



UNILATERAL CONFIDENTIALITY AGREEMENT

THIS AGREEMENT (hereinafter “Agreement”) effective as of the ____ day of _____, 20__ **BY AND BETWEEN** _____, a _____ company, whose address is _____, hereinafter referred to as “Discloser”; **AND Nitinol Devices & Components, Inc.**, a Delaware corporation, having offices at 47533 Westinghouse Drive, Fremont, CA 94539, United States of America, hereinafter referred to as “NDC”;

WHEREAS Discloser has consented to make available to NDC, on a confidential basis, certain confidential and proprietary know-how, trade secrets, data, designs, formulas, materials, technical, financial, business and commercial information relating to _____ (“Confidential Information”);

WHEREAS NDC and Discloser wish to confirm in the present agreement (hereafter the “Agreement”) the conditions under which NDC agrees to receive Confidential Information on a confidential basis for the purposes of evaluating their interest in entering into a possible business relationship and for no other purpose.

THEREFORE, IT HAS BEEN AGREED AS FOLLOWS:

Article 1. Nondisclosure

1. NDC agrees to keep confidential and not to disclose (or allow any members of its evaluation team to disclose) any of Discloser’s Confidential Information, other than to members of NDC’s evaluation team, which may include its employees, agents, consultants, legal and financial representatives, bound by similar obligations of confidentiality, who need to know such Confidential Information and only after informing each member of the evaluation team of the terms and conditions of this Agreement.
2. NDC agrees that it will not use any of Discloser’s Confidential Information for any purpose other than evaluating or undertaking a possible business relationship with Discloser without Discloser’s prior written consent.
3. This Agreement and all obligations of NDC herein not to use, disclose or disseminate any of Discloser’s Confidential Information will continue for a period of five (5) years from the date hereof.

Article 2. Confidential Information

1. Discloser agrees to clearly mark all written information it deems Confidential Information as “confidential” or if communicated orally, to confirm the confidential nature of such in a writing clearly marked “confidential” within thirty (30) days of initial disclosure.
2. Notwithstanding the foregoing, the obligations specified herein shall not apply to any information that is clearly demonstrated to fall within any of the following categories:
 - a. information that is or hereinafter becomes publicly known or available other than through unauthorized disclosure by Discloser; or

- b. information NDC can demonstrate was in its possession at the time of disclosure and was not acquired, directly or indirectly, from Discloser, unless previously disclosed on a non-confidential basis; or
 - c. information NDC received in good faith from a third party who is not under a similar restriction of confidentiality and has a right to disclose the Confidential Information; or
 - d. information that is required by law to be disclosed, but disclosure pursuant to this subsection shall not occur until NDC has complied with the terms of Article 3 below; or
 - e. information that can be proven to have been independently developed by NDC, after the disclosure hereunder, without the aid, application or use in any way of the Confidential Information received from Discloser under this Agreement, as evidenced by NDC's written records.
3. Nothing herein shall obligate Discloser to disclose any particular Confidential Information. The parties understand and agree that the disclosure of Confidential Information shall not result in any obligation on the part of either party to enter into any future agreement or business relationship.

Article 3. Compliance with Laws

If NDC becomes legally compelled to disclose any of the Confidential Information received from Discloser, NDC, to the extent legally permissible, shall use reasonable efforts to provide Discloser with prompt notice of such requirement or advice prior to disclosure so that Discloser may seek a protective order or other appropriate remedy. Following provision of such notice, NDC agrees to furnish only that portion of the Confidential Information that it believes in good faith is legally required to so furnish and, at the request and expense of Discloser, to use reasonable cooperate with Discloser's reasonable efforts to obtain assurance that confidential treatment will be accorded such Confidential Information.

Article 4. Return or Destruction of Confidential Information

At any time, at Discloser's request, NDC shall return or destroy (in NDC's discretion) all Confidential Information provided by Discloser pursuant to this Agreement, as well as all copies, notes, abstracts and records that contain Confidential Information, except that NDC may retain one set of materials for archival purposes only. Further, Discloser acknowledges that, in the ordinary course of NDC's business and as a part of its customary practices, after the destruction and deletion of other copies of the Confidential Information, electronic copies of such Confidential Information may still remain on archives, hard drives, backup tapes and similar formats, and Discloser agrees that such remaining copies shall not be deemed a breach of this paragraph. The return or destruction of this material shall not, however, affect NDC's obligations to treat such Confidential Information in accordance with the terms and conditions of this Agreement.

Article 5. Publicity

The parties agree that, without the prior written consent of the other party, neither party shall refer to the other party or attribute any information to the other party in any external communication for any purpose, including without limitation in press releases, web sites, offering memoranda, and conversations with analysts.



Article 6. Non-Exclusivity

1. Nothing herein requires either party to proceed with any proposed transaction or relationship.
2. Each party may terminate the discussions hereunder at any time; provided that the restrictions stated herein shall survive for the term of this Agreement.
3. Each of the parties acknowledges and agrees that the other party may have entered into and may continue to enter into discussions with third parties concerning the subject matter of the discussions hereunder, provided that nothing in this sentence shall limit the obligations of the parties under this Agreement.

Article 7. General Clauses

1. Nothing in this Agreement shall be deemed to constitute any party a partner, joint venture, employer, employee, master, servant, principal, or agent of any other party or of any other person.
2. The parties agree that their obligations set out herein may not be changed, modified, released, discharged, abandoned or otherwise terminated in whole or in part except by an instrument in writing signed by each party.
3. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any one or more of the provisions shall not affect the validity and enforceability of the other provisions hereof.
4. The parties hereby understand and agree that no right, license, proprietary right or interest in any of Discloser's Confidential Information or any of the products embodying the same shall be granted or construed to be granted to NDC by the terms and conditions of this Agreement.
5. This Agreement states the entire agreement and understanding of the parties on the subject matter of this Agreement and supersedes all previous agreements, arrangements, communications, and understandings relating to that subject matter.
6. The validity and construction of this Agreement shall be governed by the State of California.

IN WITNESS WHEREOF, Discloser and NDC have duly executed this Agreement as of the day and year set forth above.

DISCLOSER

NITINOL DEVICES AND COMPONENTS, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____