



**MUTUAL NON-DISCLOSURE AGREEMENT**

This Agreement is made and effective as of the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, between Optimax Systems, Inc., a New York Corporation, with its principal office located at 6367 Dean Parkway, Ontario, NY, United States America, hereafter referred to as Optimax and \_\_\_\_\_, a \_\_\_\_\_, with its principal office located at \_\_\_\_\_ hereafter referred to as *second party*.

WHEREAS, Optimax and *second party*, for their mutual benefit may engage in discussions involving drawings and quotes for program requirements and either party may exchange technical and other data of a proprietary nature, including but not limited to written descriptions, drawings, samples, compositions, computer software, visual demonstrations, and oral disclosures and other data, which, if disclosed in accordance with Section 4 herein, shall be considered "Proprietary and Confidential Data".

WHEREAS, the individual signing on behalf of the *second party* is \_\_\_ or \_\_\_ is not a U.S. citizen or a lawful permanent resident of the Unites States as defined by 8 U.S. C. 1101 (a)(20) and, if the *second party* is an entity such as a corporation, business association, limited liability company, trust or partnership, that such entity is an entity domiciled and formed under the laws of the United States.

In consideration of the mutual benefits above and the mutual covenants below, the parties wish to define their rights with respect to any Proprietary and Confidential Data exchanged and protect the proprietary features contained therein.

The parties agree as follows:

1. The parties exchange Proprietary and Confidential Data to complete discussions and contracts for the above stated purpose
2. The rights to such Proprietary and Confidential Data disclosed to each other pursuant to this Agreement are reserved to the disclosing party. The only use of the data will be for internal evaluation and design pertaining to the above. The Proprietary information will not be used by either party in their own business or in association with others without the written consent of the disclosing party. No Proprietary and Confidential Data will be disclosed unless expressly authorized to do so by the disclosing party.
3. Proprietary and Confidential Data received hereunder shall be protected from the date of receipt of the Proprietary and Confidential Data for two (2) years from the expiration of this agreement.



4. Proprietary and Confidential Data may be disclosed either orally or in writing. When disclosed in writing, the data will be conspicuously marked as proprietary. When disclosed orally, such disclosure will be designated as confidential in nature at the time of disclosure and reduced to a writing marked as confidential and delivered to the other party within thirty days after the initial disclosure has been made.
5. The Proprietary and Confidential Data remains the property of the disclosing party. It shall not be copied or distributed except for the internal evaluation and design activities noted above. Each party will take reasonable precautions to prevent disclosure of the other party's Proprietary and Confidential Data.
6. Proprietary and Confidential Data is not considered to be:
  - a. Information which becomes otherwise lawfully known,
  - b. Information that can be proven to have been developed independently by the receiving party,
  - c. Information within the public domain,
  - d. Information furnished to the government with unlimited rights,
  - e. Information disclosed with written approval,
  - f. Information which must be disclosed by judicial order
7. No license or conveyance of any rights to either party under any discoveries, inventions or patents is granted or implied by this agreement. No right for others to use this Proprietary and Confidential Data is granted.
8. The parties represent and warrant that no proprietary data delivered under this agreement shall be exported from the United States without first complying with all requirements of the International Traffic on Arms Regulations and the Export Administration Act, including the requirement for obtaining an export license, if applicable. The receiving party shall first obtain the written consent of the disclosing party prior to submitting the request for authority to export any such proprietary data. The disclosing party shall take all reasonable steps at the time of disclosure to identify any data subject to any export regulations.
9. Any U.S. Government classified information disclosed by one party to the other and identified as such shall be handled in accordance with the Department of Defense Industrial Security Manual for the Safeguarding Classified Information (DoD 5220.22-M) or the National Industrial Security Program Operating Manual (NISPOM), their supplements, and other applicable U.S. Government security regulations.
10. This agreement does not grant either party the right to make commitments for the other party without written consent.
11. The parties will destroy or return the Proprietary and Confidential Data to the disclosing party upon request of the Disclosing Party.
12. These obligations will be performed without charge to the other party. This agreement shall not be construed as an obligation to enter into a subcontract or contract or result in a claim for reimbursement for any cost from the other party.
13. This agreement shall become effective on the date shown above and shall expire five (5) years thereafter. The agreement can be terminated upon thirty days notice. However, the obligations for the Proprietary and Confidential Data, including the obligation to maintain the data as confidential for two (2) years from date of disclosure shall continue for the data which has already been disclosed under the agreement.
14. The receiving party acknowledges and agrees that due to the unique nature of the disclosing party's proprietary information, there may be no adequate remedy at law for any breach of its obligations hereunder, that any such breach will result in irreparable harm to the disclosing party, and, therefore, that upon any such breach or any threat thereof, the disclosing party shall be entitled to seek appropriate equitable relief in addition to remedies it might have at law. The receiving party shall notify the disclosing party in writing immediately upon the occurrence of any unauthorized release of proprietary information,



whether inadvertent or otherwise, and shall use reasonable efforts to prevent or limit any further dissemination of such information. However, in no event shall either party be liable hereunder or otherwise for incidental, special, consequential, indirect, punitive or multiple damages, interest or attorney's fees.

- 15. This agreement is governed by and shall be construed according to the laws of the State of New York unless preempted by the laws of the United States.
- 16. Any controversy or claim arising out of or relating to this agreement, or the breach thereof, shall be subject to the jurisdiction of the trial court of general jurisdiction of the State where the defendant resides.

In witness thereof, the parties have executed this agreement on the respective dates entered below.

Optimax Systems, Inc.

Company Name: \_\_\_\_\_

\_\_\_\_\_  
(name)

Authorized Rep: \_\_\_\_\_  
(typed name)

\_\_\_\_\_  
(position)

Authorized Rep: \_\_\_\_\_  
(position)

\_\_\_\_\_  
(signature)

Authorized Rep: \_\_\_\_\_  
(signature)

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

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