CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT
(Mutual)

THIS AGREEMENT is made on _____   _____, 19 between _____, and   _____.

1. <u>Purpose</u>. The parties wish to explore a business possibility of mutual interest, under which each may disclose Confidential Information, to the other, for the following purpose:

2. <u>Definition</u>. "Confidential Information" means any information, technical data or know-how considered proprietary or confidential by the disclosing party, including, but not limited to, that which relates to research, products, software, services, development, inventions, processes, specifications, designs, drawings, diagrams, engineering, marketing, techniques, mask works, documentation, customer information, pricing information, procedures, data, concepts, financial information and employee files disclosed by the disclosing party either directly or indirectly, in writing, orally, by drawings, inspection of parts or equipment, or access to the disclosing party's premises, and which is information designated in writing to be confidential or proprietary, or if given orally, is confirmed promptly in writing as having been disclosed as confidential or proprietary. Confidential Information does not include information, technical data or know-how which (i) is in the receiving party's possession at the time of disclosure, as demonstrable by the receiving party's files and records immediately prior to the time of disclosure, (ii) before or after it has been disclosed to the receiving party, becomes part of the public knowledge or literature, not as a result of any action or inaction of the receiving party, or (iii) is approved for release by written authorization of the disclosing party.

3. <u>Use Limitations</u>. The parties agree not to use the Confidential Information for their own use or for any purpose, except as set forth above. The parties further agree not to copy, alter, modify, disassemble, reverse engineer or decompile any of the materials unless permitted in writing by the disclosing party.

4. <u>Non-Disclosure</u>. Each party agrees not to disclose the Confidential Information to any third parties or to any of its employees except those certain employees who have a need to know the Confidential Information for the purpose set forth above. Each party agrees that it will only disclose Confidential Information to those of its employees who have signed a confidentiality agreement containing provisions similar to this Agreement with such party. Each party further agrees that it shall protect the confidentiality of and take all necessary steps to prevent disclosure of the Confidential Information to prevent it from falling into the public domain or the possession of unauthorized persons. Each party shall advise the other party in writing of any misappropriation or misuse of the Confidential Information of which the notifying party may become aware.

5.   Return of Materials.   Any materials or documents which are furnished by the disclosing party, and all copies thereof, will be returned by the receiving party promptly upon receipt of the written request of the disclosing party.

6.   No License.   No license is granted to either party under any patents, copyrights, mask work rights or other proprietary rights of the other by the disclosure of any information hereunder, nor is any warranty made as to such information.

7.   Injunctive Relief.   The parties understand and agree that, because of the unique nature of the Confidential Information, the disclosing party will suffer immediate, irreparable harm in the event the receiving party fails to comply with any of its obligations under this Agreement; that monetary damages will be inadequate to compensate the disclosing party for such breach; and that the disclosing party shall have the right to enforce this Agreement by injunctive or other equitable remedies in addition to any available legal remedies.

8.   Attorneys' Fees; Jurisdiction.   In the event of any litigation between the parties, the prevailing party shall be entitled to reasonable attorneys' fees and all costs of proceedings incurred in enforcing this Agreement.   The parties agree that California is both the place of making and the place of performance of this Agreement and both parties consent to jurisdiction in the State of California.   The parties expressly stipulate that all litigation under this Agreement shall be brought in the state courts of Santa Clara County, California or, for matters involving federal jurisdiction, in the United States District Court for the Northern District of California.

9.   Term.   This Agreement shall become effective as of the date written above and shall apply to any Confidential Information received by the parties prior to any termination of this Agreement, and shall include, without limitation any information received prior to the date of this Agreement.   This Agreement may be terminated by mutual agreement of the parties in writing or by either party upon ten (10) days' notice in writing to the other party.   The provisions of the Agreement shall apply to all Confidential Information disclosed under this Agreement prior to termination and shall survive expiration or termination of this Agreement for any reason for a period of five (5) years from the date thereof.

10.   General.   This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings.   The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of law rules.   This Agreement may be amended or modified only in a writing signed by the parties hereto.   This Agreement shall not be construed as a teaming agreement, joint venture or other business relationship.   This Agreement shall be binding upon the successors and assigns of both parties.

The undersigned represent and warrant that they have the authority to enter into this agreement on behalf of the person, entity or corporation listed above their name.

By: _____ By: _____ _

Title: _____ Title: _____ _

_____ _____
(ADDRESS) (ADDRESS)