

## MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (this "Agreement") is entered into as of June 9, 2005 (the "Effective Date"), by and between [ ] ("XXX"), and [ ] (the "Company"), for the purpose of protecting and preserving the confidential and/or proprietary nature of information to be disclosed or made available by each party to the other under this Agreement. Accordingly, the parties agree as follows:

1. Confidential Information

"Confidential Information" means all information, whether written or oral, and in any form (including, without limitation, engineering documents, research and development, manuals, reports, designs, drawings, plans, flowcharts, software (in source or object code), program listings, data file printouts, printed circuit boards, processes, component part listings and prices, product information, new product plans, sales and marketing plans and/or programs, pricing information, supplier lists and other supplier information, customer lists and other customer information, financial information and employee files or other employee information) relating to either party's business or technology that is disclosed by such party either directly or indirectly to the other party before and after execution of this Agreement. In addition, Confidential Information shall also include the existence and status of discussions between the parties.

2. Limited Use of Confidential Information

The parties agree to use the Confidential Information received hereunder solely for the purpose of engaging in discussions relating to [ ] (explain the "disclose-able" part of your concept here) (collectively, the "Subject Matter"). The recipient agrees to use the Confidential Information only to the extent necessary to engage in such discussions.

3. Ownership of Confidential Information: Right to Disclose Confidential Information

All Confidential Information is, and shall remain, the property of the disclosing party. Nothing herein shall be construed as granting or conferring any rights by license or otherwise in the Confidential Information except as expressly provided herein. A recipient acquires hereunder only a limited right to use the Confidential Information solely for the purpose set forth in Section 2 above, subject to the terms and conditions of this Agreement. The disclosing party represents and warrants to the recipient that, at the time of disclosure, the disclosing party has the right to disclose the Confidential Information to the recipient and that such disclosure does not violate the rights of any third party.

4. Obligation of Confidentiality

Each party agrees that from receipt of Confidential Information from the other party hereunder, it shall use the same degree of care and means that it utilizes to protect its own information of a similar nature, but in any event not less than reasonable care and means, to prevent the unauthorized use or the disclosure of such Confidential Information to third parties. The Confidential Information may be disclosed only to affiliates, directors, officers, employees, agents and representatives (including outside attorneys, accountants and consultants)(collectively, "Representatives")of a recipient with a "need to know" who are instructed and agree not to disclose the Confidential Information and not to use the Confidential Information for any purpose, except as set forth herein; provided, however, that the recipient accepts full liability for and shall indemnify the disclosing party (and its directors, officers, employees, agents and affiliates) against any wrongful disclosure or use of the Confidential Information by its Representative. Recipient shall have appropriate written agreements with any such Representative sufficient to comply with the provisions of this Agreement. A recipient may not alter, decompile, disassemble, reverse engineer, or otherwise modify any Confidential Information received hereunder and the mingling of the Confidential Information with information of the recipient shall not affect the confidential nature or ownership of the same as stated hereunder.

5. Exceptions to Obligation of Confidentiality

This Agreement shall impose no obligation of confidentiality upon a recipient with respect to any portion of the Confidential Information received hereunder that is: (i) now or hereafter, through no unauthorized act or failure to act on recipient's part, in the public domain; (ii) known to the recipient without an obligation of confidentiality at the time recipient receives the same from the disclosing party, as evidenced by written records; (iii) hereafter furnished to the recipient by a third party as a matter of right and without restriction on disclosure; (iv) furnished to others by the disclosing party without restriction on disclosure; or (v) independently developed by the

recipient without use of the disclosing party's Confidential Information. Nothing in this Agreement shall prevent the receiving party from disclosing Confidential Information to the extent the receiving party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the receiving party shall (a) assert the confidential nature of the Confidential Information to the agency; (b) immediately notify the disclosing party in writing of the agency's order or request to disclose; and (c) cooperate fully with the disclosing party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

6. Term and Termination

6.1 This Agreement becomes effective as of the Effective Date and shall continue in effect for a period of **three (3) years** thereafter. The obligations of confidentiality set forth hereunder shall survive such expiration or any earlier termination.

6.2 Upon the written request of the other party, or upon the expiration or any earlier termination of this Agreement, each party shall promptly return all copies of the Confidential Information, in whatever form or media, to the disclosing party or, at the direction of such party, destroy the same. Each party shall certify in writing to the other such return or destruction within ten (10) days thereafter.

7. No Warranty

Neither party makes any warranty, express or implied, as to any Confidential Information that it may provide hereunder, including without limitation as to the accuracy of the Confidential Information, as to whether any new products will be produced as disclosed, or as to the availability of product(s) on any specific date. A disclosing party may, at its sole discretion, offer such products for sale and may modify them or discontinue sale at any time. A recipient has no obligation under this Agreement to purchase any service or item from the disclosing party.

8. Non-Circumvent

Company agrees that Company shall not in any way circumvent XXX, either now or in the future and as long as this Agreement is in effect, whether directly or indirectly through third parties, by negotiating or entering into one or more agreement(s) with third parties regarding the Subject Matter without the written consent of XXX.

9. Severability; Waiver

If any part of this Agreement is held by a court of competent jurisdiction to be illegal or contrary to public policy or otherwise unenforceable, such invalid or unenforceable part shall be deemed modified or eliminated to the extent which, in the court's opinion, is necessary to make the remaining part(s) enforceable. The waiver by a party of any right hereunder will not be considered a waiver thereof unless expressly waived in a writing signed by the waiving party. No single waiver will be considered a continuing or subsequent waiver.

10. Equitable Remedies; Attorney's Fees

The parties agree that there is no adequate remedy at law for any breach of the obligations hereunder and upon any such breach or any threat thereof by either party the other shall be entitled to appropriate equitable relief, including injunctive relief in addition to whatever other remedies it might be entitled. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, court costs and related expenses from the other party.

11. Miscellaneous

11.1 This Agreement is intended as the complete and exclusive agreement as to the protection of the Confidential Information disclosed hereunder and supersedes all prior proposals, discussions, agreements, or commitments, whether oral or written, between the parties regarding such subject matter. This Agreement may only

be modified in writing by authorized representatives of the parties.

11.2 This Agreement shall be construed in accordance with, and all disputes hereunder shall be governed by, the laws of the State of New York but without giving effect to the conflict of laws rules of the State of New York or of any other jurisdiction. The parties hereby agree (i) to the exclusive venue of the courts locate in New York County, New York for all matters relating hereto and (ii) waive any objection that any such court is an improper or inconvenient forum for the resolution of any such action. The parties further agree that the mailing by certified or registered mail, return receipt requested, to the address specified on the signature page of this Agreement, of any process or summons required by any such court shall constitute valid and lawful service of process against them, without the necessity for service by any other means provided by statute or rule of court.

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be signed by their duly authorized representatives effective as of the Effective Date.

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