

MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT (this "Agreement"), is made between _____, whose address is _____, and _____, whose address is _____, and effective this ____ day of _____, 201__ (the "Effective Date").

WHEREAS, the parties hereto wish to set forth the terms governing the use and protection of various confidential, proprietary, and/or trade secret information that they may disclose to one another in connection with the parties' evaluation of, pursuit of discussions and negotiations related to and/or engagement in (directly or indirectly) a possible business transaction between the parties (the "Business Purpose").

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. For purposes of this Agreement, "Confidential Information" means any and all information revealed by one party ("Disclosing Party") to another party ("Recipient") relating in any way to the Business Purpose, including: business plans, policies or practices (whether or not patentable); marketing, technical, financial and other business information; information regarding prices, suppliers, customers, markets, employees, investors, or business operations; software; records; programs; prototypes; systems; data; disks; tapes; concepts; theories; designs; drawings; specifications; models; approaches; improvements; techniques; methods; processes; formulas; procedures; files; algorithms; work-in-process; trade secrets; or other business and/or technical information and data related thereto. Confidential Information may be disclosed orally, visually or in tangible form (whether by document, electronic media or other form). The failure of a party to mark any of the above-described information as proprietary or confidential will not affect its status as part of the Confidential Information protected by this Agreement.

2. The parties agree that any information and/or other materials fitting the definition of Confidential Information that are owned by the Disclosing Party or its parent, subsidiaries or affiliates and provided to the other party in furtherance of the Business Purpose shall be covered by this Agreement and that the parties shall be able to enforce all rights relating to all Confidential Information so provided. Confidential Information shall not include any information that: (a) is lawfully received free of restriction from another source having the right to so furnish such Confidential Information; (b) becomes generally available to the public through no fault of the Recipient; (c) at the time of disclosure to the Recipient by the Disclosing Party was known to the Recipient to be free of restriction (on a non-confidential basis) as evidenced through written records or other objective evidence in the Recipient's possession; (d) the Disclosing Party agrees in writing is free of such restrictions; or (e) is independently developed by Recipient and which Recipient can demonstrate was developed without use of Confidential Information of the Disclosing Party.

3. The Recipient shall hold such Confidential Information in strict confidence and shall not use any part of such Confidential Information except for the Business Purpose. The Recipient will keep and hold confidential any notes, analyses, compilations or other documents

prepared by the Recipient or its Representatives (defined below) which contain or otherwise reflect or are generated from Confidential Information furnished by the Disclosing Party. The Recipient agrees to protect and maintain the confidentiality and security of such Confidential Information with at least the same degree of care as it normally exercises to protect its own confidential, proprietary and/or trade secret information of a similar nature, but in any case using no less than a reasonable degree of care. The Recipient may disclose the Confidential Information only to those of its directors, officers, employees and consultants (“Representatives”) who have a need to know the Confidential Information in connection with the Business Purpose, but only after each such Representative is made aware of the confidential nature of the information, the terms of this Agreement and their obligations under it. The Recipient shall be responsible for the actions and omissions of its Representatives that violate the terms and conditions of this Agreement.

4. The Recipient may only reproduce or summarize the Disclosing Party’s Confidential Information in furtherance of the Business Purpose. The Recipient shall ensure that any copy, in whole or in part, of the Confidential Information made by it shall have affixed thereto any proprietary, copyright or trade secret notices of the Disclosing Party and/or licensors of Disclosing Party that appear on the Confidential Information delivered to the Recipient by the Disclosing Party. These notices shall be affixed in such a manner and location as to give reasonable notice of the proprietary, copyright or trade secret rights of the Disclosing Party and/or these licensors.

5. Except as expressly set forth in Section 3, above, the Recipient may not disclose any Confidential Information to any third party without prior written approval of the Disclosing Party. The Recipient shall not: (a) use the Confidential Information to damage or impair the rights of the Disclosing Party or to enable, assist or promote any other person in doing so; or (b) use any part of the Confidential Information to adversely affect or compete with the business of the Disclosing Party. Without the express permission of the Disclosing Party, the Recipient may not disclose to any other persons that it is engaged in any business relationship or exploring any potential business relationship with the Disclosing Party and may not reveal that the Disclosing Party has provided any information to the Recipient.

6. In the event the Recipient is required by law, regulation or court order to disclose any of the Confidential Information, the Recipient will promptly notify the Disclosing Party in writing prior to making any such disclosure in order to facilitate the Disclosing Party seeking a protective order or other appropriate remedy from the proper authority, at the expense of the Disclosing Party. The Recipient agrees to cooperate with the Disclosing Party in seeking such order or other remedy. The Recipient further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from requiring the disclosure of the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts, at the expense of the Disclosing Party, to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

7. All copyright, patent, trade secret or other intellectual property rights relating to the Confidential Information, or relating to any product or process derived from the Confidential Information, are the sole and exclusive property of the Disclosing Party. No license to the

Recipient under any trademark, patent, copyright or any other intellectual property right is either granted or implied by the disclosure of Confidential Information to the Recipient.

8. At the written request of the Disclosing Party or upon termination of this Agreement, all Confidential Information in tangible form (including any notes, analyses, compilations or other documents prepared by the Recipient or its Representatives that contain or otherwise reflect or are generated from Confidential Information) shall be returned to the Disclosing Party. Confidential Information provided to the Recipient in any other form, to the extent such information cannot be returned to the Disclosing Party, shall be destroyed by the Recipient to the extent practicable. Any such destruction shall be certified by the Recipient to the Disclosing Party.

9. No party is under any obligation to disclose Confidential Information to another party by virtue of this Agreement. The Disclosing Party makes no representation or warranty of any kind, express or implied, with respect to any Confidential Information. ALL CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS IS" BASIS, AND THE DISCLOSING PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE CONFIDENTIAL INFORMATION, INCLUDING ANY REPRESENTATION OR WARRANTY AS TO ACCURACY OR COMPLETENESS, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. None of the Confidential Information disclosed shall constitute any assurance, guarantee or inducement by the Disclosing Party to the Recipient of any kind, and the Disclosing Party shall have no liability resulting from the Recipient's reliance on or use of Confidential Information.

10. This Agreement is intended to provide only for the handling and protection of Confidential Information. It shall not be construed as a joint venture, partnership or other similar arrangement. Unless and until a definitive agreement between the parties with respect to a proposed transaction or business relationship has been executed and delivered, no party is under any obligation to enter into, or to negotiate toward, such a transaction or any other business relationship with the Disclosing Party by virtue of this Agreement or any expressions of interest made in connection herewith.

11. The parties acknowledge that the Confidential Information is unique and valuable and that disclosure in breach of this Agreement may result in irreparable injury to the Disclosing Party for which monetary damages alone would not be an adequate remedy. The parties agree that in the event of a breach or threatened breach of confidentiality, the Disclosing Party may be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages. The Recipient shall be required to reimburse the Disclosing Party for all costs and expenses (including reasonable attorneys' fees) incurred by them in successfully enforcing the Recipient's obligations under this Agreement.

12. Neither party may assign any of its rights or obligations hereunder, without the prior, written consent of the other party.

13. The rights and remedies of the parties are cumulative and not alternative. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver

thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

14. This Agreement shall commence on the Effective Date and shall continue in full force and effect until the two (2) year anniversary of the Effective Date (“Term”). Notwithstanding the Term, the Recipient agrees that its obligations with respect to the confidentiality, security, nondisclosure and use of the Disclosing Party’s Confidential Information (as set forth in this Agreement) shall survive for a period of five (5) years from the Effective Date, provided that such expiration shall not limit any liability resulting from breach of this Agreement prior to such expiration date, and this survival period shall not limit the common law of torts or statutory protection for trade secrets where such laws provided the Disclosing Party with greater protections with respect to its trade secrets than the protections set forth herein.

15. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible, and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the parties as expressed herein.

16. This Agreement constitutes the entire understanding between the parties hereto concerning the subject matter hereof and supersedes any prior discussions or communications among them relating thereto; may not be amended or modified except by a written instrument duly signed and executed on behalf of each party; shall be governed by the laws of the State of Wisconsin, United States of America, without regard to its choice of law provisions; and may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. As used in this Agreement, the word “including,” “includes” or any similar phrase means including, without limitation.

IN WITNESS WHEREOF, the parties have executed this Mutual Nondisclosure Agreement as of the date first set forth above.

[INSERT COMPANY NAME]

[INSERT COMPANY NAME]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____