

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (this “Agreement”) is made and entered into effective as of the _____ day of _____, 20__, by and between DRB Systems, LLC (“DRB”), an Ohio limited liability company, having an address of 3245 Pickle Road, Akron, Ohio 44312 and _____ (the “Company”), having an address of _____, under the following terms and conditions:

1. NATURE AND PURPOSE.

DRB and the Company (each hereinafter referred to as a “Party” and collectively referred to as the “Parties”) desire to engage in discussions or other communications regarding certain potential business arrangements and/or contractual relationships which may involve the disclosure of financial, proprietary, competitively sensitive, and/or market sensitive information, and/or contain trade secrets. The purpose of this Agreement is to define the Parties’ rights and obligations with respect to such information. This Agreement does not obligate either Party to disclose any information to the other or to enter into any other agreement or arrangement, nor shall it be construed as granting any rights by license or otherwise in any such information including, but not limited to, designs, software or inventions of either Party. Notwithstanding the disclosure of any such information, each Party shall retain title and all intellectual property and proprietary rights in its disclosed information. For purposes of this Agreement, the term “Affiliate” shall mean all entities now or hereafter controlling, controlled by, or under common control with, directly or indirectly, a party to this Agreement.

2. CONFIDENTIAL INFORMATION.

Either Party (the “Discloser”), may at its option, make available to the other Party (the “Recipient”) confidential information and related materials (whether written or oral) including, without limitation, financial, proprietary, competitively sensitive, and market sensitive information, as well as trade secrets, know-how, design documents, present and future technology, product development plans, price lists, lists of and information about suppliers, dealers, customers, potential customers, and associated statistical and financial information, specifications and uses of products and services, product research, sales, marketing and strategic plans, and any other information that is deemed by the Discloser as confidential (collectively, “Confidential Information”). Confidential Information shall not include any information which (a) is contained in a printed and publicly disclosed publication prior to the date of this Agreement; (b) is or becomes publicly known through no wrongful act or failure to act on the part of the Recipient; (c) is known or becomes known by the Recipient without any proprietary restrictions from a source other than the Discloser; (d) is independently developed by the Recipient without reference to the Confidential Information disclosed by the Discloser; or (e) is required to be disclosed by the Recipient to comply with applicable laws or regulations, or judicial or governmental order, provided that the Recipient, to the extent that it is legally and practically permitted to do so, provides ten (10) days prior written notice of such disclosure to the Discloser to afford the Discloser the opportunity to seek a protective order relating to such disclosure.

3. DEGREE OF CARE.

The Recipient agrees to receive and maintain Confidential Information in strict confidence and to safeguard the Confidential Information with the same degree of care as is used by the Recipient to protect its own confidential information, but in no event less than reasonable care. The Recipient agrees further not to use Confidential Information received from the Discloser for a purpose other than as expressly set forth in this Agreement, or to disclose such information to third parties without the written consent of an authorized representative of the Discloser.

4. DISCLOSURE TO REPRESENTATIVES.

The Recipient further agrees to disclose the Confidential Information only to its directors, officers, managers, members, employees, representatives, attorneys, accountants, financial advisors, consultants, and agents or the directors, officers, managers, members, employees, representatives, attorneys, accountants, financial advisors, consultants, and agents of Recipient's Affiliates ("Representatives") who have a need to have access to and knowledge of the Confidential Information solely for the purposes authorized hereunder and who are subject to confidentiality obligations to Recipient that are no less restrictive than those imposed herein. The Recipient shall be responsible for ensuring that all persons to whom Confidential Information is disclosed under this Agreement shall keep such information confidential and shall not disclose or divulge the same to any unauthorized person. Recipient shall be liable to Discloser for any breach of this Agreement by such Representatives or any act of such Representatives that would have constituted a breach had they signed this Agreement.


5. LIMITATION ON USE.

The Recipient shall use such Confidential Information only in connection with the evaluation and/or furtherance of a potential business relationship between the Parties, and the Recipient shall make no other use or disclosure, in whole or in part, of any Confidential Information. Furthermore, Recipient shall not (a) remove any copyright notice, trademark notice, and/or other proprietary legend or indication of confidentiality set forth on or contained in any of the Confidential Information; or (b) disassemble, decompile, or otherwise attempt to reverse engineer the design and function of any of the Confidential Information, nor shall it develop, manufacture, produce, and/or distribute any product(s) derived from or which otherwise use any of the Confidential Information, without entering into a separate license agreement with the Discloser. Nothing in this Agreement shall restrict the Discloser from using, disclosing, or disseminating its own Confidential Information in any way.

6. FURTHER RIGHTS AND OBLIGATIONS.

Except for the obligations of confidentiality and restrictions on use contained herein, no obligation of any kind is assumed or implied against either Party by virtue of the disclosure of Confidential Information contemplated by this Agreement, or by the meetings and conversations between the Parties with respect to the potential business arrangements and/or contractual relationships between the Parties.

7. NO WARRANTY.



The Recipient acknowledges that neither the Discloser nor any of its Representatives makes any representation as to the accuracy or completeness of such Confidential Information and that neither the Discloser nor any of its Representatives shall have any liability to the Recipient as a result of its reliance on or use of such Confidential Information. CONFIDENTIAL INFORMATION IS PROVIDED “AS IS” WITH ALL FAULTS. IN NO EVENT SHALL THE DISCLOSER BE LIABLE FOR THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL INFORMATION. DISCLOSER HEREBY DISCLAIMS ANY AND ALL WARRANTIES INCLUDING WITHOUT LIMITATION WARRANTIES REGARDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSES AND INFRINGEMENT. None of the Confidential Information disclosed by the Parties constitutes any representation, warranty, assurance, guarantee or inducement by either Party to the other with respect to the infringement of trademarks, patents, copyrights or any right of third persons.


8. RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION.

Promptly upon a written request by or on behalf of the Discloser, the Recipient agrees to destroy (and upon request, confirm all such destruction in writing) all Confidential Information in its possession or to which the Recipient has access, and will direct its Representatives to do the same, within ten (10) days after written request by the Discloser. The Recipient shall not make any additional copies of the Confidential Information without the prior written consent of the Discloser. Notwithstanding the foregoing, the Recipient and its Representatives shall (i) be permitted to retain a copy of the Confidential Information to the extent required to comply with applicable law or regulatory authority or written and established and/or bona fide internal document retention policies and (ii) not be required to destroy, delete, or modify any backup tapes or other media pursuant to automated archival processes in our ordinary course of business, provided in each case (i) and (ii) herein, any such Confidential Information retained shall (a) remain subject to the confidentiality obligations of this Agreement for so long as such Confidential Information is retained, which may exceed the term of this Agreement and (b) not be accessed, used or disclosed by the Recipient, other than to the extent required by such law or document retention policy.

9. LEGAL ACTION REQUIRING DISCLOSURE; LIMITATION OF LIABILITY.

The Recipient may disclose Confidential Information **to the extent** requested or required by any law, regulation, or legal, regulatory, governmental, administrative or judicial process or proceeding, but Recipient will provide immediate written notice (to the extent legally permissible and if circumstances permit) to the Discloser prior to disclosing any Confidential Information and cooperate with any attempt by the Discloser (at the Discloser’s sole cost and expense) to obtain confidential treatment thereof. A disclosure pursuant to the foregoing is herein referred to as a “Required Disclosure.” Except in connection with a failure to discharge responsibilities set forth in this Section 9, neither Party shall be liable for any disclosures pursuant to government regulations or for inadvertent disclosure where the appropriate degree of care has been exercised, provided that upon discovery of such inadvertent disclosure or use, it shall promptly notify the Discloser and take all reasonable steps to prevent any further inadvertent disclosure or use.

10. INJUNCTIVE RELIEF.



The Parties acknowledge and agree that money damages would not be a sufficient remedy for any breach of this Agreement and that, as a remedy for any such breach, the **Discloser** shall be entitled to specific performance, injunctive, and/or other equitable relief. Such remedies shall not be deemed to be the exclusive remedies for **any** breach of this Agreement, but shall be in addition all other remedies available at law or equity. In addition to the Discloser's other rights hereunder, the Discloser retains all rights and remedies the Discloser may have under applicable law. In the event of litigation in relation to this Agreement, the non-prevailing Party shall reimburse the prevailing Party for all reasonable costs and expenses (including reasonable attorneys' fees) associated with the litigation upon receipt of a final judgment from a court of competent jurisdiction.

11. ENTIRE AGREEMENT.

Neither this Agreement, nor the disclosure of Confidential Information under this Agreement, nor the ongoing discussions and correspondence between the Parties, shall constitute or imply a commitment or binding obligation, other than the obligation of confidentiality stated herein, between the Parties, their Representatives, or their respective Affiliates, if any. The Parties acknowledge and agree that each Party reserves the right, in its sole and absolute discretion, to reject any and all proposals and to terminate discussions hereunder at any time subject to the provisions set forth herein. Except for the obligations of confidentiality and non-use set forth herein, neither Party shall be restricted in any of its activities whatsoever by virtue of this Agreement. If, in the future, the Parties elect to enter into a binding commitment, such commitment shall be explicitly stated in a separate written agreement executed by both Parties ("Definitive Agreement"), and the Parties hereby affirm that they do not intend their discussions, correspondence, and other activities to be construed as forming a contract or any other transaction between them without execution of such separate written agreement. Without limitation of the generality of the foregoing, for purposes of this Agreement, a Definitive Agreement does not include a proposal, a negotiated term sheet, an executed letter of intent or any other preliminary written agreement or offer (whether or not signed by either of the Parties), unless specifically stated in writing to be a definitive agreement and executed by both Parties. Unless otherwise expressly stated in writing, any prior or future proposals or offers made in the course of the Parties' discussions are implicitly subject to all necessary management and government approvals and may be withdrawn by either party for any reason or for no reason at any time. This Agreement represents the entire understanding and agreement of the Parties and supersedes all prior communications, agreements and understandings, either written or oral, between the Parties relating to the subject matter hereof.

12. VALIDITY.

In case any one or more of the provisions (or part thereof) contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, such provision (or part thereof) shall not affect any of the other provisions hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision (or part thereof) had never been contained herein.

13. CHOICE OF LAW.

This Agreement and all matters arising from or relating to this Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to the conflict of law principles



thereof. Any action or suit related to this agreement shall be brought in the United States District Court, Northern District of Ohio, sitting in Akron, Ohio, or in the Common Pleas Court located in Summit County, Ohio.

14. MODIFICATION AND WAIVER.

The Parties agree and acknowledge that this Agreement cannot be amended or terminated, and no provision may be waived or modified, without the written consent of both Parties.

15. TERM.

This Agreement shall continue for a period of one (1) year from the effective date set forth above. The obligations imposed by this Agreement shall expire two (2) years from the date of last disclosure under this Agreement.

16. ASSIGNMENT.

Neither this Agreement nor any right hereunder, shall be assignable by either Party without the prior written consent of the other Party, and any purported assignment without such consent shall be void.

17. BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of the Parties' successors in interest.

Intending to be bound hereby, the Parties have executed this Mutual Non-Disclosure Agreement effective as of the date first written above.

DRB SYSTEMS, LLC

THE COMPANY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____