MUTUAL CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (the "*Agreement*") governs the disclosure of information by and between COMPANY and CLIENT ("XXX"), and the party set forth on the signature page hereto as of DATE (the "*Effective Date*").

1. As used herein, "*Confidential Information*" shall mean any and all technical and non-technical information provided by either party to the other, including but not limited to (a) financial information, business plans, procurement requirements, information regarding purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, or marketing plans, (b) trade secrets, (c) patent and patent applications and information, and (d) other proprietary information relative to the disclosing party's business, including without limitation, ideas, samples, media, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the parties, and including, without limitation, their respective information concerning research, experimental work, development, design details and specifications, engineering and information the disclosing party provides regarding third parties.

1. Each party agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party Confidential Information of the other, except as approved in writing by the other party to this Agreement, and will use the Confidential Information for no purpose other than evaluating or pursuing a business relationship with the other party to this Agreement. Each party shall only permit access to Confidential Information of the other party to those of its employees or authorized representatives having a need to know and shall be responsible for any breach by such party's employees or authorized representatives.

2. Each party shall immediately notify the other upon discovery of any loss or unauthorized disclosure of the Confidential Information of the other party.

3. Each party's obligations under this Agreement with respect to any portion of the other party's Confidential Information shall terminate when the party to whom Confidential Information was disclosed (the "*Recipient*") can document that: (a) it was in the public domain at the time it was communicated to the Recipient by the other party; (b) it entered the public domain subsequent to the time it was communicated to the Recipient by the other party through no fault of the Recipient; (c) it was in the Recipient's possession free of any obligation of confidence at the time it was communicated to the Recipient by the other party; (d) it was rightfully communicated to the Recipient free of any obligation of confidence (whether contractual, fiduciary or other relationship) subsequent to the time it was communicated to the Recipient by the other party; (e) it was developed by employees or agents of the Recipient independently of and without reference to any information communicated to the Recipient by the other party; (f) it was communicated by the other party to an unaffiliated third party free of any obligation of confidence; or (g) the communication was in response

to a valid order by a court or other governmental body, was otherwise required by subpoena, law or rules of an applicable stock exchange, or was necessary to establish the rights of either party under this Agreement and such disclosure complies with the requirements set forth below. If the Recipient or any of the Recipient's representatives is required to disclose any of the disclosing party's Confidential Information pursuant to (g) above, the Recipient will, as soon as reasonably practicable, provide the disclosing party with written notice of the applicable subpoena, law, or rule so that the disclosing party may seek a protective order or other appropriate remedy. The Recipient and its representatives will cooperate fully with the disclosing party to obtain any such protective order or other remedy. If the disclosing party elects not to seek, or is unsuccessful in obtaining, any such protective order or other remedy in connection with any requirement that the Recipient disclose Confidential Information, and if the Recipient furnishes the disclosing party with a written opinion of reputable legal counsel confirming that the disclosure of Confidential Information is required pursuant to applicable subpoena, law or rule, then the Recipient may disclose such Confidential Information to the extent required; *provided, however,* that the Recipient and its representatives will use their best efforts to ensure that such Confidential Information is treated confidentially by each person or entity to whom it is disclosed.

4. Upon termination or expiration of the Agreement, or upon written request of the other party, each party shall promptly return to the other all documents and other tangible materials representing the other's Confidential Information and all copies thereof.

5. The parties recognize and agree that nothing contained in this Agreement shall be construed as granting any property rights, by license or otherwise, to any Confidential Information of the other party disclosed pursuant to this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. Neither party shall make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information of the other party.

6. Confidential Information shall not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information of the other party by either party shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends, which appear on the original, unless otherwise authorized in writing by the other party.

This Agreement shall terminate three (3) years after the Effective Date, or may be terminated by either party at any time upon thirty (30) days written notice to the other party. The Recipient's obligations under this Agreement shall survive termination of the Agreement between the parties and shall be binding upon the Recipient's heirs, successors and assigns. The Recipient's obligations hereunder shall continue in full force and effect with respect to non-technical sales, marketing, and financial Confidential Information for three (3) years from the date of disclosure of such Confidential Information. The Recipient's obligations with respect to all technical Confidential Information shall survive termination of this Agreement.

7.   This Agreement shall be governed by and construed in accordance with the laws of California without reference to conflict of laws principles. Any disputes under this Agreement may be brought in the state courts and the Federal courts located in San Diego, California, and the parties hereby consent to

the personal jurisdiction and venue of these courts. This Agreement may not be amended except by a writing signed by both parties hereto.

8. Each party acknowledges that its breach of the Agreement will cause irreparable damage and hereby agrees that the other party shall be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

9. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

10. Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.

11. Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party.

12. Neither party shall export, directly or indirectly, any technical data acquired from the other pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval.

13. All notices or reports permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, electronic mail, facsimile transmission, by certified or registered mail, return receipt requested, or by a reputable overnight mail service, and shall be deemed given upon personal delivery, one (1) day following deposit with an overnight mail service, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the addresses set forth at the end of this Agreement or such other address as either party may specify in writing.

14. Each of the parties agrees that the software programs of the other party contain valuable confidential information and each party agrees it will not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the Confidential Information of the other party without the prior written consent of the other party.

15. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

[THE REMAINDER OF THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this **MUTUAL NON-DISCLOSURE AGREEMENT** to be executed as of the date first written above.

COMPANY **Client**

By:_____ By:

Name: Name:

Title: Title:

Address: Address: