

DATADIRECT NETWORKS, INC.
MUTUAL NON-DISCLOSURE AGREEMENT

This NON-DISCLOSURE AGREEMENT (the "Agreement") is made as of ____ (the "Effective Date") by and between DataDirect Networks, Inc., a California corporation, with its principal place of business at 9351 Deering Avenue, Chatsworth, California 91311 USA together with its Affiliates ("DDN"), and _____, a _____, with its principal place of business at _____ ("Company"). "Affiliate" means an entity or entities controlling, controlled by, or under common control with a party to this Agreement.

DDN and Company agree as follows:

1. **Confidential Information.** DDN and Company desire to begin discussions regarding a business opportunity of mutual interest (the "Purpose") and anticipate exchanging, at their sole discretion, certain information, which the disclosing party deems confidential or proprietary to its business.

"Confidential Information" shall mean any technical or business information disclosed by one party (the "Discloser") to the other party (the "Recipient") that: (i) if disclosed in writing, is marked "confidential" or "proprietary" at or prior to the time of disclosure, (ii) if disclosed orally or visually, is identified as "confidential" or "proprietary" at the time of such disclosure, and is summarized in a writing sent by the Discloser to the Recipient within thirty (30) days after such disclosure; or (iii) that a reasonable person would understand to be confidential at the time of disclosure. Confidential Information shall also include (a) notes, records, and other materials based upon or made from the Confidential Information; (b) the fact of the existence of any Confidential Information; and (c) the fact of the occurrence of any meetings or communications between the parties that involve the exchange of Confidential Information. Confidential Information made available hereunder may include information of third parties, such as affiliates or suppliers, and the source of such Confidential Information shall not affect its treatment hereunder.

2. **Term and Termination.** This Agreement shall commence on the Effective Date and will remain in effect for a period of three (3) years from the date of the last disclosure of Confidential Information by either party, at which time it will terminate (the "Term"). Notwithstanding the foregoing, the obligations under this Agreement will survive for a period of five (5) years from termination. Nothing herein is intended to limit or abridge the protection of trade secrets under applicable trade secrets law, and trade secrets shall be maintained as such until they fall into the public domain through no fault of the Recipient.

3. **Restrictions on Disclosure and Use.** Each party agrees: (i) to maintain the other party's Confidential Information in strict confidence; (ii) not to disclose such Confidential Information to third parties; and (iii) to use the Confidential Information only during the Term, only in accordance with this Agreement, and only for the Purpose. Recipient may disclose Confidential Information to its employees, agents, and subcontractors who have a bona fide need to know such information, but only to the extent necessary to accomplish the Purpose, and who are parties to written agreements that protect the Confidential Information under terms at least as restrictive as those set forth herein. Recipient shall cause each such employee, agent, and subcontractor to abide by Recipient's obligations hereunder.

4. **Care.** Recipient shall use no less than the same degree of care in safeguarding the Confidential Information as it uses for its own confidential information of like importance, but no less than reasonable care. Upon discovery of any disclosure or misuse of the Confidential Information, Recipient shall notify Discloser and shall act to prevent any further disclosure or misuse, including enforcing obligations of parties to whom it has disclosed such Confidential Information.

5. **Exceptions.** Recipient's obligations of confidentiality and restrictions on use hereunder shall not apply to Confidential Information if, and then only to the extent that, it is: (a) known to Recipient before receipt from Discloser; (b) generally available to the public (or becomes so), unless due to the fault or negligence of Recipient; (c) received by Recipient from a third party without a duty of confidentiality, and Recipient is not aware that such third party is breaching a duty of confidentiality by disclosing such Confidential Information to Recipient; or (d) independently developed by or for Recipient without any use of such Confidential Information.

6. **Required Disclosures.** Recipient is permitted to disclose the Confidential Information as required by law provided, however, that Recipient shall, (a) where permitted by law, give Discloser written notice promptly upon receipt of a disclosure requirement and before the disclosure is made, (b) take reasonable actions and provide reasonable assistance to Discloser to secure confidential treatment of the Confidential Information at the cost of Recipient, and (c) disclose only such Confidential Information as is required by law.

7. **Copies.** Recipient shall make only such copies (including electronic copies) of the Confidential Information as are necessary to accomplish the Purpose. Any such copies shall reproduce all confidentiality markings included therein.

8. **Return.** All of Discloser's Confidential Information, and all copies (including electronic copies), excerpts, and embodiments containing or consisting of the Discloser's Confidential Information, shall be returned to Discloser immediately upon Discloser's request; provided, however, that the Recipient may at its option retain one (1) copy of such materials or documents for archival purposes only. Such retained copy shall remain subject to the confidentiality obligations of this Agreement in perpetuity. Upon written request of the Discloser, the Recipient shall certify in writing its compliance with this section.

9. **Rights Not Granted.** As between the parties, all Confidential Information, including but not limited to all intellectual property rights therein, shall remain the sole and exclusive property of Discloser. Except for the limited right to use the Confidential Information only for the Purpose, only during the Term, and only in accordance with

this Agreement, this Agreement does not grant to Recipient any license or right, express or implied, under any trademark, patent, copyright, mask work protection right, trade secret, or any other intellectual or industrial property right. In no event shall Recipient reverse engineer, decompile, disassemble, modify, or create other works from any software programs contained in the Confidential Information, unless expressly permitted in writing by the Discloser.

10. **No Warranties. All Confidential Information is provided "AS IS." Discloser makes no representations or warranties, express or implied, regarding any Confidential Information, including but not limited to those of completeness or fitness for any particular purpose.**

11. **Equitable Relief.** Recipient acknowledges that the use or disclosure of Confidential Information in contravention of the terms of this Agreement will cause irreparable harm and significant damages, the degree of which may be difficult to ascertain. Accordingly, Recipient agrees that Discloser will have the right to seek an immediate injunction against any breach or threatened breach of this Agreement, as well as the right to pursue any and all other remedies available at law or equity for such breach.

12. **Export.** Each party represents that it is not listed on a U.S. Government restricted party list for export control or trade sanctions purposes, including the Specially Designated Nationals list administered by the Office of Foreign Assets Control and the Entity List, Denied Persons List and Unverified List administered by the Bureau of Industry and Security, and is not 50% or more owned, in the aggregate, by one or more restricted parties. Any Confidential Information disclosed under this Agreement may be subject to U.S. export controls. Each party agrees that it shall not export, re-export, or transfer, directly or indirectly, any Confidential Information of the other party to any restricted party, to any region subject to U.S. embargo or comprehensive sanctions (currently, Cuba, Iran, North Korea, Russia, Sudan and Syria), or for any end use prohibited by Section 744 of the U.S. Export Administration Regulations (e.g., chemical/biological weapons, nuclear, and missiles), without obtaining any required prior authorization from the U.S. government.

13. **No Assignment.** Neither party may assign any of its rights, or delegate any of its obligations, under this Agreement, in whole or in part, without the prior written consent of the other party. Any attempted assignment without such consent shall be void.

14. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its choice of law provisions. Both parties hereby agree to the exclusive jurisdiction and venue of the courts of the State of California located in Santa Clara County with respect to any legal proceeding arising in connection with this Agreement.

15. **Entire Agreement.** This Agreement is the entire agreement between the parties as to the subject matter hereof and supersedes any previous agreements, oral or written, as to its subject matter. It may be modified only by written agreement of the parties.

16. **Miscellaneous.** Neither party has an obligation under this Agreement to disclose or receive specific Confidential Information or any Confidential Information at all. Neither party has an obligation under this Agreement to purchase any product or service from the other party, or engage in any other transaction with the other party. The parties do not intend that any agency or partnership relationship be created between them by this Agreement. A copy or facsimile of this Agreement signed by an authorized representative of either party shall have the same force and effect as an original.

The parties hereby execute this Agreement as of the Effective Date.

Company

By: _____
Signature

Name:

Title:

DataDirect Networks, Inc.

By: _____
Signature

Name: _____

Title: _____