

DRAFT OF CONFIDENTIAL AGREEMENT AND NON-DISCLOSURE AGREEMENT

This Agreement is made and entered into by and between _____ ABC (hereinafter referred to as ABC) having offices at _____ and DEF (hereinafter referred to as DEF) having offices at _____

Subject of ABC Information: Business and technical information including but not limited to its ideas, products, proposed products, processes, services, capabilities, and materials, or any information which quantifies, classifies, or identifies any ideas, products, proposed products, processes, services, capabilities and materials to be employed including

Subject of DEF Information: Business and technical information including but not limited to its ideas, products, proposed products, processes, services, capabilities, and materials, or any information which quantifies, classifies, or identifies any ideas, products, proposed products, processes, services, capabilities and materials to be employed including

Purpose(s) of Disclosures: To exchange confidential information to enable the parties to discuss possible future business collaborations relating to the aforementioned business and technology.

The parties anticipate that technical and business information, and/or media samples, prototype parts or other tangible embodiments of information, may be disclosed or delivered between the parties, for the above stated Purpose(s), such information and tangible embodiments constituting confidential information, being considered by ABC and DEF to be proprietary (and being referred to hereinafter, collectively, as "Proprietary Material"). Any party furnishing Proprietary Material will be referred to as a "disclosing party" and a party receiving Proprietary Material will be referred to as a "receiving party." In order to provide for the protection of such Proprietary Material from unauthorized use and disclosure, the parties hereby agree that the disclosure of such Proprietary Material between them shall be subject to the following terms and conditions:

1. Both parties agree that all Proprietary Material which relates to the above-stated Subject(s) and Purpose(s) and which is disclosed to the receiving party by the disclosing party, whether orally, or in written or other tangible form, will be maintained by the receiving party in confidence, provided, that: (a) disclosures in writing are expressly marked with a confidential or proprietary legend; (b) oral disclosures and tangible embodiments in a form other than written are identified as confidential or proprietary at the time of disclosure or delivery; and (c) oral disclosures are thereafter reduced to writing and marked with a confidential or proprietary legend, which writing is thereafter furnished to the receiving party within days after the oral disclosure. The receiving party may, however, in furtherance of the aforesaid Purpose(s), disclose such Proprietary Material to its professional advisors, investment committee

participants, and those of its employees and others under its control, all of whom will be advised of this Agreement and agree to accept the obligations there under. The receiving party further agrees not to reverse engineer any tangible embodiments of Proprietary Material furnished by the disclosing party, not to disclose any Proprietary Material to third parties and limit circulation of the Proprietary Material to such employees and others under its control having a direct "need to know" in connection with the above mentioned Purpose.

2. The receiving party additionally agrees to take reasonable care to safeguard the confidential nature of the foregoing Proprietary Material, and such reasonable care shall not be less than the degree of care used to prevent disclosure of its own proprietary material. However, the receiving party will not be liable for disclosure and use of such Proprietary Material: if the Proprietary Material is in, or becomes part of, the public domain other than through a breach of this Agreement by the receiving party; if the Proprietary Material is disclosed to the receiving party by a third party who is not known by the receiving party to be subject to any confidentiality obligation; if the Proprietary Material is disclosed by the receiving party with the disclosing party's prior written approval; or if disclosure of the Proprietary Material is required by any judicial order or decree or by any governmental law or regulation. Further, with respect to such Proprietary Material provided to the receiving party by the disclosing party, or rule of any stock exchange the receiving party shall not be liable for disclosure and use thereof if such Proprietary Material was of record in the files of the receiving party at the time of its disclosure to the receiving party by the disclosing party or if such Proprietary Material is developed by the receiving party completely independently of the disclosing party's Proprietary Material. Prior to disclosure to any third party of any Proprietary Material to which the receiving party determines the obligations of confidentiality, non-use and non-disclosure do not apply pursuant to this Agreement, the receiving party shall provide within..... days' prior written notice to disclosing party of the intent to disclose such Proprietary Material, stating the grounds upon which the exception is claimed and providing documentation in support thereof. The receiving party shall limit the scope of disclosure to only the portion of the Proprietary Material not protected.

3. Proprietary Material identified and disclosed as provided in this Agreement shall be held in confidence for a period of _____ years from the date of disclosure. During such period, such Proprietary Material shall be used only for the Purpose(s) stated above. Neither party acquires any intellectual property rights under this Agreement, except the limited rights to carry out the Purpose(s) above stated.

4. Each party understands that the other is developing and acquiring technology for its own products, and that existing or planned technology independently developed or acquired by that party may contain ideas and concepts similar or identical to those contained in the disclosing party's proprietary information. The disclosing party agrees that entering this Agreement shall not preclude the receiving party from developing or acquiring technology similar to the

disclosing party's, without obligation to the disclosing party, provided the receiving party does not use the disclosing party's proprietary information to develop such technology.

5. All Proprietary Material received and identified in accordance with this Agreement shall remain the property of the disclosing party and shall be returned or destroyed upon request except that the receiving party may keep one copy of such proprietary material for its legal files which shall remain subject hereto. Nothing contained herein shall be construed as a right or license, express or implied, under any patent or copyright, or application therefore, of either party by or to the other party.

6. Each disclosing party warrants that it has the right to make disclosures under this Agreement. **NO OTHER WARRANTIES ARE MADE BY EITHER PARTY. ALL PROPRIETARY MATERIAL IS PROVIDED "AS IS".**

7. The receiving party agrees that no technical data furnished to it by the disclosing party shall be exported from the _____ without first complying with all requirements of the concerned rules and regulations, including the requirement for obtaining any export license, if applicable. The receiving party shall first obtain the written consent of the disclosing party prior to submitting any request for authority to export any such technical data.

8. This Agreement

a. will be effective as of the date of the signature by the last party to execute this Agreement, and may be terminated at any time upon written notice by either party;

b. shall automatically terminate _____ years from its effective date unless terminated sooner pursuant to provision (a) above;

c. does not obligate either party to deliver a purchase order for the performance of any service or for the supply of any article whatsoever;

d. does not obligate either party to perform any service or to furnish any proposal or comments;

e. does not obligate either party to disclose Proprietary Material to the other; and

f. will be binding upon the parties hereto and their successors, assignees, or personal representatives as the case may be. Any termination of this agreement shall not relieve the receiving party of any obligations herein incurred prior to the date of such termination or to be performed subsequent to the date of such termination.

9. The terms and conditions herein constitute the entire agreement and understanding of the parties and shall supersede all communications, negotiations, arrangements and agreements, either oral or written, with respect to the subject matter hereof. No amendments to or modifications of this Agreement shall be effective unless reduced to writing and executed by the parties hereto. The failure of either party to enforce any term hereof shall not be deemed a waiver of any rights contained herein.

10. This Agreement shall apply to any Proprietary Material that may have been provided to either party prior to the effective date hereof.

11. No rights or obligations other than those expressed and recited herein are to be implied from this Agreement. No other existing Agreement between the parties, if any, are modified or terminated by this Agreement. No warranty or representation is made by either party hereto that any information transmitted by it hereunder is patentable or copyrightable, or that any such information involves concepts or embodiments that are free of infringement of other rights. Neither party hereto shall be obligated to prosecute any such action or bring any suit against any person not a party hereto for infringement. Neither party shall indemnify the other party hereto for any liability resulting from infringement of patent, copyright or trademark of a third party caused by the use of any Proprietary Material transferred pursuant to the Agreement. Neither party hereto confers the right to the other to use in advertising, publicity, or otherwise any trademark or trade name of the other party, nor confers any authorization to the other party to act as an agent on its behalf for any purpose.

12. This Agreement shall be governed and interpreted in accordance with the laws of the _____, without giving effect to its internal principles of conflict of law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate.

ABC DEF

By: _____ By: _____

(Authorized Signature) (Authorized Signature)

Name: _____ Name: _____

Title: _____ Title: _____

Date: