

BILATERAL NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made effective this ____ day of _____, _____ by and between the Mid-Atlantic Technology Research and Innovation Center, a West Virginia corporation, with an office at 3200 Kanawha Turnpike, South Charleston, WV 25303 (hereinafter "MATRIC") and _____ having a principal place of business at _____, relating to the exchange of proprietary information between the parties.

1. SUBJECT AND PURPOSE OF DISCLOSURE

The subject and purpose of the disclosures to be made hereunder:

_____ (Hereinafter "the Program")

2. PROPRIETARY INFORMATION

As used herein, the term "proprietary information" shall mean any information and data of a proprietary and company confidential nature, related to the above subject and purpose of disclosure, including, but not limited to: trade secrets; business activities; inventions and engineering concepts; technical, marketing, operating and cost information; computer programs; and computer programming techniques. Proprietary information will be protected by the receiving party under this Agreement to the extent it is disclosed in tangible form and is identified with appropriate stamp or marking as proprietary or, if disclosed orally or visually, to the extent it is identified as proprietary at the time of disclosure, with subsequent confirmation in writing referencing the date and type of information disclosed within twenty (20) days of disclosure.

3. USE OF PROPRIETARY INFORMATION

Both parties understand that the proprietary information that it receives from the other party is regarded by that party as valuable and, AGREE AS FOLLOWS:

- a.** To use the proprietary information received from the other party only for the above purpose, to not reproduce, duplicate, copy, distribute, disclose or otherwise disseminate the proprietary information, and to hold in confidence and protect the proprietary information from dissemination to and use by anyone not a party to this Agreement;
- b.** To disclose the proprietary information received from the other party only to persons who are employees of the receiving party who have a need to know for the above purpose; and
- c.** That all proprietary information received from the other party in tangible form shall be returned to the disclosing party promptly upon its request except to the extent it has been provided to the Government as specifically allowed below.

Notwithstanding the above, proprietary information may be reproduced for or disclosed to the United States Government by MATRIC for information and evaluation in connection with the Program. Any such disclosure shall bear the restrictive legend of either FAR 52.215-1(e) or a substantially identical successor provision.

4. EXCLUDED INFORMATION

The obligations with respect to the reproduction, disclosure and use of proprietary information, as set forth in this Agreement, are not applicable to proprietary information which, according to tangible evidence:

- a.** is developed independently without breach of this Agreement by the receiving party's employees;
- b.** is within, or later falls within, the public domain through no fault of the receiving party; or
- c.** becomes available to the receiving party from a source, other than the disclosing party, who has no obligation of secrecy with respect to the proprietary information; or
- d.** was rightfully in the receiving party's possession at the time of disclosure; or
- e.** the disclosure of which is required by law provided that receiving party shall give the other party reasonable advance notice to contest such requirement of disclosure.

5. PROTECTION OF PROPRIETARY INFORMATION

The standard of care for protection of the proprietary information which shall be imposed on the party receiving it will be that degree of care that the receiving party uses to prevent disclosure, publication, or dissemination of its own proprietary information of a similar nature, but in no event shall the degree of care be less than a reasonable degree of care.

6. TERM OF AGREEMENT

The receiving party shall maintain the proprietary information in confidence in accordance with the terms of this Agreement for a period of **THREE (3) years** from the date of receipt of such proprietary information.

7. TERMINATION

This agreement will terminate one year from the effective date, however either party may, upon thirty (30) days written notice to the other party, terminate this Agreement with respect to any disclosure that may be made thereafter. Notwithstanding such termination, the rights and obligations hereunder of both parties as to disclosures made within the provisions of this Agreement prior to such termination shall remain as specified herein.

8. WARRANTY

Neither the proprietary information nor the act of disclosure thereof shall constitute a grant of any license under any trademark, patent, copyright or other proprietary right or application for the same, nor shall it constitute any representation, warranty, assurance, guarantee or inducement by the disclosing party with respect to the infringement of any trademark, patent, copyright or proprietary right or the accuracy of the proprietary information.

9. ASSIGNMENT

Neither party shall have the right to assign or otherwise transfer its rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party.

10. GOVERNING LAW

This Agreement shall be governed and construed under the laws of the State of West Virginia.

11. ENTIRE AGREEMENT

This Agreement constitutes and expresses the entire agreement and understanding between the parties hereto in reference to all matters referred to; all previous discussions, promises, representations and understandings relative thereto, if any, between the parties hereto, being herein merged. No modification of this Agreement shall be binding unless in writing and signed by authorized representatives of both parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the dates set forth under their names.

Second Party

MATRIC

By: _____
(Signature)

By: _____
(Signature)

(Name)

(Name)

(Title)

(Title)

(Date)

(Date)