

MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT (the "**Agreement**") is made and entered into as of _____ (the "**Effective Date**") between ACME Corp, located at: _____ (together with its Affiliates, "**ACME**")

and _____ [**Full Legal Company Name**],

located at [Address-1 _____

[Address-2 _____

[Address-3 _____

together with its Affiliates, the "**Company**") to assure the protection and preservation of the confidential and/or proprietary nature of information to be disclosed or made available to each other.

1. **Background.** ACME and the Company (each individually a "**Party**" and collectively the "**Parties**" herein) intend to engage in discussions and negotiations concerning the establishment of business relationships between them (hereinafter the "**Purpose**"). In the course of such discussions and negotiations, it is anticipated that either Party may disclose or deliver to the other Party certain confidential technical, financial and business information, which the Disclosing Party desires, the Recipient to treat as confidential. Nothing herein shall obligate either Party to proceed with any transaction between them, and each Party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity. As used in this Agreement, the Party disclosing Confidential Information is referred to as the "**Disclosing Party**" and the Party receiving such Confidential Information is referred to as the "**Recipient**". An "**Affiliate**" is an entity which Controls, is Controlled by, or under common Control with, a Party. "**Control**" means owning more than 50% of the voting stock of an entity.

2. **Confidential Information.** "Confidential Information" shall include but not be limited to all written, visual, electronic or oral information disclosed by either Party in writing, whether before or after the Effective Date, either directly or indirectly, in connection with the Purpose; and shall include without limitation, business, financial and technical information, software demonstration programs, routines, algorithms, computer systems, techniques, documentation, designs, procedures, ideas, know-how, formulas, inventions (whether patentable or not), improvements, concepts, records, files, memoranda, reports, drawings, plans, price lists customer lists, forecasts, strategies and the like.

It is agreed, that Recipient shall have a duty to protect only that Confidential Information (i) which is disclosed by the Disclosing Party in writing and is marked as confidential, proprietary or similar legend, at the time of disclosure; (ii) which is disclosed by the Disclosing Party in any other manner and is identified as confidential at the time of disclosure and is also summarized and designated as confidential, proprietary or similar legend, in a written memorandum delivered to the Recipient within thirty (30) days of the disclosure; or (iii) which, under the circumstances surrounding disclosure, ought to be treated as confidential by the Receiving Party.

3. **Exclusions.** Confidential Information shall not, however, include any information which

(i) was publicly known and/or made generally available in the public domain prior to the time of disclosure by the Disclosing Party;

(ii) becomes publicly known and made generally available after disclosure by the Disclosing Party to the Recipient through no action or inaction of the Recipient;

(iii) is already in the possession of the Recipient (and not under a duty of nondisclosure) at the time of disclosure by the Disclosing Party as shown by the Recipient's files and records at the time of disclosure;

(iv) is obtained by the Recipient from a third Party without a breach of such third Party's obligations of confidentiality;

(v) is independently developed by the Recipient without use, access or knowledge, either directly or indirectly, of the Disclosing Party's Confidential Information, as shown by documents and other competent evidence in the Recipient's possession; or

(vi) is required to be disclosed by the Recipient to comply with applicable laws or governmental regulations, provided that the Recipient provides prior written notice of such disclosure to the Disclosing Party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure and reasonably cooperates with any Disclosing Party's effort in obtaining confidential treatment or an order protecting the Confidential Information from public disclosure.

4. **Non-use and Non-Disclosure.** The Recipient agrees not to use any Confidential Information of the Disclosing Party for any purpose except to evaluate and engage in discussions and/or activities concerning a current or potential business relationship between the Parties. The Recipient agrees not to disclose any Confidential Information of the Disclosing Party to third parties or to such Party's employees, except to those employees or consultants of the Recipient who are required to have the information in order to evaluate or engage in discussions and/or activities concerning the current or contemplated business relationship. The Recipient shall be responsible for the observance and proper performance by all of its Affiliates and consultants, if any, of the terms and conditions of this Agreement. The Recipient shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the Disclosing Party's Confidential Information and which are provided to the Recipient hereunder.

5. **Maintenance of Confidentiality.** The Recipient agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the Disclosing Party. Without limiting the foregoing, the Recipient shall take at least those measures that it takes to protect its own Confidential Information of a like or similar nature and shall ensure that its employees and consultants who have access to Confidential Information of the

Disclosing Party have signed a non-use and non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees or consultants. The Recipient shall promptly report to the Disclosing Party actual or suspected violation of the terms of this Agreement and will take reasonable further steps requested in writing by the Disclosing Party to prevent, control or remedy any such violation. Each Party shall reproduce the other Party's proprietary rights and /or confidentiality notices on any copies, in the same manner in which such notices were set forth in or on the original.

6. Proprietary Rights/No License. All Confidential Information and materials are and shall remain the exclusive property of the Disclosing Party. Nothing in this Agreement is intended to grant any rights to either Party under any patent, mask work right, copyright, trademark, trade secret or any other intellectual property right of the other Party, nor shall this Agreement grant any Party any rights in or to the Confidential Information and materials of the other Party except as expressly set forth herein. The Recipient acknowledges and agrees that the Confidential Information is being provided "AS IS" and that the Disclosing Party does not make, and expressly disclaims, any representations or warranties, express or implied.

7. Term and Termination. This Agreement shall be effective on the Effective Date and shall continue in effect at least until the second anniversary thereof. Either Party may terminate this Agreement at any time after the second anniversary upon written notice to the other Party.

8. Return of Materials. All documents and other tangible objects containing or representing Confidential Information which have been disclosed by the Disclosing Party to the Recipient, and all copies and extracts thereof which are in the possession of the Recipient, shall be and remain the exclusive property of the Disclosing Party and shall, within ten (10) days after receipt of the Disclosing Party's written request, be promptly returned to the Disclosing Party or destroyed. The Recipient shall destroy all documents and other materials (including data stored on disk or tape) produced by it containing any Confidential Information, and shall certify such destruction in writing to the Disclosing Party, including a list of the materials

destroyed. This obligation shall survive any termination of this Agreement.

9. Term of Confidentiality Obligation. The obligations of each Recipient hereunder shall survive for three years following the termination of this Agreement.

10. Remedies. Each Party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the Disclosing Party, entitling the Disclosing Party to seek injunctive relief in addition to all legal and equitable remedies.

11. Miscellaneous. This Agreement shall bind and inure to the benefit of the Parties hereto and their Affiliates, successors and assigns. This Agreement shall be governed by the laws of the State of Delaware, without reference to conflict of laws principles and both Parties consent to the jurisdiction thereof. Both Parties shall adhere to all applicable laws, regulations, and rules relating to the export of technical data, and shall not export or re-export any Confidential Information, which includes technical data in violation of such applicable laws, regulations and rules. This Agreement does not create any agency or partnership relationship. This Agreement shall not be assignable or transferable without the prior written consent of the other Party, except that a Party may assign to a successor in the event of merger or acquisition. This document contains the entire agreement between the Parties with respect to the subject matter hereof, and neither Party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other Party except as set forth herein. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. In the event any term, condition or provision of this Agreement is held to be illegal, unenforceable or invalid by a court of competent jurisdiction, the remaining terms, conditions and provisions will remain in full force and effect. This Agreement may not be amended or modified, nor any obligation waived, except by a writing signed by both Parties hereto.

IN WITNESS WHEREOF, the Parties hereto, each acting under due and proper authority, have executed this Agreement as of the Effective Date first written above.

(Signature)

(Printed Name of Signatory)

(Company Title)

(Full Authorized Company Name)

By:

(Signature)

(Printed Name of Signatory)

(Company Title)

ACME Corp.

By: