

CONFIDENTIALITY AGREEMENT
[Form – Mutual Transaction]

This **CONFIDENTIALITY AGREEMENT** is made and entered into as of the ___ of _____, 200__ by and between **3RDi Product Development, Inc. a North Carolina Corporation** and _____, a _____ corporation, at times referred to collectively herein as the **"Parties"** or each individually as a **"Party"**.

WITNESSETH:

Whereas, the Parties are considering engaging in a business transaction with each other (the **"Transaction"**); and

Whereas, to facilitate the Parties' consideration and evaluation of the Transaction, each party (a **"Discloser"**) is willing to disclose to the other party (a **"Disclosee"**) certain non-public, confidential or proprietary information (the **"Information"**, as defined in Section 1.1 below), and Disclosee is willing to receive such information and material, all in accordance with the terms and conditions of this Agreement; and

Now, therefore, in consideration of the Parties' consideration and evaluation of the Transaction, of the premises, covenants and agreements set forth herein, and of other good and valuable consideration, the receipt and legal sufficiency of which the Parties hereby acknowledge, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Definition of Information.

1.1 Definition. As used in this Agreement, the term "Information" shall include, in respect of the Discloser, subject to the exclusions described in Section 1.2 below, all information relating to the Discloser or to any aspect of the Discloser's business that the Discloser discloses to the other Party or that the other Party otherwise learns from the Discloser. Subject to Section 1.2 below, the Information shall include, but is not limited to: (a) all documents, manuals, records, files, memoranda, reports and other sources of information of whatever kind regarding the Discloser or its business and all methods, processes, techniques, formulae, algorithms, research, know-how, trade secrets, computer programming techniques and source and object codes, specifications, diagrams, blueprints, component selections, applications and combinations, equipment modifications, design features, custom lists, pricing lists and policies and other corporate, business, marketing and technical information, methods and plans; (b) any information marked as confidential or otherwise represented by the Discloser as confidential either before or within a reasonable time after its disclosure (the disclosing party shall clearly identify confidential Information); (c) analyses, compilations, studies and other documents prepared by the Disclosee or its officers, directors, agents, employees or representatives (including without limitation attorneys, accountants and financial advisors) which contain or otherwise reflect the Discloser's Information or the Disclosee's review thereof or interest therein; and (d) the existence of this Agreement or the Transaction or the fact that discussions or negotiations are taking place in connection therewith and any proposed terms, conditions or other information relating to the Transaction. Discloser will not have any obligation to specifically identify any information as to which the protection of this Agreement extends by any notice or other action.

1.2 Exclusions. Notwithstanding anything herein to the contrary, the term "Information" shall not include, in respect of either Discloser and as to the Disclosee, any: (a) information which is or becomes generally available to the public other than as a result of a disclosure by the Disclosee; (b) information which becomes available to the Disclosee on a non-confidential basis from a source which is not prohibited from disclosing such information to the

Disclosee by a legal, contractual or fiduciary obligation to the Disclosor; (c) information which the Disclosee develops independently of any disclosure by the Disclosor; or (d) information which was in the Disclosee's possession or known to the Disclosee prior to its receipt of such information from the Disclosor.

2. Disclosure and Use of Information. Each Party agrees to keep secret and to treat with confidentiality the other Party's Information and not to disclose any of any other Party's Information to any third party whatsoever or to use any of any other Party's Information for any purpose whatsoever other than in connection with its consideration and evaluation of the Transaction. Each Party agrees to limit the dissemination of the other Party's Information to such persons within the Party receiving such Information who need to know such Information for the purposes of evaluating the Transaction, are informed of the confidential nature of the Information, and agree to be bound by the terms and conditions of this Agreement. Each Party shall be responsible for any and all breaches of this Agreement by such Party's officers, directors, agents, employees and representatives. Disclosee will not be liable for disclosure of Information of the Disclosor pursuant to law or the order, requirement or request of any court or government authority, provided Disclosor is notified in writing prior to such disclosure and is given the reasonable opportunity to defend. Disclosee will take reasonable steps in any such disclosure to have the court or governmental authority protect the confidentiality of all information so disclosed. Any such disclosure by the Disclosee will, in no way, be deemed to change, alter or diminish the confidential and proprietary status of such Information.

3. Reproduction of Information. Neither Party shall at any time copy or reproduce any of the other Party's Information without such other Party's prior written consent, except as required to perform as required under contract.

4. Return of Information. Each Party shall keep records of the tangible items of Information furnished to it by the other Party and shall destroy or return all copies of all such tangible items of Information to the other Party immediately upon such other Party's request or upon cessation of the Parties' consideration and evaluation of the Transaction and provide a notarized written statement to Disclosor certifying that all such documents have been so returned or destroyed.

5. Disclaimers. ALL INFORMATION IS PROVIDED BY THE DISCLOSING PARTY "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS, IMPLIED, OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES REGARDING ITS ACCURACY, COMPLETENESS, PERFORMANCE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR ITS MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. No License. All Confidential Information remains the exclusive property of Disclosor and no right or license under any patent application, patent or other proprietary right is granted hereunder by implication or otherwise and no commercial obligation on the part of either party is intended or undertaken.

7. Miscellaneous.

7.1 Term. Each Party's obligations hereunder shall continue as to each item of the other Party's Information until such item of Information loses its status as "Information" by falling into any of the exclusions therefrom described in Section 1.2 above in respect of such Party; provided, however, that if the foregoing provision is found by a court of competent jurisdiction to be unenforceable, then each Party's obligations hereunder shall continue as to each item of the other Party's Information for three (3) years after the date of such item's disclosure by such other Party.

7.2 Remedies. Each Party agrees that the other Party would be damaged irreparably by such Party's failure to perform its obligations to such other Party hereunder;

accordingly, each Party shall be entitled to enforce this Agreement by seeking injunctive and other available relief, including, but not limited to, specific performance. This right shall be in addition to any other remedy, equitable or otherwise, which such Party may have, including without limitation any award of incidental, consequential, compensatory or other damages.

7.3 Indemnification. Each Party agrees to indemnify and to hold harmless the other Party against and from any and all costs, expenses, losses or damages arising out of any breach of this Agreement by such Party or wrongful disclosure of any Information by any of such Party's officers, directors, agents, employees or representatives. This duty of indemnity shall extend to all costs and expenses including reasonable attorney's fees, incurred by any Party so indemnified in connection with enforcing its rights hereunder.

7.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of North Carolina.

7.5 Amendments. Neither this Agreement nor any of the terms or provisions hereof may be amended, modified or supplemented except by a written instrument signed by both of the Parties.

7.6 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and permitted assigns. Neither this Agreement nor any of either Party's rights, interests or obligations hereunder may be assigned or otherwise transferred by either Party without the prior written consent of the other Party.

7.7 Severability. The invalidity of any provision of this Agreement, as determined by a court competent jurisdiction, shall in no way affect the validity of any other provision hereof.

7.8 Waiver. No waiver by either Party of any breach of any provision of this Agreement shall constitute a waiver of any other or subsequent breach.

In Witness Whereof, the Parties, by the authority duly given, have executed this **Confidentiality Agreement** as of the day and year first above written.

By: Michael M. Askew
Name : Michael Askew
Title : VP Product Development
Company : 3RDi Product Development, Inc.

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