

## CONFIDENTIAL NON-DISCLOSURE AGREEMENT

This AGREEMENT is effective \_\_\_\_\_, between Vision Research, Inc. ("VISION RESEARCH"), a Delaware corporation with a place of business located at 100 Dey Rd. Wayne NJ 07470 and [ \_\_\_\_\_ ] (the "Company") a [ \_\_\_\_\_ ] corporation with a place of business located at [ \_\_\_\_\_ ].

WHEREAS, VISION RESEARCH and the Company are presently engaged in discussions with respect to allowing the Company access to the Developer Zone on Vision Research's website (the "Proposed Transaction"); and

WHEREAS, in connection with these discussions, VISION RESEARCH shall disclose to the Company, orally, in writing, by inspection or otherwise, Confidential Information in the Developer Zone including but not limited to the Software Development Kit; and

WHEREAS, the parties desire to formally set forth their understanding and agreement with respect to the Company's treatment of the Confidential Information and have done so in the provisions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

1. "Confidential Information" is defined as all knowledge, data, statistics, business plans, records, trade secrets, business secrets, operational methods, customer lists, concepts, designs, processes, ideas, policies and other business, financial, technical or proprietary information, in whatever form or medium (for e.g., electronic, hard copy or graphic) which is disclosed by VISION RESEARCH, its officers, employees, contractors, agents, consultants, or representatives to the Company or its employees, contractors, agents, consultants or representatives (collectively, "Employees"). Information considered confidential or proprietary to VISION RESEARCH need not be marked "Confidential" or "Proprietary" to be Confidential Information for purposes of this Agreement.

2. Confidential Information shall not include information which:

- a. Is or becomes public knowledge through no wrongful act on the part of the Company;
- b. Is already known to the Company at the time of disclosure and that the Company can demonstrate evidence of prior knowledge;
- c. Is received by the Company on a non-confidential basis from a source other than VISION RESEARCH or any of its Employees, provided that such source is not known by the Company to be bound by a

confidentiality agreement with VISION RESEARCH or otherwise prohibited from disclosing the Confidential Information.

- d. Is explicitly approved for release by written authorization of VISION RESEARCH; or
- e. Is required by law, regulation, rule, act or order of any governmental authority or agency to be disclosed by the Company; provided, however, that the Company gives VISION RESEARCH sufficient advance written notice to permit it to seek a protective order or other similar order with respect to such Confidential Information and thereafter discloses only the minimum Confidential Information required to be disclosed in order to comply.

3. The Company shall retain any Confidential Information in strictest confidence and shall not use, exploit, disclose or permit the use, exploitation or disclosure of any Confidential Information obtained from VISION RESEARCH, except to persons or entities directly involved in the Proposed Transaction and then, only to the extent necessary in connection with the Proposed Transaction, or as otherwise required by law. The Company shall inform any of its Employees to whom Confidential Information is disclosed of the existence of this Agreement and of its provisions, and that the Confidential Information has been shared with the Company in strict confidence. The Company also shall take all reasonable measures to ensure that its Employees keep any Confidential Information strictly confidential and not use or exploit any of the information in any manner without the written consent of VISION RESEARCH.

4. In addition, the Company shall not, and shall direct its Employees not to disclose to any person or persons the fact that discussions or negotiations are taking place concerning the Proposed Transaction, or any of the terms, conditions or other facts with respect to the Proposed Transaction, including the status thereof.

5. The Company acknowledges that VISION RESEARCH shall be irreparably damaged in the event that any of the terms of this Agreement are violated and agrees that such terms shall be enforceable through any available equitable remedies, including, without limitation, issuance of an injunction restraining the unauthorized copying, duplication, use or disclosure of any Confidential Information furnished to the Company or any of its Employees. Such enforcement shall be in addition to any other rights or remedies available to VISION RESEARCH under applicable law and all remedies shall be cumulative and not exclusive of any other remedy.

6. Upon completion or termination of this Agreement, or at any time upon request, all records, whether written, recorded or otherwise, of the Confidential Information, whether such records were made by either party, shall be returned to VISION RESEARCH, together with any and all copies of said records.

7. Neither VISION RESEARCH nor any of its Employees makes any representations, express or implied, as to the accuracy or completeness of any

Confidential Information or other information provided to the Company, except as may be specifically provided in a formal written agreement. VISION RESEARCH shall not be liable to the Company for any cause of action in any way based on or resulting from its use of the Confidential Information, except as may be specifically provided in a formal written agreement. VISION RESEARCH assumes no duty or obligation to update any Confidential Information or other information or to correct any inaccuracies in it which may become apparent.

8. Neither party, by execution of this Agreement, shall be committed to the consummation of the Proposed Transaction until such time as a written agreement is reached by and between the parties.

9. Nothing in this Agreement shall be construed as granting or transferring any rights in, or license to use, any VISION RESEARCH trademark, patent, copyright, trade secret or other intellectual property.

10. The Company shall not remove or export from the United States or re-export from any location any Confidential Information or any product derived from or incorporating any Confidential Information, except in compliance with, and with all licenses and approvals required under all applicable U.S. and foreign export laws and regulations, including, without limitation, those of the U.S. Department of Commerce, the U.S. Department of State and the U.S. Department of Treasury.

11. This Agreement shall terminate five (5) years from the date hereof. Either party may terminate this Confidentiality Agreement prior to that time by sending written notice of its intent to do so to the other party at least thirty (30) days prior to such termination. Notwithstanding any such termination, all rights and obligations hereunder shall survive with respect to Confidential Information disclosed prior to such termination.

12. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

13. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to any conflict of laws principle. Any action or claim brought by either party under this Agreement shall be brought in the appropriate state or federal court of the Commonwealth of Pennsylvania.

14. This Agreement constitutes the entire understanding between VISION RESEARCH and the Company concerning the subject matters hereof. It merges and supersedes all prior and contemporaneous discussions, representations and writings concerning the subject matter hereof, whether oral or written. No modification or waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by both parties hereto.

15. The invalidity or unenforceability of any term or provision contained in this Agreement shall not void or impair this Agreement's remaining provisions which shall remain in full force and effect as if no such invalid or unenforceable provision existed.

16. It is further understood that the failure or delay by VISION RESEARCH in exercising any right, power or privilege hereunder shall not operate as a waiver thereof, preclude any other or further exercise thereof, or the exercise of any right power or privilege hereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

[THE COMPANY]

VISION RESEARCH, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_