

This Model Non-Disclosure ("Agreement") (NDA) is an example of a form agreement for use only in connection with discussions between a small business participating in the SBA's SBIR Program ("SBIR Company") and a prime contractor regarding a possible business relationship, where the discussions will involve the disclosure of each party's confidential information. Because this NDA is only a form agreement, it must be adapted by the parties to meet their specific requirements and expectations. This NDA does not in any way constitute legal advice from AMT. Each party to this agreement should seek the advice of professionals to assist in understanding the terms and conditions of the NDA, determining how such terms and conditions may impact agreements into which the parties previously entered, and determining what changes are necessary to adapt it to their specific needs.

Mutual Non-Disclosure Agreement

THIS NONDISCLOSURE AGREEMENT (this "Agreement") effective this ___ day of _____, 2004 ("Effective Date") is made by and between _____ ("_____") a _____ corporation with an office located at _____ and _____ ("_____") a _____ corporation with an office located at _____ (each also individually referred to as "Party" and together as "Parties").

WHEREAS, each Party has valuable Confidential Information (as defined below in Section 2), and for the sole purpose of discussing and evaluating a possible business arrangement between the Parties described in Section 3 below (the "Permitted Use"), each Party desires to receive the other Party's Confidential Information while agreeing to maintain all such Confidential Information in strict confidence and to use such Confidential Information solely for the Permitted Use; and

WHEREAS, each Party is willing to disclose the Confidential Information to the other so long as the receiving Party agrees to maintain all such Confidential Information in strict confidence and use such Confidential Information solely for the Permitted Use;

NOW, THEREFORE, in consideration of the mutual promises expressed herein, the Parties agree as follows:

1. **Representatives:** Each Party's representative for coordinating disclosure or receipt of Confidential Information is: (i) for Discloser: name: _____; title _____ and address: _____; and (ii) for Recipient: name: _____; title _____ and address: _____.

2. **Description of Confidential Information:** For purposes of this Agreement, the Party disclosing its Confidential Information is the "Discloser" and the Party receiving such Confidential Information is "Recipient." For purposes of this Agreement, a "Recipient" is limited solely to the Parties as defined in the first paragraph of this Agreement. "Confidential Information" means any information which is disclosed by Discloser and which is or should be reasonably understood to be confidential or proprietary to the Discloser, including, without limitation, information relating to or otherwise concerning Discloser's business, products, technology, services, finances,

users, technical data, tools, source code, product designs and plans, and other marketing and technical information and other unpublished information. The Parties agree that confidential or proprietary information conveyed in written or other tangible form shall be deemed “Confidential Information” under this Agreement if it is so designated by Discloser by prominently marking it with a “confidential,” “proprietary,” or similar legend. Information disclosed in other than a tangible form shall be treated as Confidential Information, if before its disclosure, Discloser advises Recipient that it will be disclosing Confidential Information and within thirty (30) days after disclosure, Discloser summarizes the Confidential Information in writing and marks it with a “confidential” or similar legend and delivers it to Recipient.

3. **Use and Nondisclosure of Confidential Information:** Recipient shall have the right to use the Confidential Information solely for the purpose of discussing and evaluating a possible business relationship between the Parties, described more fully as the follows:

_____ [TO BE MODIFIED DEPENDING UPON THE NATURE OF THE TRANSACTION].

4. **Confidentiality Period:** Recipient’s duty to hold Confidential Information in confidence shall

- (a) in the case of Confidential Information that is subject to the “limited” or “restricted” data rights provisions of the Federal Acquisition Regulation (“FAR”) and the Department of Defense Federal Acquisition Regulation Supplement (“DFARS”) or other restrictions applicable to commercial software or technical data, survive the expiration or termination of this Agreement for any reason;
- (b) in the case of Confidential Information that is subject to the “SBIR data rights” provisions of DFARS 252.227-7018 (or any successor clause) applicable to any military agency, expire the later of (i) five (5) years after completion of the last project between a military agency of the United States Government (the “Government”) and Discloser or any other Discloser-authorized third party (including, as the case may be, Recipient) or (ii) the Government’s lawful disclosure of such Confidential Information into the public domain; and
- (c) in the case of Confidential Information that is subject to the “SBIR data rights” provisions of FAR 52-227-20 (or any successor clause) applicable to any civilian agency, expire the later of (i) four (4) years after the acceptance by a civilian agency of the Government of all items to be delivered by Discloser or any other Discloser-authorized third party (including, as the case may be, Recipient) under the applicable SBIR contract or (ii) the Government’s lawful disclosure of such Confidential Information into the public domain.

For purposes of this Agreement, “SBIR Contract” means a “Phase I,” “Phase II,” or “Phase III” contract as such terms are defined in the SBIR Policy Directive issued by

the Small Business Administration on September 24, 2002, Fed. Reg. Vol. 67, No. 185 (60072-60098).

5. **Standard of Care:** Recipient shall not use Confidential Information for any purpose other than the Permitted Use, and shall not disclose, disseminate or otherwise publish or communicate Confidential Information received hereunder to any person, firm, corporation or other third party without the prior written consent of Discloser, except to employees, consultants and representatives of Recipient who have a need to know and who have been informed of and have agreed to Recipient's obligations hereunder. Additionally, if Recipient or any of its licensees, agents or assignees is authorized to deliver or disclose to any third party, including the Government, any Confidential Information, Recipient shall ensure that such delivery or disclosure is made in accordance the applicable markings requirements under the then-current FAR or the then-current DFARS. Recipient shall confer with Discloser regarding the applicable marking requirement.

6. **Exclusions; Legally Required Disclosure:**

(a) This Agreement imposes no obligation upon Recipient with respect to information that: (i) was in Recipient's possession without a duty of confidentiality to Discloser before receipt from Discloser; (ii) is or becomes a matter of public knowledge through no act or omission of Recipient; (iii) is rightfully received by Recipient from a third party without a duty of confidentiality; (iv) is independently developed by Recipient; (v) is disclosed by Discloser to a third party, including the Government, without a duty of confidentiality on the third party or who holds sufficient rights or licenses to disclose such information to and allow for use by Recipient; or (vi) is disclosed by Recipient with Discloser's prior written approval.

(b) If Recipient is required to disclose Confidential Information under operation of law, Recipient will disclose only such information as is legally required by order of a court of competent jurisdiction or other competent administrative body and will use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed. Recipient will provide Discloser notice of such possible disclosure prior to disclosure in order to give Discloser an opportunity to contest such disclosure.

7. **Warranty: ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS," AND WITHOUT ANY WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.**

8. **No Other Rights:** It is expressly agreed between the Parties that the Recipient does not, through the terms of this Agreement or otherwise, obtain any rights or privileges to any of the Discloser's know-how or trade secrets concerning all or any portion of the Confidential Information. This Agreement shall not be construed as granting or confirming any rights other than as expressly stated herein.

9. **Return of Confidential Information:** Recipient will, at Discloser's option, return or destroy (and so certify to Discloser) all tangible material embodying Confidential Information (in any form or medium) at any such time as Discloser may so request.

10. **Injunctive Relief:** Recipient acknowledges that disclosure or use of Confidential Information in violation of the Agreement could cause irreparable harm to Discloser for which monetary damages may be difficult to ascertain or an inadequate remedy. Recipient therefore agrees that Discloser will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any violation of this Agreement.

11. **Nonwaiver:** Any failure by Discloser to enforce Recipient's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

12. **Disclosure Period:** This Agreement pertains to Confidential Information that is disclosed during the period commencing with the Effective Date and ending on the earliest of (a) termination of dealings between the parties, and delivery of written notice thereof by either party specifically referencing this Agreement; (b) a definitive agreement is entered into between the parties hereto, which will then govern the treatment of confidential information disclosed thereafter, or (c) one (1) year after the Effective Date.

13. **Miscellaneous:**

(a) Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the Party to whom the same is directed; (ii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt, or (iii) five (5) business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available. All notices shall be given to the Party representatives and at the addresses set forth in Section 1 above.

(b) All additions or modifications to this Agreement must be made in writing and signed by the representative of each Party.

(c) This Agreement is made under, and shall be construed according to, the laws of _____ **[IDENTIFY STATE]** except for its conflicts of laws principles. Each Party irrevocably consents to the jurisdiction of the federal and/or local courts located in _____ in connection with any action violating this Agreement.

(d) This Agreement may be executed in counterparts and delivered by facsimile transmission, each of which shall be deemed an original and both of which together shall constitute one and the same document.

(e) Neither Party shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the Parties, their successors and assigns.

(f) If any provision of this Agreement shall be held by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the date first written above.

Company Name: _____

Company Name: _____

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____