MUTUAL NON-DISCLOSURE AGREEMENT

 **THIS MUTUAL NON-DISCLOSURE AGREEMENT** (the “Agreement”) is entered into between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as of , 20\_\_\_\_, to protect the confidentiality of certain confidential information that may be disclosed by the parties in analyzing the technology of mutual interest.

1. The “Confidential Information” of a party means any and all technical and non-technical information disclosed by either party to the other party.

2. Each party agrees that at all times it will hold in confidence and not disclose to any third party any Confidential Information of the other party, except as approved in writing by the other party. Each party will use the Confidential Information of the other party only for the purpose of evaluating or pursuing a business relationship. Neither party will modify, reverse engineer, decompile, create other works from, or disassemble any Confidential Information of the other party without the prior written consent of the other party. Each party will only permit access to Confidential Information of the other party to those of its employees or authorized representatives having a need to know and who are bound by confidentiality obligations at least as restrictive as those contained in this Agreement. Each party will immediately notify the other party upon discovery of any loss or unauthorized disclosure of the Confidential Information of the other party.

3. A party receiving Confidential Information will not have any obligations under this Agreement regarding a specific portion of the Confidential Information if the receiving party can demonstrate that such Confidential Information: (i) was in the public domain at the time it was disclosed to the receiving party; (ii) entered the public domain subsequent to the time it was disclosed to the receiving party, through no fault of the receiving party; (iii) was in the receiving party’s possession free of any obligation of confidence at the time it was disclosed to receiving party; or (iv) was developed by employees or agents of the receiving party independently of and without reference to any information communicated to the recipient by the other party. In addition, a receiving party may disclose Confidential Information of the other party without violating the obligations of this Agreement, to the extent the disclosure is required by a valid order of a court or other governmental body having jurisdiction, provided that the receiving party provides the other party with reasonable prior written notice of the disclosure and makes a reasonable effort to obtain, or to assist the other party in obtaining, a protective order preventing or limiting such disclosure.

4. Each party recognizes and agrees that nothing contained in this Agreement grants any property rights, by license or otherwise, to any Confidential Information of the other party, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on the Confidential Information. Neither party will make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information of the other party.

5. Neither party will reproduce Confidential Information of the other party in any form except as required to evaluate or pursue a business relationship between the parties. Any reproduction by a party of any Confidential Information of the other party will remain the property of the disclosing party and will contain any and all confidential or proprietary notices or legends which appear on the original, unless otherwise authorized in writing by the other party.

6. This Agreement will terminate three years after the date of signing, or may be terminated by either party at any time upon thirty days written notice. Each party’s obligations set forth in Section 2 will survive for five (5) years after termination of the Agreement and will be binding upon that party’s heirs, successors and assigns. Upon termination or expiration of the Agreement, or upon written request of the other party, each party shall promptly return to the other all Confidential Information of the other party.

7. This Agreement will be governed by the laws of Colorado without regard for its conflicts of law principles that would require application of the laws of a different state. This Agreement may not be amended except by a writing signed by both parties. Each party acknowledges that its breach of the Agreement may cause irreparable damage to the other party and agrees that the other party is entitled to seek injunctive relief under this Agreement, as well as any further relief that may be granted by a court of competent jurisdiction. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, this unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole and in such event, this provision will be interpreted so as to best accomplish the objectives of the unenforceable or invalid provision within the limits of applicable law.

8. Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party, except that a party may assign the Agreement without consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets.

By: By:

Printed Name: Printed Name:

Date: Date: