

**NONDISCLOSURE AGREEMENT**

THIS NONDISCLOSURE AGREEMENT (this "Agreement") is made on \_\_\_\_ day of \_\_\_\_\_ 2006 ("Effective Date"), between

\_\_\_\_\_, a \_\_\_\_\_,  
\_\_\_\_\_

and

\_\_\_\_\_ a \_\_\_\_\_  
incorporated under the \_\_\_\_\_  
(the above parties are hereinafter collectively referred to as the "parties").

The parties agree as follows:

1. *Purpose.* The parties wish to explore a business or research opportunity of mutual interest (the "Opportunity") as detailed in the letter of Intent dated \_\_\_\_\_, and in connection with the Opportunity, each party may disclose to the other confidential technical and business information, sample(s), materials, and/or prototype(s) that the disclosing party desires the receiving party to treat as confidential..

2. "*Confidential Information*" means (a) any information disclosed by either party to the other party, either directly or indirectly, in writing, orally, electronically, other media format, and/or in tangible objects, including, without limitation, algorithms, invention summaries, inventions, mask works, business plans, customer data, customer lists, customer names, financial analysis, forecasts, formulas, hardware configuration information, know-how, ideas, designs, discoveries, market information, marketing plans, processes, products, product plans, research, specifications, software, source code, trade secrets or any other information which is designated as "confidential," "proprietary" or some similar designation, or any third party information that the disclosing party has an obligation of confidentiality to protect (collectively, the "Disclosed Materials") (b) any information otherwise obtained, directly or indirectly, by a receiving party through inspection, review or analysis of the Disclosed Materials and (c) the LOI dated \_\_\_\_\_. Information disclosed orally shall be considered Confidential Information only if such information is stated as such at the time of disclosure and is confirmed in writing as being Confidential Information within thirty (30) days after the initial disclosure.

3. *Exceptions.* Confidential Information shall not, however, include any information that (i) was publicly known and 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 receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party lawfully in possession of such information, without a breach of such third party's obligations of confidentiality and as shown by documents and other competent evidence in the receiving party's possession; or (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession.

4. *Non-use and Non-disclosure.* Each party agrees not to use, directly or indirectly, in whole or in part, any Confidential Information of the other party for any purpose except to evaluate and engage in discussions concerning the Opportunity. Each party agrees not to disclose any Confidential Information of the other party, except as specifically provided for in this Agreement. A receiving party may disclose the other party's Confidential Information to those employees of the receiving party who are required to have the information in order to evaluate or engage in discussions concerning the Opportunity. If a receiving party is required by law to make any disclosure that is prohibited or otherwise constrained by this Agreement, the receiving party will provide the disclosing party with prompt written notice of such requirement so that the disclosing party may seek a protective order or other appropriate relief. Subject to the foregoing sentence, such receiving party may furnish that portion (and only that portion) of the Confidential Information that the receiving party is legally compelled or is otherwise legally required to disclose; provided, however, that the receiving party provides such assistance as the disclosing party may reasonably request in obtaining such order or other relief.

5. *Maintenance of Confidentiality.* Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own confidential information of a similar nature, but in no case less than reasonable care (including, without limitation, all precautions the receiving party employs with respect to its confidential materials). Each party shall ensure that its employees who have access to the other party's Confidential Information have signed a non-use and non-disclosure agreement in content similar to the provisions of this Agreement or are otherwise legally obligated not to disclose such Confidential Information, prior to any disclosure of Confidential Information to such employees. No party shall make any copies of the other party's Confidential Information except upon the other party's prior written approval. A party receiving Confidential Information shall promptly notify the party disclosing such Confidential Information of any use or disclosure of such Confidential Information in violation of this Agreement of which the receiving party becomes aware.

6. *No Obligation.* Nothing in this Agreement 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 Opportunity.

7. *No Warranty & Assumption of Risk.* The parties acknowledge that all characteristics of the information or owned IP exchanged may not be or are not fully understood and its use may involve risks or dangers that are not known or fully appreciated. ALL INFORMATION INCLUDING ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS, FUNCTIONALITY, NONINFRINGEMENT, ITS FITNESS FOR A PARTICULAR PURPOSE OR ITS MERCHANTABILITY OF THE INFORMATION PROVIDED.

8. *Return of Materials.* All documents, data and other tangible objects (in whatever media or format) containing or representing Confidential Information that have been disclosed by either party to the other party, and all copies or extracts thereof that are in the possession of the other party, shall be and remain the property of the disclosing party and shall be promptly returned to the disclosing party upon the disclosing party's written request.

9. *No License, Testing or Publicity.* Nothing in this Agreement is intended to grant any rights to either party under any discovery, disclosed invention, patent, mask work right, copyright, trade secret, trademark or service mark, or other intellectual property right of the other party, nor shall this Agreement grant any party any rights in or to the other party's Confidential Information. Nothing herein grants any rights whatsoever to the parties to test, disassemble, decompile, reverse engineer, replicate, or otherwise copy any of the Confidential Information or a party's intellectual property. To the extent applicable, each party shall reproduce the other party's proprietary rights notices on any such authorized copies, in the same manner in which such notices were set forth in or on the original. No party shall use or cause to be published in any kind of media or communication the name, logo or other identifying information of any of the parties to this Agreement without the prior expressed written consent of the specific party.

10. *Term.* The obligations of each receiving party under this Agreement shall survive until such time as all Confidential Information of the other party disclosed hereunder becomes publicly known and made generally available through no action or inaction of the receiving party.

11. *Availability of Equitable Relief.* Each party understands and agrees that its breach or threatened breach of this Agreement will cause irreparable injury to the other party and that money damages will not provide an adequate remedy for such breach or threatened breach, and both parties hereby agree that, in the event of such a breach or threatened breach, the non-breaching party will also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. The parties' rights under this Agreement are cumulative, and a party's exercise of one right shall not waive the party's right to assert any other legal remedy. Should any proceeding or litigation be commenced between the parties hereto concerning the terms of this Agreement, or the rights and duties of the parties hereto, the prevailing party in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for the prevailing party's attorneys' fees.

12. *Governing Law and Jurisdiction.* This Agreement shall be subject to, and interpreted in accordance with, the laws of the Union of India. The parties agree to the exclusive venue and jurisdiction of the courts situated in Bangalore.

13. *Severability.* If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law.

14. *Counterparts and Facsimiles.* The parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same agreement.

15. *Expenses.* Each of the parties shall be responsible for its own expenses. Receiving Party shall be completely responsible for its cost and expenses in conducting any evaluations, and reporting the results of an evaluation, unless other specific arrangements are made in writing prior to the expenses being incurred.

16. *Miscellaneous.* This Agreement shall benefit and bind the parties and their respective successors, heirs, legal representatives and permitted assigns. This Agreement constitutes the entire agreement between the parties with respect to the Opportunity and

supersedes all prior written and oral agreements between the parties regarding the subject matter of this Agreement, 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 in this Agreement. Nothing in this Agreement shall be construed as creating an agency, partnership, joint venture, or other business relationship or association between the parties. No provision of this Agreement may be waived except by a writing executed by the party against whom the waiver is to be effective. A party's failure to enforce any provision of this Agreement shall neither be construed as a waiver of the provision nor prevent the party from enforcing any other provision of this Agreement. No provision of this Agreement may be amended or otherwise modified except by a writing signed by the parties to this Agreement.

By their signatures below, the authorized representatives of each of the parties acknowledges their agreement to this NonDisclosure Agreement made on the Effective Date first written above.

_____	_____
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

Witnesses