

MUTUAL NONDISCLOSURE AGREEMENT

THIS AGREEMENT is made and entered into as of _____ between Excelacom, Inc., a Delaware corporation with offices at 11911 Freedom Drive, Suite 430 Reston, VA 20190 ("Excelacom"), and _____, with a principal address of _____. (collectively, the "Parties").

1. The Parties are entering into discussions regarding a potential business relationship for the purpose(s) described in Attachment A hereto (the "Project"). Neither this Agreement nor any discussions or disclosures hereunder shall be deemed a commitment to any business relationship, contract or future dealing with the other party.

2. During the discussions one party hereto (the "Disclosing Party") may disclose to the other party (the "Receiving Party") information the Disclosing Party deems proprietary and confidential. The terms "Disclosing Party" and "Receiving Party" include each party's employees, corporate affiliates and/or other entities that disclose or receive Confidential Information (defined below). The rights and obligations of the Parties hereto also shall inure to such affiliates and may be directly enforced by or against such affiliates.

3. The term "Confidential Information" shall mean:

- (a) any information, data, or know-how that has been created, discovered or developed by the Disclosing Party or that is in any way proprietary to the Disclosing Party, including without limitation information that relates to research, planning, products, services, customers, prospective customers, marketing plans and strategies, technical plans, operations, prices, customer and prospective customer lists and relationships, business plans, developments, inventions, processes, designs, drawings, engineering, hardware configuration information, marketing or finances of the disclosing party;
- (b) any scientific or technical information that has been created, discovered or developed by the Disclosing Party or that is in any way proprietary to the Disclosing Party, including without limitation information that relates to a design, process, procedure, formula or improvement;
- (c) all confidential or proprietary concepts, documentation, reports, data, specifications, flow charts, diagrams, databases, inventions, software (including without limitation source or object code), information and trade secrets, whether or not patentable or copyrightable; and
- (d) any documents or information designated in writing to be confidential or proprietary, or if given orally is

identified as confidential or proprietary at the time of disclosure.

4. The Receiving Party shall:

- (a) use the Confidential Information disclosed to it only for the Project(s) and/or purpose(s) set forth in Attachment A;
- (b) restrict disclosure of the Confidential Information to employees, contractors, consultants and/or authorized representatives of the Receiving Party who have a need to know and not disclose it to any other person or entity without the prior written consent of the Disclosing Party;
- (c) advise its employees, contractors, consultants and/or authorized representatives having access to the Confidential Information of the proprietary nature thereof and of the obligations set forth in this Agreement;
- (d) take appropriate action by instruction or agreement with its employees, contractors, consultants and/or authorized representatives having access to the Confidential Information to fulfill its obligations under this Agreement;
- (e) not disclose to third parties any Confidential Information received;
- (f) not reverse engineer or disassemble or make or cause to be made derivative works of any kind from the Confidential Information, absent express written permission of Disclosing Party.
- (g) take all measures reasonably necessary to protect the secrecy of and avoid disclosure or use of Confidential Information of the Disclosing Party in order to prevent it from falling into the public domain or the possession of any person(s) or other entities other than those persons or entities authorized under this Agreement to have any such information. Such measures shall include, at a minimum, the highest degree of care that the Receiving Party utilizes to protect its own Confidential Information of a similar nature.

5. The obligations of confidentiality and restrictions on use in Section 4 shall not apply to any Confidential Information which the Receiving Party proves:

- (a) is in the possession of the Receiving Party at the time of disclosure as shown by the Receiving Party's files and records immediately prior to the time of disclosure;
- (b) that prior to or after the time of disclosure, has become part of the public knowledge or literature other than as a result of any breach of this Agreement;
- (c) is received from a third party free to disclose such information without restriction;
- (d) is independently developed by the Receiving Party without use of Confidential Information of the Disclosing Party;
- (e) is approved by the Disclosing Party, in writing, for release; or
- (f) is required to be disclosed in a judicial or administrative proceeding after all reasonable legal remedies for maintaining such information in confidence have been exhausted, including, but not limited to making best efforts to place the information under seal and giving the Disclosing Party as much advance notice of the possibility of such disclosure to allow the Disclosing Party to seek to obtain a protective order concerning such disclosure.

6. In the event of dissemination, disclosure, or use of the Confidential Information which is not permitted by this Agreement, Receiving Party shall notify Disclosing Party immediately in writing and will use reasonable efforts to assist Disclosing Party in minimizing the damage from such disclosure. Such remedy shall be in addition to and not in lieu of any other rights and remedies Disclosing Party may have at law or in equity against Receiving Party. Receiving Party will be solely responsible for any breach of this Agreement and in addition to the foregoing will, at its sole expense, take all reasonable measures including, but not limited to, court proceedings, to prohibit or prevent unauthorized disclosure or use of the Confidential Information.

7. The Disclosing Party shall retain all rights, titles and interests in and to its Confidential Information and any and all derivatives thereof. Nothing in this Agreement is intended to grant any rights under any patent or copyright of either party, nor shall this Agreement grant either party any rights in or to the other party's Confidential Information other than the limited right to review such Confidential Information in connection with the Project.

8. Any materials or documents that have been furnished by Disclosing Party to the Receiving Party in connection with the Project will be promptly returned by the Receiving Party, accompanied by all copies of such documentation, within ten (10) days after (a) the Project has been terminated or (b) receipt of the written request of the Disclosing Party for the return of any materials or documents that were provided to Receiving Party.

9. The Parties agree that the Receiving Party shall not export any Confidential Information without the express written permission of the Disclosing Party. If the Receiving Party is permitted to export any Confidential Information, Receiving Party shall comply with the U.S. Export Administration Laws and Regulations (EAR) and shall not export or re-export any technical data or products received from the Disclosing Party or the direct product of such technical data to any proscribed country listed in the EAR unless properly authorized by the U.S. government.

10. This Agreement shall be effective as of the date first written above. The terms and conditions of this Agreement shall be valid and in effect until such time as all Confidential Information disclosed hereunder shall become publicly known and made generally available through no action or inaction of the Receiving Party unless the Parties determine in a writing signed by both Parties to terminate them earlier. This Agreement remains in effect for the period of time set forth herein, even if the Parties determine not to pursue a business relationship together.

11. Upon written demand or the termination of this Agreement, whichever occurs first, the Parties shall promptly return to each other all Confidential Information disclosed in tangible form with a signed letter confirming that all copies, notes, abstracts and the like of the Confidential Information have been returned or destroyed.

12. RECEIVING PARTY UNDERSTANDS AND ACKNOWLEDGES THAT DISCLOSING PARTY DOES NOT MAKE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY, COMPLETENESS, OR NON-INFRINGEMENT OF THE CONFIDENTIAL INFORMATION AND THAT SUCH IS DISCLOSED "AS IS." RECEIVING PARTY AGREES THAT DISCLOSING PARTY WILL NOT HAVE ANY LIABILITY TO RECEIVING PARTY RELATING TO OR RESULTING FROM THE USE OF THE CONFIDENTIAL INFORMATION OR ANY ERRORS THEREIN OR OMISSIONS THEREFROM.

13. This Agreement shall be binding upon and for the benefit of the Parties, their successors and assigns, provided that Confidential Information of the Disclosing Party may not be assigned without the prior written consent of the Disclosing

Party. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

14. This Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Virginia applicable to contracts executed and performed entirely within the Commonwealth of Virginia and without reference to the choice of law provisions thereof. All disputes shall be resolved in state or federal courts in the Commonwealth of Virginia, and each party consents to jurisdiction and venue in such courts. This Agreement shall be binding upon the Parties in the United States and worldwide.

15. Each party agrees that its obligations provided in this Agreement are necessary and reasonable in order to protect the Disclosing Party and its business, and each party expressly agrees that monetary damages would be inadequate to compensate the Disclosing Party for any breach by the Receiving Party of its covenants and agreements set forth in this Agreement. Accordingly, each party agrees and acknowledges that any such violation or threatened violation by Receiving Party will cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the actual breach or a continuation of any such breach by the Receiving Party, without the necessity of proving actual damages. The prevailing party in any legal action to enforce this Agreement shall be entitled to recover all reasonable attorneys' fees and costs.

16. If any court determines that any provision(s) of this Agreement is invalid, such determination will not affect the validity of any other provision(s) of this Agreement, which will remain in full force and effect, and will be construed so as to be valid under applicable law. Without limiting the foregoing, Receiving Party specifically acknowledges that the

nondisclosure and confidentiality provisions in this Agreement are severable and if any of them are held invalid or unenforceable for any reason, any such provision will be adjusted or reduced only to the extent necessary to cure any invalidity and to protect the interests of Disclosing Party to the fullest extent of the law.

17. Neither this Agreement nor the disclosure or receipt of Proprietary Information constitutes or implies any promise or intention to enter into a partnership, agency, employment, or joint venture relationship, or to make any investment in any entity, to purchase any products or services by any entity, or to offer any additional information, products, or services to any entity.

18. All notices and other communications given under this Agreement shall be in writing in the English language, addressed to the undersigned representatives of the Parties at the addresses above, and shall be deemed to have been given on the date delivered when hand delivered, one business day after mailing if sent via reputable overnight courier, or four business days after mailing if sent by first-class registered or certified mail, postage prepaid.

19. This Agreement, including Attachment A hereto, constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto.

20. This Agreement may be executed in any number of counterparts, all of which taken together will constitute one and the same agreement, and the Parties hereto may execute this Agreement by signing such counterpart.


IN WITNESS WHEREOF.

EXCELACOM, INC.

By: _____
(Signature)

Title: _____
(Job title)

(Print name here)

By:  _____
(Signature)

Title: _____
(Job title – if applicable)

ATTACHMENT A

This Attachment A is hereby incorporated by reference into and made a part of the Mutual Nondisclosure Agreement dated as of _____, between Excelacom and _____.

Purpose(s) for which Confidential Information is being disclosed (the “Project”):
