



## MUTUAL CONFIDENTIALITY AGREEMENT

This Mutual Confidentiality Agreement (“Agreement”) is entered into as of [DATE], by and between **MERRILL**, on behalf of itself and its wholly-owned subsidiaries (collectively, "MERRILL"), 400 Florence Street, Saginaw, Michigan 48602 and [**LEGAL NAME OF OTHER PARTY**] (“[NAME]”), [ADDRESS].

[NAME] and MERRILL are considering entering into a business relationship [DESCRIPTION OF RELATIONSHIP] (the “Business Relationship”).

[NAME] and MERRILL desire to share certain confidential information that is necessary to explore and carry out the Business Relationship, and desire that such information remain confidential.

Intending to be legally bound, [Name] and MERRILL agree as follows:

1. The term “Confidential Information” means any and all business, technical, or other information or material which is of a confidential or proprietary nature, including, but not limited to, technical information, know-how, trade secrets, inventions, agreements, business plans, goals, objectives, costs, sales data, projections, systems, pricing, quotations, requests for proposals, proposals, records, reports, manufacturing processes, formulations, designs, products, product design information, unpublished copyrightable material, procedures, supplies, methodologies, operating guidelines, and customer and product databases. Confidential Information may be disclosed (a) in written or other tangible form and marked “Confidential or with words of similar import,(b) orally or visually and identified as confidential or proprietary information at the time of disclosure, or (c) under circumstances by which the receiving party should reasonably understand that such information is to be treated as confidential, whether or not marked “Confidential” or otherwise, and all such forms of Confidential Information are protected by this Agreement. [NAME] and MERRILL agree that any and all Confidential Information delivered by one to the other shall be kept in the strictest confidence.
2. Notwithstanding the foregoing, the term "Confidential Information" does not include information which (a) becomes publicly known through no fault of the recipient, (b) was already known to the recipient prior to disclosure by the party to this Agreement, (c) is subsequently disclosed to the recipient by a third party who is not under any obligation of confidentiality to the disclosing party, or (d) is independently developed by the receiving party without use of or reference to information disclosed by or on behalf of the disclosing party.



3. The parties will engage in the mutual disclosure of Confidential Information for the sole purpose of (a) considering the potential Business Relationship, and/or (b) fulfilling the objectives of the Business Relationship (collectively, the "Purpose").
4. A party shall not, without the prior written consent of the disclosing party, disclose any Confidential Information nor use, copy, distribute or disseminate any Confidential Information for any purpose other than as required for the Purpose.
5. Each party agrees to minimize dispersion and duplication of the Confidential Information provided pursuant to this Agreement, making such Confidential Information available only to their respective personnel, agents, advisors and representatives who need to know such information ("Authorized Persons"). All Authorized Persons to whom Confidential Information is disclosed shall be informed of the obligations of this Agreement and instructed to maintain the Confidential Information in confidence. A party shall be fully responsible for Confidential Information provided to its Authorized Persons and shall be liable for any violation of the terms of this Agreement by any such Authorized Person as though such violation was committed directly by the party, regardless of whether or not such violation was sanctioned by or known to the party.
6. At any time upon the disclosing party's written request, the receiving party shall destroy or, upon the written request of disclosing party received prior to destruction, promptly return to disclosing party all Confidential Information in receiving party's possession or in the possession of any of its Authorized Persons, and shall not retain any copies or other reproductions, or extracts, thereof (except that any Confidential Information consisting of analyses, compilations, studies, or other documents prepared by receiving party or its Authorized Persons shall be destroyed and not returned). However, nothing in this Agreement shall require the alteration, modification, deletion or destruction of backup tapes, nor restrict receiving party from retaining a single copy of the Confidential Information for archival and dispute resolution purposes and to comply with any applicable law, rule, regulation or legal process, provided that the materials retained under this sentence shall remain subject to the obligations of confidentiality under this Agreement until such time as the materials shall be returned, destroyed or are no longer subject to the confidentiality obligations under this Agreement.
7. If either party is given or prepares or produces any drawings, samples, programs, products, service methods or other tangible or intangible property according to the other party's Confidential Information or incorporating any of the other party's Confidential Information, the receiving party will not show or display to any party other than Authorized Persons, nor in any manner publicly use, or give distribute, transfer or sell to any third party any of these items without first obtaining the written permission of the disclosing party.



8. All Confidential Information delivered by a party to the other party hereunder and all related copyrights, trademarks, patents and other intellectual property rights are and shall remain the exclusive property of the delivering party. This Agreement does not explicitly or implicitly transfer or grant to the receiving party any intellectual property rights, any rights under any intellectual property right, nor any right to use the Confidential Information other than for the purposes set forth herein.
9. Except as may be set forth in the definitive agreements for the Business Relationship, [Name] and MERRILL do not warrant the accuracy, reliability, or completeness of the Confidential Information they are disclosing hereunder, nor do they assume any liability for loss or damage arising from the receiving party's use of or reliance upon any of disclosing party's Confidential Information, and [Name] and MERRILL are disclosing all Confidential Information to one another "as is."
10. [Name] and MERRILL agree that unless and until a definitive written agreement concerning the Business Relationship has been executed and delivered, neither [Name] nor MERRILL will be under any legal obligation of any kind whatsoever with respect to any Business Relationship by virtue of this or any other written or oral expression by any representative of either party, except with respect to the matters specifically agreed to in this Agreement.
11. If a party is requested or becomes legally compelled to make any disclosure which is prohibited by this Agreement, such party shall give the other party prompt notice (if legally permitted) of such request or compulsion so that the other party may seek an appropriate protective order or other appropriate remedy. If such protective order or other remedy is not obtained, or if and to the extent that the other party waives such prohibition, such party may make such disclosure if and to the extent that such party is legally compelled to make such disclosure or else be liable for contempt or suffer other legal penalty. If a party should be the subject of any suit or other legal or administrative proceeding in which, in the opinion of such party's counsel, such party's prosecution or defense in the proceeding would be materially prejudiced by its inability to make a disclosure which is otherwise prohibited by this Agreement, such party may make such disclosure to the extent necessary to effect such prosecution or defense, subject to the following conditions: such party shall give the other party prompt notice thereof and shall, to the extent feasible, seek an appropriate protective order and/or cooperate with disclosing party's efforts to obtain reliable assurance that confidential treatment will be accorded to any Confidential Information so disclosed.
12. Each party acknowledges that it will be difficult to measure accurately the damages resulting from any breach by a party of the covenants and restrictions set forth herein, that the injury to the non-breaching party from any such breach would be incalculable and irremediable and damages would not, therefore, in and of themselves, be an adequate remedy. If either party or its Authorized Persons shall violate or threaten to violate the restrictions contained herein, the other party herein



shall be entitled to injunctions, both preliminary and final, enjoining and restraining such violation or threatened violation, and such remedies shall be in addition to any and all other remedies which may be available at law or in equity.

13. The term of this Agreement during which Confidential Information may be exchanged shall be for a period of three (3) years from the effective date hereof, which shall commence on the date set forth above (the "Term"). The Parties agree that their obligations to protect *the Confidential Information* shall remain in effect for a period of three (3) years after the termination or expiration of this Agreement.
14. In the event that either party is required to retain the services of an attorney to enforce this Agreement or to defend against any cause of action, claim, or counterclaim brought by the other party pursuant to this Agreement, then the prevailing party shall be entitled to recover the actual attorneys' fees and costs which it has incurred, in addition to other remedies to which it is entitled under applicable law, unless the adjudicator specifically finds that neither party is the prevailing party.
15. If any provision in this Agreement shall be determined to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the validity and enforceability of the remaining valid and enforceable provisions hereof. In such event, the parties agree that such invalid or unenforceable provision shall be modified to the extent necessary in order that such provision shall be legally enforceable to the fullest extent permitted by applicable law. In the event such invalid or unenforceable provision cannot be so modified, then this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
16. This Agreement and the resolution of any disputes or claims arising out of or relating in any way to this Agreement shall be governed by, and construed in accordance with, as to all matters, including, validity, construction and effect, the laws of the State of Michigan, without reference to any choice of laws provisions. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the courts of the State of Michigan located in the County of Oakland, Michigan and the United States District Court for the Eastern District of Michigan for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby (and each party agrees not to commence any action, suit or proceeding relating thereto except in such courts). Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby, in the courts of the State of Michigan located in the County of Oakland, Michigan and the United States District Court for the Eastern District of Michigan and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.



17. To the extent that Confidential information is subject to U.S. export control laws and/or the regulations under 22 C.F.R § 120 et seq. of the International Traffic in Arms Regulations (“ITAR”) and 15 CFR § 730 et seq. of the Export Administration Regulations (“EAR”), the receiving party shall not violate any such laws and/or regulations and shall not, without limitation, disclose, transfer, or export such Confidential Information to third parties, including foreign persons or entities whether or not related to or affiliated with such party, and/or subcontract out any work and/or orders arising from the Business Relationship, without first receiving express written consent from the disclosing party. A party shall register with the Office of the Defense Trade controls if required by law. If a party does not comply with its obligations under this Section, such non-complying party shall indemnify, hold harmless, and defend the other party as to any violations that the non-complying party may cause under ITAR and EAR, including but not limited to the payment of civil and criminal penalties, all costs and expenses, and attorney’s fees.
18. This Agreement shall be binding upon the successors and assigns of the parties.
19. This Agreement constitutes the entire agreement between the parties in relation to the subject matter hereof and may not be modified, except in writing, signed by an authorized representative of each party. This Agreement may be executed in one or more counterparts, each of which shall be an original, with the same effect as if the signatures thereto were upon one instrument.

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

[NAME]

MERRILL

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

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

Its:

XXXXXXX

(Title)