

:Title:

## NON-DISCLOSURE AGREEMENT

**THIS NON-DISCLOSURE AGREEMENT** (the "Agreement") is entered into effective as of the date last signed below (the "Effective Date")

### BETWEEN:

:party1.: a company organized and existing under the laws of [-----] with its principal place of business' at :party1address: and :party2: a company organized and existing under the laws of [-----] with its principal place of business at :party2address: ("Disclosing Party" and the "Receiving Party") (each a "Party" and together the "Parties"). As used in this Agreement, Affiliates includes any company which is a direct or indirect holding company of that Party or a direct or indirect subsidiary of that Party or any such holding company.

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### NOW THE PARTIES AGREE AS FOLLOWS:

#### 1. Confidential Information

For the purposes of this Agreement "Confidential Information" means all information disclosed to the Receiving Party by the Disclosing Party or any person acting on the Disclosing Party's behalf, including its directors, officers, employees, affiliates, and professional advisers(together referred to as the "Disclosers") in relation to the Permitted Purpose whether orally or inwriting in whatever form, or by the inspection of tangible objects, including, but not limited to, documents, prototypes, samples, business plans, customer opportunities, research, development, know-how, product plans, designs, costs, finances, spread sheets, marketing plans, and prices.

#### 2. Maintenance of Confidentiality

In consideration of the Disclosing Party supplying or procuring the supply of, the Confidential Information to the Receiving Party, the Receiving Party hereby undertakes and agrees as follows:

- a) to hold the Confidential Information in confidence and not to disclose or permit it to be made available to any person, firm or company (except to other Disclosees), without the Disclosing Party's prior consent.
- b) only to use the Confidential Information for the Permitted Purpose and only to disclose the Confidential Information to Disclosees who need to know such information for the Permitted Purpose.
- c) to ensure that each person to whom disclosure of Confidential Information is made by the Receiving Party is fully aware in advance of the Receiving Party's obligations under this Agreement.
- d) upon written demand from the Disclosing Party either to return the Confidential Information and any materials derived from or based on the Confidential Information (including all copies thereof whether in 1hard copy or electronic form) or to confirm to the Disclosing Party in writing that, save as required by law or regulation, it has been destroyed (notwithstanding the above, the Receiving Party may retain copies of Confidential Information stored on backup disks or in backup storage facilities automatically produced in the ordinary course of business. Any Confidential Information so retained will be held subject to the confidentiality and use limitations of this Agreement); and
- e) to keep confidential and not reveal to any person, firm or company (other than Disclosees) the fact that discussions or negotiations are taking place or have taken place between the Parties in connection with the Permitted Purpose or any details of those discussions or negotiations.

#### 3. Exceptions

- a) Nothing in clauses 2(a) to (f) of this Agreement shall apply to any information or Confidential Information which: at the time of its disclosure is in the public domain.
- b) after disclosure comes into the public domain for any reason except the Receiving Party's failure, or failure on the part of any Disclosee, to comply with the terms of this Agreement.
- c) is disclosed by any of the Disclosers on a non-confidential basis.

- d) was lawfully in the Receiving Party's possession prior to such disclosure.
- e) is subsequently received by the Receiving Party from a third party without obligations of confidentiality (and, for the avoidance of doubt, the Receiving Party shall not be required to inquire whether there is a duty of confidentiality); or
- f) is required to be disclosed pursuant to a valid order issued by a court or government agency or as required by applicable law, provided that the Receiving Party provides the Disclosing Party (i) prompt notice (in all instances, such notice shall be given within [ ] hours of learning of such obligation), and (ii) the opportunity and sufficient time to oppose such disclosure or seek a protective order or other appropriate remedy. The Receiving Party shall cooperate with and not oppose the Disclosing Party's efforts to seek any necessary protection (to the extent the Disclosing Party decides to seek such protection). In the absence of a protective order and provided that the Receiving Party has complied with its aforementioned obligations, it may disclose only the Confidential Information specifically required and only to the extent compelled to do so by an appropriate governmental authority.

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#### 4. Use

The Receiving Party shall not reverse engineer, disassemble, or decompile any prototypes or other tangible objects which embody Disclosing Party's Confidential Information. In the event that the Receiving Party discovers any unauthorized use or disclosure of Disclosing Party's Confidential Information, then Receiving Party shall immediately: (i) notify Disclosing Party thereof in writing; and (ii) take all reasonable steps to limit such unauthorized use or disclosure.

#### 5. Independent Development

The Disclosing Party understands that the Receiving Party may currently or in the future be developing information internally or receiving information from other parties that may be similar to the Confidential Information. Nothing in this Agreement shall prohibit the Receiving Party from developing or receiving such information or from developing products, or having products developed for the Receiving Party, that compete with Disclosing Party's products, provided that in doing so, Receiving Party does not use or disclose any Confidential Information.

6. **No Representations or License** (a)The Receiving Party acknowledges that the Disclosing Party, does not make or give any representation, warranty or undertaking as to the accuracy, completeness or reasonableness of the Confidential Information. (b)The Confidential Information shall remain the sole property of the Disclosing Party. Nothing in this Agreement is intended to grant any right to the Confidential Information except as expressly set forth herein. (c)Nothing in this Agreement shall obligate the Parties to proceed with any business relationship and each Party may terminate the discussions contemplated by this Agreement.

#### 7. Term

This Agreement shall be effective from the :startdate: until :duration: thereafter, provided that the obligations undertaken by each Party under this Agreement shall continue for :confidentialityduration: from receipt of any Confidential Information and, in particular, such obligations will survive the termination of negotiations between the Parties regarding the Permitted Purpose.

#### 8. Mutual Indemnification

Each party shall indemnify and hold the other party harmless from any and all :indemnitycostextent: arising out of any :triggeringevents:.

Commented [PL4]: losses, liabilities, damages, judgments, awards, expenses, and costs, including attorney's fees

#### 9. Non solicit

Without the Disclosing Party's prior written consent, the Receiving Party and its Affiliates will not for a period of :nonsolicitationduration: from the date hereof (the "Specified Period") directly or indirectly solicit the employment of any person who(x) is now an employee (including, but not limited to, development engineers) of the Disclosing Party or its Affiliates and (y)(i) who was introduced in person to the Receiving Party by the Disclosing Party during the Specified Period in connection with the Permitted Purpose or (ii) about whom the Receiving Party received from the Disclosing Party Confidential Information in connection with the Permitted Purpose. For purposes of this paragraph 8 only, Confidential Information shall not include the mere disclosure of a name of an officer or employee and/or his title. The foregoing restrictions do not prohibit(i) the Receiving Party or its Affiliates from engaging in any general solicitation of employees or individual contractors not specifically targeted at the employees or individual contractors of the Disclosing Party or its Affiliates or (ii) the

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employment of any person following an unsolicited approach by that person at his/her own instigation or (iii) an approach made by a recruiter without the person having first been identified to the recruiter by the Receiving Party or its Affiliates seeking to employ that person.

#### 10. Rights and Remedies

- The parties hereto shall exercise extreme good faith and best efforts in complying with the terms and conditions of this Agreement.
- Upon the written request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party Confidential Information and Material, including all originals, copies (including, without limitation, electronic copies such as e-mail and computer files) and derivative documents and material, whether machine or user readable or usable.
- Upon the written request of the Disclosing Party, the Receiving Party shall promptly destroy Confidential Information and Material designated by the Disclosing Party and shall promptly provide the Disclosing Party with a written certification as to such destruction, in form and substance satisfactory to the Disclosing Party.
- The Receiving Party shall notify the Disclosing Party immediately upon discovery by the Receiving Party of any disclosure, communication, transfer, duplication or use of Confidential Information and Material not in accordance with the terms and conditions of this Agreement. Such notice shall contain full and specific particulars on the Confidential Information and Material disclosed, communicated, transferred, duplicated or used and the circumstances, timing and persons involved. The Receiving Party shall cooperate fully and take every reasonable step to assist the Disclosing Party to regain possession of such Confidential Information and Material, to prevent any further such disclosure, communication, transfer, duplication and use, and to minimize any and all resulting damage to the Disclosing Party.
- The parties hereto acknowledge that any breach of the terms and conditions of this Agreement, without regard to whether such breach results in financial loss or gain to any party hereto, would result in irreparable harm to the Disclosing Party. Therefore, in addition to any and all other remedies available to the Disclosing Party, each party hereto acknowledges and consents that the Disclosing Party shall be entitled to injunctive or other equitable relief by order of a court of competent jurisdiction, without the necessity of posting a bond or proving special damages or irreparable injury.

**11. Variation and waiver** (a) No variation to this Agreement shall be of any effect unless it is agreed in writing and signed by or on behalf of the Parties. (b) No omission to exercise or delay in exercising any right, power or remedy provided by law or under this Agreement shall constitute a waiver thereof.

#### 12. Remedies

The Receiving Party agrees that damages may not be an adequate remedy for any breach (whether actual or threatened) of the provisions of this Agreement and that accordingly, the Disclosing Party shall be entitled to seek the remedies of injunction, specific performance or other equitable relief.

#### 13. Assignment and Entire Agreement

This Agreement shall be binding upon and for the benefit of the Parties and their successors and assigns. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and no alteration to this Agreement shall be valid unless made in writing and signed by the Parties.

#### 14. Governing Law

This Agreement shall be governed by, and construed in accordance with, **jurisdiction** law. Any matter claim or dispute arising out of or in connection with this Agreement, whether contractual or non-contractual, is to be governed by and determined in accordance with **jurisdiction** law. Each Party hereby irrevocably submits to the exclusive jurisdiction of the **jurisdiction** courts in respect of any claim or dispute arising out of or in connection with this Agreement.

**IN WITNESS** WHEREOF this Agreement has been executed on the date below.

By

Name

Title:

Date:

By

Name:

Title:

Date:

