

MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (the “Agreement”) is made and entered into as of the Effective Date set forth below, by and between the Parties.

Parties: <i>Full Legal Name:</i> <i>Business Entity Type:</i> <i>Organized In:</i> <i>Address:</i> <i>Recipient for Notice:</i>	Company Name Corporation State of Attn:	
Effective Date:	, 2010	
Definition of Confidential Information:	Information provided by Discloser that is (a) in writing and marked “confidential” or other similar legend; (b) in the form of devise, product, materials samples, or benchmark results derived from the Confidential Information; (c) disclosed in any other manner and identified as confidential at the time of disclosure; or (d) information learned as a result of a visit to Discloser’s site.	
Permissible Use of Confidential Information:	The Parties shall use the Confidential Information solely for internal evaluation.	
Term and Termination	This Agreement will terminate the earlier of (a) by either Party upon ten (10) days’ prior written notice to the other Party or (b) ten (10) years from the Effective Date.	
Confidentiality Period	Recipient’s duty to protect Confidential Information pursuant to this Agreement expires five (5) years from receipt of Confidential Information.	

1. Scope of Agreement. This Agreement governs Confidential Information disclosed during the term of this Agreement. This Agreement shall also apply to any Subsidiary. “Subsidiary” shall mean any entity of which more than fifty percent (50%) of the stock or other equity interests entitled to vote for the election of directors or an equivalent governing body is owned or controlled by either Party.

2. No Warranties. ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS” WITHOUT WARRANTY OR GUARANTEE OF ANY KIND AS TO ITS ACCURACY, COMPLETENESS, OPERABILITY, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR ANY OTHER WARRANTY, EXPRESS, IMPLIED, OR STATUTORY. THE DISCLOSER SHALL NOT BE LIABLE TO THE RECIPIENT FOR ANY DAMAGE, LOSS, EXPENSE, OR CLAIM OF LOSS OF ANY KIND OR CHARACTER (INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE, SPECIAL, INCIDENTAL, RELIANCE) ARISING FROM THE RECIPIENT’S USE OF OR RELIANCE ON THE CONFIDENTIAL INFORMATION.

3. Duty of Care. A Party receiving Confidential Information (“Recipient”) from the other Party (“Discloser”) shall protect such Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as Recipient uses to protect its own confidential information of a like nature. Recipient shall not disclose any Confidential Information disclosed hereunder to any third party and shall limit disclosure of Confidential Information to only those of its employees and contractors with a need to know and who are bound by confidentiality obligations with Recipient at least as restrictive as those contained in this agreement. Each Party shall be responsible for its employees’ and contractors’ adherence to the terms of this Agreement. Further, Recipient shall not reverse engineer, disassemble, or decompile any products, prototypes, software, or other tangible objects that embody Confidential Information.

4. Exclusions. This Agreement imposes no obligation upon Recipient with respect to Confidential Information that Recipient can reasonably demonstrate (a) was in Recipient’s rightful possession on or before receipt from Discloser; (b) is or becomes a matter of Public Knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without a duty of confidentiality; or (d) is independently developed by Recipient without use of or reference to Confidential Information.

5. Compelled Disclosure. In the event the Recipient receives a request or demand to disclose all or any part of Confidential Information under the terms of a subpoena or order issued by a court of competent jurisdiction or authorized governmental agency, Recipient may comply with such request or demand only if Recipient:

- (i) asserts the privileged and confidential nature of the Confidential Information against the third party seeking disclosure;
- (ii) promptly notifies the Discloser in writing of any such requirement or order to disclose prior to the disclosure of Confidential Information; and
- (iii) reasonably cooperates with the Discloser regarding Discloser’s efforts, if any, to protect against any such disclosure and/or obtain a protective order narrowing the scope of such disclosure and/or use of Confidential Information.

6. Return or Destruction of Confidential Information. Within fifteen (15) days of Discloser’s written request, Recipient shall destroy and provide written certification of such destruction, or return to Discloser *all* or any portion of Confidential Information.

7. No Other Rights. Confidential Information disclosed by Discloser remains at all times the property of discloser. Recipient does not acquire any intellectual property rights under this Agreement or any other rights except the limited rights to use Confidential Information for the Permissible Use set forth above.

8. Independent Development. Discloser acknowledges that the Recipient may currently or in the future develop information internally, or receive information from other parties that is similar to Discloser’s Confidential Information. Nothing in this Agreement will prohibit Recipient from developing or having developed for its products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated or embodied in Discloser’s Confidential Information provided that Recipient does not violate any of its obligations under this Agreement in connection with such development. Neither party shall have any obligation to limit or restrict the assignment of its employees or contractors as a result of their having had access to Confidential Information.

9. No Other Obligations. This Agreement does not create any obligations other than those expressly stated herein, including without limitation, any obligation to purchase any goods or services from the other Party, to offer for sale products using or incorporating Confidential Information, or to enter into any further agreements of any kind.

10. Export Restrictions. Recipient shall adhere to all U.S. and other applicable Export Laws, including but not limited to the U.S. Export Administration Regulations (EAR), currently found at 15 C.F.R. Sections 730 through 744, and shall not export or re-export or release the technology, software, or any source code to a national of a country in Country Groups D:1 or E:1, or export to Country Groups D:1 or E:1 the direct product of such technology, if such foreign produced direct product is subject to national security controls as identified on the Commerce Control List (currently found in Supplement 1 to Section 744 of EAR), unless properly authorized by the U.S. Government. These export requirements will survive any expiration or termination of this Agreement.

11. Governing Law. This Agreement is made under and shall be construed according to the laws of the state of _____, excluding conflicts of law rules. The Parties specifically exclude from application to this Agreement the United Nations Convention on Contracts for the International Sale of Goods.

12. Equitable Remedies. Recipient acknowledges that its breach of this Agreement may cause irreparable damages and hereby agrees that Discloser 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.

13. General Provisions. Neither Party may assign this Agreement without the prior written consent of the other Party. This Agreement may be executed in multiple counterparts, each of which shall constitute a signed original. Any facsimile or electronic image of this Agreement or writing referenced herein shall be valid and acceptable for all purposes as if it were an original. The Parties do not intend that any agency or partnership relationship be created between them by this Agreement. Each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, in the event that any provision of this Agreement becomes or is declared illegal by any court of competent jurisdiction, or becomes otherwise unenforceable, such provision shall be deemed deleted from this Agreement and the remainder of this Agreement shall remain in full force and effect. The provisions of this Agreement that by their nature extend beyond termination or expiration of this Agreement will survive such termination or expiration. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or unenforceability of any other provision of this Agreement.

14. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties as to the protection of the Confidential Information disclosed during the term of the Agreement and supersedes and merges all prior oral and written agreements, discussions and understandings between them. Notwithstanding the aforementioned, this Agreement shall not supersede any existing nondisclosure confidentiality agreement between the parties which contains terms more restrictive than those herein. No waiver or modification of any provision of this Agreement shall be binding unless made in writing and signed by an authorized representative of each party.

The Parties hereto by their duly authorized representatives have executed this Agreement.

Company Name Here

Authorized Signature

Print Name

Title

Date

Company Name Here

Authorized Signature

Print Name

Title

Date