

## MUTUAL NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT is dated [REDACTED]

### PARTIES

- (1) **MICROSCAN SYSTEMS INC.** whose registered office is at **700 SW 39<sup>TH</sup> ST., RENTON WA 98057** ("Microscan")
- (2) [REDACTED] whose registered office is at [REDACTED],

### BACKGROUND

Each party wishes to disclose to the other party Confidential Information in relation to the Purpose. Each party wishes to ensure that the other party maintains the confidentiality of its Confidential Information. In consideration of the benefits to the parties of the disclosure of the Confidential Information, the parties have agreed to comply with the following terms in connection with the use and disclosure of Confidential Information.

### AGREED TERMS

#### 1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions and rules of interpretation in this clause apply in this agreement:

**Confidential Information:** all information that would be regarded as confidential by a reasonable business person (however recorded, preserved or disclosed) disclosed by a party or its employees, officers, representatives or advisers (together, its Representatives) to the other party and that party's Representatives in the **three [3] year period** commencing on the date of this Agreement including but not limited to:

- (a) the fact that discussions and negotiations are taking place concerning the Purpose and the status of those discussions and negotiations;
- (b) the existence and terms of this agreement;
- (c) any information relating to:
  - (i) the business, affairs, customers, clients, suppliers, plans, intentions, or market opportunities of the Disclosing Party or of the Disclosing Party's corporate group; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the Disclosing Party or of the Disclosing Party's corporate group; and
- (d) any information or analysis derived from Confidential Information;

but not including any information that:

- (e) is or becomes generally available to the public other than as a result of its disclosure by the Recipient or its Representatives in breach of this agreement or of any other undertaking of confidentiality addressed to the party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known shall nevertheless be treated as Confidential Information); or
- (f) was available to the Recipient on a non-confidential basis prior to disclosure by the Disclosing Party; or
- (g) was, is or becomes available to the Recipient on a non-confidential basis from a person who, to the Recipient's knowledge, is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from disclosing the information to the Recipient; or
- (h) was lawfully in the possession of the Recipient before the information was disclosed to it by the Disclosing Party; or
- (i) the parties agree in writing is not confidential or may be disclosed; or

- (j) is developed by or for the Recipient independently of the information disclosed by the Disclosing Party; or
- (k) is trivial, obvious or useless.

**Disclosing Party:** a party to this agreement which discloses or makes available directly or indirectly Confidential Information.

**Purpose:**


**Recipient:** a party to this agreement which receives or obtains directly or indirectly Confidential Information.

**Representative:** employees, agents and other representatives of the Recipient and its affiliates.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 Any obligation in this agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
- 1.6 Reference to a "party" is to a party to this agreement and reference to "the parties" shall be construed accordingly.

## **2. OBLIGATIONS OF CONFIDENTIALITY**

- 2.1 The Recipient shall keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall, and shall procure that its Representatives shall:
  - (a) not use or exploit the Confidential Information in any way except for the Purpose;
  - (b) not disclose or make available the Confidential Information in whole or in part to any third party, except as expressly permitted by this agreement;
  - (c) not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose; and
  - (d) apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorised disclosure, copying or use;
- 2.2 The Recipient may not disclose the Disclosing Party's Confidential Information to those of its Representatives save to those who need to know this Confidential Information for the Purpose and provided that:
  - (a) it informs these Representatives of the confidential nature of the Confidential Information before disclosure and obtains from its Representatives enforceable undertakings to keep the Confidential Information confidential in terms at least as extensive and binding upon the Representatives as the terms of this agreement are upon the parties; and
  - (b) at all times, it is responsible for these Representatives' compliance with the obligations set out in this agreement.
- 2.3 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority (including, without limitation, any relevant securities exchanges), or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 2.3, it takes into account the reasonable requests of the other party in relation to the content of this disclosure.

- 2.4 The Recipient shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Disclosing party from time to time) to safeguard the Confidential Information from unauthorised access or use.
- 2.5 No party shall make, or permit any person to make, any public announcement concerning this agreement, the Purpose or its prospective interest in the Purpose without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed) except as required by law or any governmental or regulatory authority (including, without limitation, any relevant securities exchange) or by any court or other authority of competent jurisdiction. Neither party shall make use of the other party's name or any information acquired through its dealings with the other party for publicity or marketing purposes without the prior written consent of the other party.

### **3. RETURN OF INFORMATION**

- 3.1 At the request of the Disclosing Party, the Recipient shall:
- (a) destroy or return to the Disclosing Party all documents and materials (and any copies) containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information;
  - (b) erase all the Disclosing Party's Confidential Information from its computer systems or which is stored in electronic form (as far as reasonably practicable); and
  - (c) certify in writing to the Disclosing Party that it has complied with the requirements of this clause, provided that a Recipient may retain documents and materials containing, reflecting, incorporating, or based on the Disclosing Party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Recipient to keep evidence that it has performed its obligations under this agreement. The provisions of this clause 3 shall continue to apply to any such documents and materials retained by the Recipient, subject to clause 6.1.
- 3.2 If the Recipient develops or uses a product or a process which, in the reasonable opinion of the Disclosing Party, might have involved the use of any of the Disclosing Party's Confidential Information, the Recipient shall, at the request of the Disclosing Party, supply to the Disclosing Party information reasonably necessary to establish that the Disclosing Party's Confidential Information has not been used or disclosed.

### **4. RESERVATION OF RIGHTS AND ACKNOWLEDGEMENT**

- 4.1 All Confidential Information shall remain the property of the Disclosing Party. Each party reserves all rights in its Confidential Information. No rights, including, but not limited to, intellectual property rights, in respect of a party's Confidential Information are granted to the other party and no obligations are imposed on the Disclosing Party other than those expressly stated in this agreement.
- 4.2 Except as expressly stated in this agreement, no party makes any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.
- 4.3 The disclosure of Confidential Information by the Disclosing Party shall not form any offer by, or representation or warranty on the part of, the Disclosing Party to enter into any further agreement in relation to the Purpose, or the development or supply of any product or service to which the Confidential Information relates.
- 4.4 The Recipient acknowledges that damages alone may not be an adequate remedy for the breach of any of the provisions of this agreement. Accordingly, without prejudice to any other rights and remedies it may have, the Disclosing Party shall be entitled to seek the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this agreement.
- 4.5 The Recipient shall be liable to the Disclosing Party for the actions or omissions of the Recipient's Representatives under this agreement, as if they were the actions or omissions of the Recipient.

**5. WARRANTY**

- 5.1 Each Disclosing Party warrants that it has the right to disclose its Confidential Information to the Recipient and to authorise the Recipient to use such Confidential Information for the Purpose.

**6. TERM AND TERMINATION**

- 6.1 If either party decides not to become, or continue to be involved in the Purpose with the other party it shall notify the other party in writing immediately. The obligations of each party shall, notwithstanding any earlier termination of negotiations or discussions between the parties in relation to the Purpose, continue for a period of **one [1] year** from the termination of this agreement provided that such obligations shall not terminate in respect of any Confidential Information retained by the Recipient under clause 3 which a reasonable business person involved in the Purpose would recognise retains significant commercial value for the Disclosing Party.
- 6.2 Termination of this agreement shall not affect any accrued rights or remedies to which either party is entitled.

**7. ENTIRE AGREEMENT AND VARIATION**

- 7.1 This agreement constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.
- 7.2 No variation of this agreement shall be effective unless it is in writing and signed by each of the parties (or their authorised representatives).

**8. NO WAIVER**

- 8.1 Failure to exercise, or any delay in exercising, any right or remedy provided under this agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict any further exercise of that or any other right or remedy.
- 8.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall preclude or restrict the further exercise of that or any other right or remedy.
- 8.3 No amendment or waiver of any of the provisions of this Agreement shall be effective unless made in writing and signed by all the parties to this Agreement.

**9. ASSIGNMENT**

Except as otherwise provided in this agreement, neither party may assign, sub-contract or deal in any way with, any of its rights or obligations under this agreement or any document referred to in it.

**10. NOTICES**

- 10.1 Any notice required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to each party required to receive the notice at its address as set out below:

- (a) MICROSCAN SYSTEMS INC.:

**<Contact Name>**, 700 SW 39<sup>TH</sup> ST., RENTON WA USA 98057

- (b) \_\_\_\_\_  
\_\_\_\_\_

or as otherwise specified by the relevant party by notice in writing to each other party.

10.2 Any notice shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or
- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the third Business Day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

10.3 A notice required to be given under this agreement shall not be validly given if sent by e-mail.

## 11. COUNTERPARTS

This agreement may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.

## 12. NO PARTNERSHIP

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

## 13. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under or in connection with it.

## 14. GOVERNING LAW AND JURISDICTION

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be construed and controlled by the laws of the State of Washington (except for its conflicts of laws principles), and both parties further consent to jurisdiction of the state and federal courts sitting in the State of Washington. In any action arising under this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

This agreement has been entered into on the date stated at the beginning of it.

Signed by \_\_\_\_\_  
for and on behalf of **MICROSCAN  
SYSTEMS INC.**

.....  
Director

Signed by \_\_\_\_\_  
for and on behalf of \_\_\_\_\_

.....  
Director