



MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (the "Agreement") is made as of _____, 2011 (the "Effective Date") by and between XXX Corp a Delaware corporation, and all of its affiliates, with principal offices at _____), and _____ a corporation, with all of its affiliates, with principal offices _____ at _____ (the "Company").

1. Purpose. XXX and the Company wish to explore a possible business opportunity of mutual interest regarding _____ (the "Purpose") in connection with which each party may disclose its Confidential Information (as defined below) to the other. This Agreement is intended to allow the parties to discuss and evaluate the Purpose while protecting each party's Confidential Information against unauthorized use or disclosure.

2. Definitions

"Confidential Information" means any oral, written, graphic or machine-readable information including, but not limited to, that which relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, business plans, agreements with third parties, services, customers, marketing or finances of the disclosing party, which Confidential Information is designated in writing to be confidential or proprietary, or if given orally, is confirmed in writing as having been disclosed as confidential or proprietary within thirty (30) days after the oral disclosure.

"Affiliate" means, any legal entity that controls, is controlled by, or is under common control with another legal entity. An entity is deemed to "control" another if it owns directly or indirectly a sufficient voting interest to elect a majority of the directors or managing authority or to otherwise direct the affairs or management of the other entity.

3. Nondisclosure of Confidential Information

(a) XXX and the Company each agree not to use any Confidential Information disclosed to it by the other party for any reason other than the Purpose specified above. Neither party shall disclose or permit disclosure of any Confidential Information of the other party to third parties or to employees of the party receiving Confidential Information, other than directors, officers, employees, consultants and agents who are required to have the information in order to carry out the discussions regarding the Purpose. Each party has had or will have its directors, officers, employees, consultants and agents who shall have access to Confidential Information of the other party sign a nondisclosure agreement in content substantially similar to this Agreement. Each party agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the receiving party utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Each party agrees to notify the other in writing of any actual or suspected misuse, misappropriation or unauthorized

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disclosure of Confidential information of the disclosing party which may come to the receiving party's attention.

(b) Exceptions. Notwithstanding the above, neither party shall have liability to the other with regard to any Confidential Information of the other, which the receiving party can prove:

(i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the receiving party;

(ii) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;

(iii) is disclosed with the prior written approval of the disclosing party;

(iv) was independently developed by the receiving party without any use of the Confidential Information of the disclosing party;

(v) becomes known to the receiving party, without restriction, from a source other than the disclosing party without breach of this Agreement by the receiving party and otherwise not in violation of the disclosing party's rights; or

(vi) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice of such court order or requirement to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

4. Return of Materials. Any materials or documents that have been furnished by one party to the other in connection with the Purpose shall be promptly returned by the receiving party, accompanied by all copies of such documentation, upon the written request of the disclosing party.

5. No Modification. XXX and the Company each agree that it shall not modify, reverse engineer, decompile, create other works from or disassemble any software programs contained in the Confidential Information of the other party unless permitted in writing by the disclosing party.

6. No Rights Granted. Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of either party, nor shall this Agreement grant either party any rights in or to the other party's Confidential Information other than the limited right to review such Confidential Information solely for the Purpose specified above.

7. Term. The commitments of each party hereunder shall continue for a period terminating on the later to occur of the date (a) five (5) years following the Effective Date of this Agreement or (b) five (5) years from the date on which Confidential Information is last disclosed under this Agreement.

8. Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly

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provided in this Agreement.

9. Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

10. Independent Contractors. XXX and the Company are independent contractors, and nothing contained in this Agreement shall be construed to constitute XXX and the Company as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.

11. Restrictions on Export. Neither XXX nor the Company shall export, directly or indirectly, any technical data acquired from the other party pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval.

12. Governing Law. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of California, without giving effect to principles of conflicts of law.

13. Remedies; Indemnification. XXX and the Company each agree that its obligations set forth in this Agreement are necessary and reasonable in order to protect the disclosing party and its business. XXX and the Company each expressly agree that due to the unique nature of the disclosing party's Confidential Information, monetary damages would be inadequate to compensate the disclosing party for any breach by the receiving party of its covenants and agreements set forth in this Agreement. Accordingly, XXX and the Company each agree and acknowledge that any such violation or threatened violation shall cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled (a) to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages, and (b) to be indemnified by the receiving party from any loss or harm, including but not limited to reasonable attorney's fees, arising out of or in connection with any breach or enforcement of the receiving party's obligations under this Agreement or the unauthorized use or disclosure of the disclosing party's Confidential Information.

14. Amendment and Waiver. Any term of this Agreement may be amended with the written consent of XXX and the Company. Any amendment or waiver effected in accordance with this Section shall be binding upon the parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

16. Entire Agreement. This Agreement is the product of both of the parties hereto, and

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constitutes the entire agreement between such parties pertaining to the subject matter hereof, and supersedes any other understanding between the parties with regards to the transactions contemplated herein.

The parties have executed this Mutual Nondisclosure Agreement as of the Effective Date.

XXX Corp.

Company:

By: _____

By: _____

Name: _____
(print)

Name: _____
(print)

Title: _____

Title: _____

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