

## MUTUAL CONFIDENTIALITY NON-DISCLOSURE AGREEMENT

This Mutual Confidentiality Non-Disclosure Agreement (this "Agreement") is made between \_\_\_\_\_, and \_\_\_\_\_ as of \_\_\_\_\_ . In connection with a potential business transaction between the parties, each party (collectively with its Affiliates, "Disclosing Party") may disclose to the other party (collectively with its Affiliates, "Recipient") certain Confidential Information, as defined below.

### 1. Confidential Information; Exclusions.

(a) "**Confidential Information**" shall mean all business, marketing, financial, technical, strategic and other information relating to the Disclosing Party or its Affiliates or its or its Affiliates' business, products, intellectual property or technology, including without limitation, ideas, concepts, inventions, discoveries, technical data, patents, patent applications and all continuations, continuations-in-part, divisionals, extensions, substitutions, reissues, reexaminations and renewals thereof, and data, documents and materials related thereto, trade secrets, research and development efforts and data, documents and materials related thereto, technology, software, object code, algorithms, formulas, analyses, modules, methods, procedures, processes and techniques, manufacturing processes, designs, drawings, diagrams, lab notebook entries, current and projected components, parts, elements, hardware and software, test and trial equipment, data and results thereof, devices, models, products and product plans, specifications, prototypes, development, exploration, collaboration, purchase and supply, commercial and other business relationships, manufacturing, commercialization and sales efforts and plans, business models, plans and business information including but not limited to costs, prices, markets and industries, surveys, customers and documents, reports, analyses and data related thereto, marketing, marketing plans, operations, projections, corporate and financial information and all other information relating to the plans, business, finance and/or affairs of the Disclosing Party that may be furnished or disclosed to Recipient or an Affiliate of Recipient by, or acquired by Recipient or an Affiliate of Recipient, directly or indirectly, from, the Disclosing Party or an Affiliate of the Disclosing Party, which information may or may not be identified with the legend "Confidential" and all other information traditionally recognized as proprietary, and includes without limitation, Trade Secrets. Such term shall also include all copies and extracts of Confidential Information and all analyses, computer-generated studies and data containing or resulting from Confidential Information. Information considered to be Confidential Information may be disclosed orally or in writing.

(b) "**Trade Secret**" shall mean information related to the business or

services of the disclosing party or its affiliates that: (i) derives economic value, actual or potential, from not being generally known to or readily ascertainable by other persons who can obtain economic value from its disclosure or use and (ii) is the subject of efforts by the Disclosing Party or its Affiliates that are reasonable under the circumstances to maintain its secrecy, including, but not limited to, (A) making any information reduced to tangible form clearly and conspicuously with a legend identifying its confidential or proprietary nature, (B) identifying any oral presentation or communications as confidential immediately before, during, or after such oral presentation or communication, or (C) otherwise treating such information as confidential. Assuming the criteria in (i) and (ii) above are met, Trade Secrets include, but are not limited to, technical and non-technical data related to designs, programs, inventions (whether or not patentable), finances, actual or potential customers and suppliers, research, development, marketing, existing and future products and employees of the Disclosing Party and its Affiliates.

(c) **Exclusions.** For purposes of this Agreement, Confidential Information shall not include, and the obligations herein shall not apply to, information that: (i) is now or subsequently becomes generally available to the public through no fault of Recipient or any Affiliate of Recipient or any of their officers, employees, agents, advisors and financing sources (collectively "Representatives"); (ii) Recipient can demonstrate was rightfully in its possession prior to disclosure to Recipient or its Affiliates by the Disclosing Party or its Affiliates; (iii) is independently developed by Recipient or its Affiliates without the use of any Confidential Information provided by the Disclosing Party or its Affiliates; or (iv) Recipient or its Affiliates rightfully obtains from a third party who has the right, without obligation to the Disclosing Party or its Affiliates, to transfer or disclose such information.

(d) **Affiliate.** For purposes of this Agreement, an Affiliate of a party is a person, association, corporation, limited liability company, partnership, company or other entity that directly or indirectly through one or more intermediaries, controls, or is controlled by or under common control with such party, whether control is derived through the ownership of equity interests, by contract or otherwise through the direct or indirect power to control management and policies.

## 2. Confidentiality Obligations.

(a) **Confidentiality Obligation.** Recipient shall use its commercially reasonable efforts and shall cause its Affiliates to use their commercially reasonable efforts to protect the confidentiality of the Confidential Information it/they receive from the Disclosing Party or its Affiliates from disclosure and non-permitted use with the degree of care that is at least equivalent to the degree of care that it uses to protect its own confidential

information but in no event less than a commercially reasonable degree of care.

(b) **Limited Use.** Recipient and its Affiliates may use and will insure that their Representatives use the Confidential Information only for the purpose of exploring and furthering a business relationship with the Disclosing Party and/or its Affiliates and for no other purposes except as mutually agreed by the Recipient and Disclosing Party. Specifically, Recipient and its Affiliates shall not, and shall not permit any of their Representatives to, reverse engineer, decompile or modify the Confidential Information or prepare derivative works of the Confidential Information.

(c) **Representatives.** Recipient may provide the Confidential Information they receive from the Disclosing Party and its Affiliates only to those of their Affiliates and its Affiliates Representatives who (i) have a “need to know” such Confidential Information in order to enable Recipient to use such Confidential Information for such purpose and (ii) are legally bound to maintain the confidentiality of such Confidential Information and to use it for no other purpose. Each Recipient party represents and warrants that it will inform each of its Affiliates and its and their Representatives who have access to the Disclosing Party’s and its Affiliates’ Confidential Information of the confidential nature of such information and will cause them to comply with this agreement as if they were parties hereto. The Recipient shall be liable for any unauthorized disclosure of Confidential Information by its Affiliates and its and their Representatives.

(d) **Required Disclosure.** Recipient or any Affiliate of Recipient may, in addition, disclose Confidential Information if required by any order of any court or similar body or government authority, provided that Recipient shall endeavor to notify the Disclosing Party a reasonable time prior to such required disclosure and, to the extent reasonable, permit the Disclosing Party to contest such disclosure or seek appropriate protective measures with respect to the disclosed Confidential Information.

(e) **Loss of Information.** Recipient shall notify the Disclosing Party immediately in the event it becomes aware of the of loss or compromise of any Confidential Information or that such loss or compromise of Confidential Information is likely to occur or likely to have occurred.

3. **Right to Disclose.** The Disclosing Party warrants that it and its Affiliates have the right to disclose the Confidential Information to Recipient. All information is provided “AS IS” and without any warranty, express, implied or otherwise, regarding its accuracy or performance.

4. **Return or Destruction.** Promptly upon the Disclosing Party's request, Recipient will either return or, if requested by the Disclosing Party, destroy all copies of any media or materials containing Confidential Information, including but not limited to all computer programs, documentation, notes, plans, drawings, and copies thereof and all analysis, compilations, forecasts and other documents prepared by or on behalf of a Recipient or its Affiliates and cause the secure deletion of Confidential Information in electronic form (deletion in a manner such that the Confidential Information is not recoverable). If requested by Disclosing Party, the Receiving Party shall certify in writing to the Disclosing Party such return, destruction and deletion has occurred.
  
5. **Term.** The herein contained Agreement shall commence on the date of this agreement and shall extend for a period of five years from the date Confidential Information was last disclosed by one of the parties to this Agreement, except that the obligation of non-disclosure with respect to Trade Secrets shall survive indefinitely as long as such information remains a Trade Secret; provided that Confidential Information shall no longer remain subject to this Agreement if it qualifies for one of the exceptions in Section 1(b) above.
  
6. **No Implied License.** Notwithstanding anything to the contrary provided herein, the Disclosing Party and its Affiliates, as applicable, are and shall remain the sole owners of their Confidential Information and all data derived from it which the Recipient and its Affiliates receives from the Disclosing Party and its Affiliates. No rights or licenses under copyright, patent or trademark or other intellectual property rights of the Disclosing Party or its Affiliates are granted or implied by either a confidential or non-confidential disclosure, except to use the information as provided under this Agreement. Disclosing Party makes no representations or warranties with respect to the Confidential Information disclosed by it or its Affiliates.
  
7. **Relief.** Both parties to this Agreement acknowledge and agree that the Confidential Information hereunder this Agreement is of a unique and valuable nature, and that the unauthorized distribution or broadcasting of the Confidential Information could have the potential to destroy and, at the very least, diminish the value of such information. The damages that the Disclosing Party could sustain as a direct result of the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, both parties hereby agree that the Disclosing Party

shall be entitled to claim injunctive relief that would prevent the dissemination of any Confidential Information that would be in violation of the terms set forth herein this Agreement. Any such injunctive relief provided shall be in addition to any other available remedies hereunder, whether at law or in equity. The Disclosing Party shall be entitled to recover any sustained costs and/or fees, including, but not limited to, any reasonable attorney's fees which may be incurred while attempting to obtain any such relief. Furthermore, in the event of any litigation which may be related to this Agreement, the prevailing party shall be entitled to recover any such reasonable attorney's fees and expenses incurred.

8. **Successors and Assigns**. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that except as to a sale or transfer of the business to which this Agreement relates neither this Agreement nor Confidential Information may be assigned without the prior written consent of Disclosing Party. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.
9. **Severability**. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.
10. **Independent Contractors**. The parties hereto are independent contractors, and nothing contained in this Agreement shall be construed to constitute the parties hereto as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.
11. **Amendment and Waiver**. Any term of this Agreement may be amended or waived only with the written consent of both parties hereto. Any amendment or waiver effected in accordance with this Section shall be

binding upon the parties and their respective successors and assigns. No delay or omission by either party hereto to exercise any right or power occurring upon any noncompliance or default by the other party with respect to any of the terms of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties hereto of any of the covenants, conditions, or agreements to be performed by the other shall not be construed to be a waiver of any succeeding breach thereof or of any covenant, condition, or agreement herein contained. Unless stated otherwise, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity, or otherwise.

12. **Counterparts**. This Agreement may be executed in two or more counterparts, including facsimile or electronic counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.
13. **Entire Agreement**. This Agreement is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.
14. **No Publicity**. Neither party shall, without the prior consent of the other party, disclose to any other person the fact that Confidential Information of the other party or its Affiliates has been and/or may be disclosed under this Agreement, that discussions or negotiations are taking place between the parties, that a business relationship may be or has been formed between the parties, or any of the terms, conditions, status or other facts with respect thereto, except as required by law and then only with prior notice as soon as possible to the other party.
15. **Construction**. This Agreement shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party which prepared the instrument or drafted any provision thereof, the relative bargaining powers of the parties or the domicile of any party.

16. **Captions and Headings**. The captions and headings contained in this Agreement are for convenience of reference only and shall not be used to limit the applicability or meaning of any provisions of this Agreement.
17. **Pronouns and Plurals**. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders where the context so requires. The use of the singular form shall include the plural and the use of the plural shall include the singular where the context so requires.
18. **Restrictions on Export**. Neither party shall export, directly or indirectly, any technical data acquired from the other party 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 government approval without first obtaining such license or approval.
19. **Governing Law**. This Agreement will be governed by and construed in accordance with the internal laws of the State of Illinois.  
*[Remainder of page intentionally left blank; signatures to follow.]*

Agreed to and executed by the parties as of the date set forth above:

By:

\_\_\_\_\_

(signature)

\_\_\_\_\_

(signature)

Miona Short

(printed name and title)

\_\_\_\_\_

(printed name and title)