceeding arising out of or in connection with this Agreement. Each party further waives any objection to the laying of venue for any such suit, action or proceeding in such courts.

14. Miscellaneous

This Agreement will inure to the benefit of and be binding on the respective successors and permitted assigns of the parties. Neither party may assign its rights or delegate its duties under this Agreement without the other party's prior written consent. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement. Neither party will be charged with any waiver of any provision of this Agreement, unless such waiver is evidenced by a writing signed by the party and any such waiver will be limited to the terms of such writing.

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

Disclosing Party

Signature: _____
Name: _____

Signature: _____
Representative name: _____
Representative title: _____



Receiving Party

Signature: _____

Name: _____

Signature: _____

Representative name: _____

Representative title: _____

