

## Mutual Confidentiality Agreement

This AGREEMENT is made by and between H-Tech LLP and \_\_\_\_\_ (each of whom shall be hereinafter referred to as "Disclosing Party" or "Receiving Party", as appropriate) as of \_\_\_\_\_, 2004.

Project Reference: Discussions and information related, but not limited to, \_\_\_\_\_.

In consideration of the mutual promises and covenants contained in this Agreement, and the mutual disclosure of confidential information to each other, the parties hereto agree as follows:

### 1. Confidential Information and Materials

(a) "Confidential Information" shall mean any nonpublic information that Disclosing Party specifically marks and designates, either orally or in writing, as confidential or which, under the circumstances surrounding the disclosure, ought to be treated as confidential. "Confidential Information" includes, but is not limited to, product schematics or drawings, descriptive material, specifications, source code or object code, sales and customer information, Disclosing Party's business policies or practices, information received from others that Disclosing Party is obligated to treat as confidential, and other materials and information of a confidential nature.

(b) "Confidential Information" shall not include any materials or information which the Receiving Party shows: (i) is at the time of disclosure generally known by or available to the public or which becomes so known or available thereafter through no fault of the Receiving Party; or (ii) is legally known to the Receiving Party at the time of disclosure; or (iii) is furnished by the Disclosing Party to third parties without restriction; or (iv) is furnished to the Receiving Party by a third party who legally obtained said information and the right to disclose it; or (v) is developed independently by the Receiving Party where the Receiving Party can document such independent development.

(c) "Confidential Materials" shall mean all tangible materials containing Confidential Information, including without limitation drawings, schematics, written or printed documents, computer disks, tapes, and compact disks (CD), whether machine or user readable.

### 2. Restrictions

(a) Receiving Party shall not disclose any Confidential Information to third parties for a period of two (2) years following the termination of its relationship with Disclosing Party or three (3) years from the date of this Agreement, whichever is longer, except to Receiving Party's consultants as provided below. However, Receiving Party may disclose Confidential Information in accordance with judicial or other governmental order, provided Receiving Party shall give Disclosing Party reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent.

(b) Receiving Party shall not use any Confidential Information other than for purposes of evaluation in connection with the above-referenced Project or as otherwise expressly authorized by the Disclosing Party.

(c) Receiving Party shall take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, to keep confidential the Confidential Information. Receiving Party may disclose Confidential Information or Confidential Materials only to Receiving Party's employees or consultants on a need-to-know basis. Receiving Party shall instruct all employees given access to the information to maintain confidentiality and to refrain from making unauthorized copies. Receiving Party shall maintain appropriate written agreements with its employees, consultants, parent, subsidiaries, affiliates or related parties, who

receive, or have access to, Confidential Information sufficient to enable it to comply with the terms of this Agreement.

(d) Confidential Information and Confidential Materials may be disclosed, reproduced, summarized or distributed only in pursuance of Receiving Party's business relationship with Disclosing Party, and only as otherwise provided hereunder. Receiving Party agrees to segregate all such Confidential Materials from the confidential materials of others to prevent commingling.

### 3. Rights and Remedies

(a) Receiving Party shall notify Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or Confidential Materials, or any other breach of this Agreement by Receiving Party, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and/or Confidential Materials and prevent further unauthorized use or disclosure.

(b) Receiving Party shall return all originals, copies, reproductions and summaries of Confidential Information and/or Confidential Materials then in Receiving Party's possession or control at Disclosing Party's request or, at Disclosing Party's option, certify destruction of the same.

(c) Disclosing Party may visit Receiving Party's premises, with reasonable prior notice and during normal business hours, to review Receiving Party's compliance with the terms of this Agreement.

### 4. Miscellaneous

(a) All Confidential Information and Confidential Materials are and shall remain the sole and exclusive property of the Disclosing Party. By disclosing information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party in, to or under Disclosing Party patents, copyrights, trademarks, or trade secrets.

(b) All Confidential Information and Materials are provided "AS IS" and Disclosing Party makes no warranty regarding the accuracy or reliability of such information or materials. Disclosing Party does not warrant that it will release any product concerning which information has been disclosed as a part of the Confidential Information or Confidential Materials. The Disclosing Party will not be liable for any expenses or losses incurred or any action undertaken by the Receiving Party as a result of the receipt of Confidential Information or Confidential Materials. The entire risk arising out of the use of the Confidential Information and Confidential Materials remains with the Receiving Party.

(c) Receiving Party agrees that it shall adhere to all U.S. Export Administration laws and regulations 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 U.S. Export Administration Regulations unless properly authorized by both the Disclosing Party and the U.S. Government.

(d) The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without use of the other party's Confidential Information.

(e) This Agreement constitutes the entire Agreement between the parties with respect to the subject matter hereof. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by both parties. None of the provisions of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of the Disclosing Party, its agents, or employees but only by an instrument in writing signed by an

authorized officer of Disclosing Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion. Failure of either party to enforce any provision of this Agreement shall not constitute waiver of such provision or any other provisions of this Agreement.

(f) If any action at law or in equity is necessary to enforce or interpret the rights arising out of or relating to this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which it may be entitled.

(g) This Agreement shall be construed and controlled by the laws of the State of [State], and both parties further consent to jurisdiction by the state and federal courts sitting in the State of [State].

(h) If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect. Should any of the obligations of this Agreement be found illegal or unenforceable as being too broad with respect to the duration, scope or subject matter thereof, such obligations shall be deemed and construed to be reduced to the maximum duration, scope or subject matter allowable by law.

(i) All obligations created by this Agreement shall survive change or termination of the parties' business relationship.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized representatives as of the date first set forth above.

Party

Address:

By: H-Tech LLP

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

2nd Party

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_