

## MUTUAL CONFIDENTIALITY & NONDISCLOSURE AGREEMENT

**THIS AGREEMENT** is made on \_\_\_\_\_ (the "Effective Date"), between Definitive Design Corp., a Pennsylvania corporation with offices at 105 Corporate Drive, Langhorne, Pa. 19047 and, \_\_\_\_\_, with offices at \_\_\_\_\_ (together with its affiliates "Company"). This agreement is effective as of the date set forth above. The parties acknowledge the following facts:

A. Definitive Design Corp. and Prospect/Supplier ("Company") wish to enter into discussions, review, analysis and negotiations related to their respective businesses to determine if there is sufficient mutual interest by the parties regarding a possible collaboration and/or business relationship in various product development projects. ("the Project");

B. In order to evaluate and, if appropriate, to proceed with the Project, each of the parties may disclose (the "Disclosing Party") to the other party (the "Receiving Party") certain Confidential Information (as defined below).

In consideration of the above premises and the covenants hereinafter set forth, the parties agree as follows:

**1. Confidential Information.** "Confidential Information" means information related to the business of the Disclosing Party which is proprietary and/or confidential to the Disclosing Party or its customers, suppliers or other business partners including, without limitation, technical and non-technical data related to the designs, inventions, techniques, Processes, prototypes, undisclosed patents pending, finances, business plans, actual or potential customers and suppliers, existing and future products and employees of the Disclosing Party. In order to be considered Confidential Information under this Agreement, any information disclosed in written form must be clearly marked as "confidential", "proprietary" or similar legend to indicate its confidential or proprietary nature. The parties agree to use reasonable efforts to summarize the content of oral disclosures of Confidential Information within a period of ten (10) days following disclosure, provided, however, that any failure to provide such written summary shall not affect the nature of the Confidential Information disclosed, if such Confidential Information was identified as confidential or proprietary when orally disclosed or by its nature or the circumstances in which it was disclosed, ought reasonably to be considered confidential and/or proprietary. The parties further agree that any information obtained by the Receiving Party by way of observation or study at the facilities of the Disclosing Party, and which does not otherwise fall within the exclusions of paragraph 2 below, shall be considered Confidential Information for the purposes of this Agreement. Confidential Information shall also specifically include the terms of this agreement and neither party shall disclose the existence of this Agreement or the Project other than as expressly agreed in writing.

**2. Exclusions from Confidential Information.** The parties agree that, for the purposes of this Agreement, Confidential Information shall not include any information which the Receiving Party can establish: (i) is publicly known through no action on the Receiving Party's part; (ii) was known by the Receiving Party prior to receipt from the Disclosing Party; (iii) has been rightfully received by the Receiving Party from a third party without restriction on disclosure and without breach of an obligation of confidentiality running directly or indirectly to the Disclosing Party; or (iv) was independently developed by the Receiving Party without reference to, or reliance on, any information which would otherwise be Confidential Information hereunder. In addition, it shall not be considered a breach of the obligations of this Confidentiality Agreement if the Receiving Party discloses Confidential Information to that extent that such information: (a) has been approved for public release by the Disclosing Party's written authorization; or (b) is required to be disclosed by law, or to a competent court, government or regulatory body having the right to same.

**3. Restrictions on Use.** As consideration for having access to or receiving any Confidential Information, the Receiving Party agrees that it shall use the Confidential Information solely in furtherance of the Project and shall make the Confidential Information available solely to employees, agents or independent contractors of the Receiving Party (a) who are directly involved in performing the Project and have a specific need to know such information; and (b) whom the Receiving Party has obligated under a confidentiality agreement to hold the Confidential Information in trust and in strictest confidence. The Receiving Party shall use the same efforts to protect the confidentiality of the Confidential Information as it uses to protect its own Confidential Information and, in any event, no less than a reasonable standard of care. The Receiving Party shall not disclose or disseminate, or permit any of its employees to disclose or disseminate, the Confidential Information to any third party without the other's prior written consent.

**4. Return of Confidential Information.** Upon the termination of this Agreement, or at either party's request, the party in receipt of any Confidential Information shall, on request, deliver to the Disclosing Party all files, documents, computer programs and other media (and all copies and reproductions of any of the foregoing) in its possession or control to the extent same contain Confidential Information. Upon the request of either party, the Receiving Party shall certify in writing that all materials containing Confidential Information (including all copies thereof) have been returned to the Disclosing Party.

**5. Term and Termination.** This Agreement shall become effective on the Effective Date first set forth above and shall terminate upon the expiration of five (5) years from the Effective Date unless earlier terminated by either party at any time on written notice to the other. Notwithstanding any termination of this Agreement the obligations and restrictions on the Receiving Party under paragraph 3 above shall survive until such time as the information in question otherwise falls into one of the exclusions from "Confidential Information" set out in paragraph 2.

**6. No Warranty or License.** This Agreement does not require either party to disclose any Confidential Information and any Confidential Information provided hereunder is provided strictly on an “as is” basis without any warranty or guarantee as to its accuracy, completeness or utility. All Confidential Information shall remain the sole property of the party disclosing such information. No license to either party of any trademark, patent, copyright or any other intellectual property right is either granted or implied by this Agreement or any disclosure hereunder.

**7. Feedback.** Notwithstanding any other provision in this Agreement, if Recipient provides any ideas, suggestions or recommendations to Discloser regarding Discloser’s Confidential Information (“Feedback”), Discloser is free to use such Feedback and to incorporate such Feedback in Discloser’s products, without payment of royalties or other consideration to Recipient, so long as Discloser does not infringe Recipient’s patents, copyrights or trademark rights in the Feedback. Nothing in this Agreement is intended to grant a license or waive any rights in either Party’s patents, copyrights or trademarks.

**8. Injunctive Relief.** The parties agree that disclosure or use of Confidential Information contrary to this Agreement may cause the disclosing party irreparable harm, for which damages may not be adequate compensation. Therefore, the parties agree that a party seeking to enforce this Agreement may be entitled to equitable relief, including an injunction, in order to stop any breach or threatened breach of this Agreement.

**9. Governing Law.** This Agreement is governed by the laws of Pennsylvania, excepting its choice of law provisions. The parties hereby agree to irrevocably submit to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania in respect of all legal proceedings arising out of this Agreement.

**10. Corporate Affiliates.** This Agreement is intended to encompass the Affiliates (as defined below) of both parties hereto. Consequently, any Affiliates of a party may disclose Confidential Information to the other party or to the other party’s Affiliates, and Affiliates of a party may receive Confidential Information from the other party or the other party’s Affiliates. The terms “Disclosing Party” and “Receiving Party”, as used herein, shall include Affiliates of the parties with respect to Confidential Information disclosed by or received by an Affiliate, as the case may be. Each party is responsible for a breach of this Agreement by any of its Affiliates, and the party agrees to take all reasonable measures to restrain its Affiliates from prohibited or unauthorized disclosure or use of Confidential Information. For the purposes of this Agreement, an “Affiliate” of a party shall mean any corporation or entity that (a) is controlled, either directly or indirectly, by a party; (b) is under common voting control, either directly or indirectly, with the party; or (c) that controls the party; as the case may be, where “control” means the ability to vote greater than fifty percent (50%) of the outstanding voting securities in such corporation.

**11. Independent Development.** Discloser understands that Recipient may currently or in the future be developing information internally, or receiving information from other Parties that may be similar to Discloser's Confidential Information. Nothing in this Agreement will prohibit Recipient from developing products, or having products developed for it, that compete with Discloser's products, provided that in doing so, Recipient does not use or disclose Discloser's Confidential Information.

**12. Independent Contractors.** Company is an independent contractor, and nothing contained in this Agreement shall be construed to constitute Definitive Design Corp. and Company as partners, joint ventures, co-owners or otherwise as participants in a joint or common undertaking.

**13. Miscellaneous Provisions.** This Agreement constitutes the entire agreement and understanding between the parties and integrates all prior and contemporaneous discussions between them related to the subject matter hereof. No amendment to this Agreement shall be valid unless it is in writing and signed by both parties.

This Agreement shall be binding upon the respective successors and assigns of the parties hereto. No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right. If any provision of this Agreement shall be held invalid or unenforceable for any reason, such invalidity or unenforceability shall attach only such provision and shall not affect or invalidate any other provision of this Agreement. This agreement may be executed by way of facsimile or electronic transmission of signed copies which shall be binding upon the parties as if an original.



Definitive Design Corp  
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Langhorne, PA 19047  
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www.definitive-design.com

Executed by the duly authorized representatives of the parties to be effective as of the date set forth above.

**Definitive Design Corporation**

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

Name: *Craig Hidalgo*

Title: *President*

**PROSPECT / SUPPLIER**

Company Name:

By: \_\_\_\_\_  
(Authorized Officer)

Name:

Title: