

DATE: DD/MM/YEAR

BI-LATERAL CONFIDENTIAL DISCLOSURE AGREEMENT

THIS CONFIDENTIAL DISCLOSURE AGREEMENT ("Agreement") is made by and between **Bergstrom Inc.**, an Illinois corporation with its principal place of business located at 2390 Blackhawk Rd, Rockford, Illinois, subsidiaries and affiliates (Bergstrom) and _____ and its subsidiaries and affiliates ("Company")

WHEREAS, this Agreement is being entered into to provide for the confidentiality, protection and handling of each party's Proprietary Information (as defined herein) which may be disclosed to the other party for the express purpose(s) set forth herein; and

WHEREAS, in the course of such relationship the parties may disclose to each other confidential and proprietary information relating to their respective business plans, product research and development, customer and supplier relationships, project or sales opportunities, corporate strategies or other financial, commercial, technical or scientific matters;

WHEREAS, the party receiving Proprietary Information of the other party agrees to make use of the Proprietary Information only for the following specific purpose(s):

Purpose

NOW, THEREFORE, in consideration of the desires expressed above and of the mutual covenants and promises herein, the parties intending to be legally bound hereby agree:

1. DEFINITIONS:

- 1.1 "Disclosing Party" means the party furnishing Proprietary Information and "Receiving Party" means the party receiving Proprietary Information.
- 1.2 "Proprietary Information" means Confidential Information and Trade Secrets; provided, however, that Proprietary Information shall not include information which the Receiving Party can establish:
 - (a) is known prior to the time of disclosure by the Disclosing Party or is independently derived by the Receiving Party's employees who have no knowledge of or access to the Disclosing Party's Confidential Information; or
 - (b) is or becomes publicly known other than as a result of an unauthorized disclosure of the Receiving Party hereunder; or
 - (c) is rightfully received from a Third Party (which, for the purposes of this Agreement, shall mean a person or corporation, together with the employees and agents thereof, who is not a party to this Agreement) and without confidential limitation provided that at the time of the receipt of such information the Receiving Party had no knowledge that the Third Party was subject to a confidentiality agreement or other confidentiality obligation with respect to the information.

- 1.3 "Confidential Information" means confidential data and confidential information relating to the business of either party (which does not rise to the level of a Trade Secret) which is or has been disclosed to the Other Party or of which the Other Party becomes aware as a consequence of or through its relationship to the Disclosing Party and which has value to the Disclosing Party and is not generally known to its competitors.
- 1.4 "Trade Secrets" means information without regard to form including, but not limited to, technical or non-technical data, formulas, patterns, compilations, prototypes, models, patent applications, concepts, ideas, and other intellectual property, programs, software, devices, methods, techniques, drawings, processes, financial data, financial plans, product or service plans or lists of actual or potential customers or suppliers which qualifies as a trade secret under the applicable state law.

2. RIGHTS, RESTRICTIONS AND OBLIGATIONS:

- 2.1. Proprietary information delivered in tangible form shall be identified prior to its disclosure with an appropriate marking or identification such as "Confidential" or "Proprietary" or other similar legend. If information is disclosed either orally or visually, then to receive the protection pursuant to this Agreement such Proprietary Information must be identified as confidential or proprietary information at the time of disclosure, reduced to tangible summary form otherwise in compliance with this Agreement and furnished to the Receiving Party within twenty (20) calendar days of the original disclosure. It is understood and agreed by the parties that protection shall be afforded the identified Proprietary Information during the interim period of up to twenty (20) days between disclosure and summation delivery.
- 2.2. The Receiving Party agrees that it will hold the Proprietary Information of the Disclosing Party in confidence and shall not, at any time, use, copy, reveal, publish, transfer or otherwise disclose or communicate the Proprietary Information of the Disclosing Party to any Third Party without the prior written consent of an authorized representative of the Disclosing Party.
- 2.3. The Receiving Party will use efforts to protect the Disclosing Party's Proprietary Information commensurate with those it employs for the protection of Proprietary Information of its own, including as a minimum, alerting its employees of the confidential and sensitive nature of the Disclosing Party's Proprietary Information, disclosing such information only to the extent necessary and only to those key employees and or representatives of the Receiving Party who need to know such information for the purpose of a specific transaction within the scope of the business relationship between the parties as outlined herein, and the use of appropriate safeguarding procedures to protect the Proprietary Information of the Disclosing Party. However, in no event shall the degree of care used by the Receiving Party to safeguard the Proprietary Information of the Disclosing Party be less than a reasonable degree of care.
- 2.4. Each party acknowledges and agrees that the use or disclosure of any Proprietary Information of the other party without the prior express written consent of the Disclosing Party shall be considered a breach of this Agreement and/or an unauthorized disclosure of Trade Secrets.
- 2.5. The parties agree that, except as set forth herein, the obligations to maintain the nonuse and confidentiality of Proprietary Information of the other party shall endure for five (5) years from the date of termination of the business relationship or if later, five (5) years after the return to the disclosing party or the destruction of the evidentiary copy of the Confidential Information referred to below, provided, however that the confidentiality and non-use obligations with respect to any Proprietary Information that constitutes a Trade Secret shall continue in effect for so long as the information remains a trade secret

under the applicable state law. The parties further agree that the terms and conditions of the Agreement shall inure to the benefit of and shall be binding on the parties and each of their respective successors, assigns, affiliates, parents, subsidiaries, officers, directors, employees, agents, or other representatives.

- 2.6. The Receiving Party acknowledges and agrees that due to the unique nature of the Disclosing Party's Proprietary Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach will result in irreparable harm to the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to seek appropriate equitable relief including an injunction in any applicable jurisdiction prohibiting the breaching party from any such disclosure, attempted disclosure, violation or threatened violation without the necessity of proving damages or furnishing a bond or other security in addition to remedies it might have at law. The Receiving Party shall notify the Disclosing Party in writing immediately upon the occurrence of any unauthorized release of Proprietary Information, whether inadvertent or otherwise, and shall use reasonable efforts to prevent or limit any further dissemination of such information. The party breaching this agreement hereby indemnifies and holds the non-breaching party harmless from and against all damages, losses and costs (including reasonable attorneys' fees) resulting from any such actual, attempted or threatened disclosure or violation.

3. TERM AND TERMINATION:

- 3.1 This Agreement shall be deemed effective as of the date first noted above and shall terminate 2 years thereafter, unless it is extended by mutual written consent or earlier terminated as provided in this Agreement. Upon the expiration or termination of this Agreement, the parties agree that no further Proprietary Information shall be sent to the other party. Termination shall not affect the obligations established under Sections 1 and 2 of this Agreement prior to termination with respect to Proprietary Information.
- 3.2 Either party may terminate this Agreement with respect to further disclosures upon thirty (30) days written notice to the other party; provided, however, that the obligations of the parties under Sections 1 and 2 hereof shall survive termination or expiration of this Agreement. Notice of termination or other written notices of confidentiality under this Agreement shall be deemed received ten (10) days after posting unless actually received at an earlier date.
- 3.3 Promptly upon the Disclosing Party's written request at any time during the term hereof, or upon the expiration or termination of this Agreement, the Receiving Party shall:
- (a) return or destroy all materials, including, but not limited to, all originals, copies, reproductions, and materials prepared by the Receiving Party or generated by the Receiving Party which contain in any way Proprietary Information in any tangible form, and any copies thereof made by the Receiving Party; and
 - (b) destroy all copies of the Disclosing Party's Proprietary Information in its possession, power or control, which are present on magnetic media, optical disk, volatile memory or other storage device, in a manner that assures that the Disclosing Party's information is rendered unrecoverable.
 - (c) The preceding notwithstanding, one copy may be retained by the Receiving Party in a secure location for evidentiary purposes and as a means of determining any continuing obligations under this Agreement.

4. NO LICENSE: The parties acknowledge that no license or right is granted hereby and no license or right shall be incorporated herein by reference, by implication, or by other means with respect to or under any invention, patent application, patent, copyright, trade secret or other proprietary right contained in or in any way relating to the Proprietary Information of the other party. The Receiving Party agrees that the Disclosing Party's Proprietary Information is and will remain the property of the Disclosing Party, and will be used only for the benefit of the Disclosing Party.

5. ENTIRE AGREEMENT: This Agreement contains the complete understanding of the parties and may not be modified, amended, or waived unless in writing and signed by both parties hereto or in the case of waiver by the party waiving compliance. The terms of this Agreement are in lieu of and override any contrary terms or conditions, preprinted or otherwise, that may appear on any form used (1) by one Party to purchase or offer to purchase from the other Party, or (2) by the other Party to acknowledge such a purchase or accept such an offer. The failure of any party at any time to require performance of any provision hereof shall in no manner affect the right of such party at a later time to enforce such provision or any other provision of this Agreement.

6. NO OBLIGATION TO DISCLOSE: Nothing herein shall be construed as obligating or be deemed to obligate either party to disclose any particular Proprietary Information to the other. In addition, each Party warrants that it has the right to disclose its Proprietary Information for the purposes of this Agreement. In providing any proprietary information hereunder, neither party makes any representation, either express or implied, as to its adequacy, accuracy, sufficiency or freedom from defect any kind, including freedom from any patent infringement that may result from the use of such proprietary information. Nor shall either party incur any responsibility or obligation whatsoever by reason of such proprietary information, except as provided in this agreement.

7. SEVERABILITY: If any provision of this Agreement is declared void or unenforceable, such provision will be severed from this Agreement, and the balance of the Agreement will remain in full force and effect.

8. CHOICE OF LAW: This Agreement shall be governed by the laws of the United States of America, State of Illinois without giving effect to the choice of law or conflict of laws provisions. To the extent any law, statute, treaty or regulation by its terms as determined by a court, tribunal, or other government authority of competent jurisdiction, is in conflict with this Agreement, the conflicting terms of this Agreement shall be superseded only to the extent necessary by the terms required by such law, statute, treaty or regulation. Each party hereby acknowledges that the rights and obligations of this Agreement are subject to the laws and regulations of the United States relating to the export of products and technical information. Without limitation, each party shall comply with all such laws and regulations.

9. LEGALLY COMPELLED DISCLOSURE OF PROPRIETARY INFORMATION: If the Receiving Party becomes legally compelled (including by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Proprietary Information of the Disclosing Party, the Receiving Party shall provide the Disclosing Party with prompt written notice prior to such disclosure so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. If such a protective order or other remedy is not obtained, or if the Disclosing Party waives compliance with the provisions hereof, the Receiving Party agrees to disclose only that portion of the Proprietary Information which the Receiving Party is advised by opinion of outside counsel is legally required to be disclosed.

10. NO RESTRICTION: The receipt of Proprietary Information under this Agreement shall not preclude or otherwise limit the Receiving Party, without disclosing or using the Proprietary Information of the Disclosing Party, from developing, providing and/or obtaining technology,

11. FUTURE AGREEMENTS: Each Party shall bear all costs and expenses incurred by it under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract, or other business relationship with the other Party. If this Agreement is entered into in anticipation of a teaming agreement, the Parties understand and agree that, notwithstanding any conduct of the Parties to the contrary, there is no binding agreement to team until the final teaming agreement is signed by both Parties.

13. NOTICES: Any formal notice or demand to be made or given under this Agreement shall be in writing and may be given by personal delivery, by facsimile transmission or by a nationally recognized overnight delivery service addressed to the respective parties as follows:

In the case of Company: **Insert Company Name**

Attention: **Company Representative**
Facsimile: **(XXX) YYY-ZZZZ**

IN WITNESS WHEREOF, the parties represent that they understand each of the terms and conditions hereof and that they have caused this Agreement to be duly executed by their authorized representative to be effective as of the date first noted above.

Company

Signature _____

Printed

Title

Date _____