

CONFIDENTIALTY, NON-USE AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALTY, NON-USE AND NON-DISCLOSURE AGREEMENT is made effective as of the _____ day of _____, 2004 by and between Gateway TechnoLabs Pvt. Ltd. ('Gateway'), with a principal place of business at _____ and _____ ("Client") with a principal place of business at _____

PURPOSE

Gateway and Client wish to explore a business relationship, in connection with which Client may disclose to Gateway and/or Gateway may disclose to Client Confidential Information. The Parties would not be willing to hold or to continue discussions without the benefit of this Agreement and, therefore, the parties agree as follows:

1. **Confidentiality.**

a. **Confidential Information.** Subject to the limitations set forth in subsection c, below, all information disclosed by Client to Gateway or by Gateway to Client will be deemed to be "Confidential Information". In particular, without limiting the foregoing in any way, Confidential Information will be deemed to include any trade secret, technical data or know how, process, technique, algorithm, program, design, drawing, formula, test data, projection, strategy, business plan, or method (including, but not limited to, sequence of steps) relating in any way to any of the disclosing party's research projects, works in process, future developments, present or future products or services, suppliers, partners, affiliates, employees, investors, whether or not such information was disclosed in oral, written, graphic, or electronic form.

b. **Restriction on Use, Disclosure and Dissemination.** The non-disclosing party (the "Recipient") shall use the Confidential Information solely for the purpose of evaluating a possible business relationship or for such activities as may be appropriate for such Recipient within the context of a formal business relationship with the disclosing parties, should the parties enter into such a relationship. The Recipient shall not use the Confidential Information for any other purpose. The Recipient shall not disclose or disseminate in any way any of the Confidential Information to third parties. The Recipient shall take all reasonable measures to protect the secrecy of and avoid disclosure or improper use of Confidential Information, to prevent it from falling into the public domain, and to protect it from falling into the possession of third persons. Such measures include, but shall not be limited to, the highest degree of care that the Recipient utilizes to protect its own Confidential Information of a similar nature. Confidential Information will not be reproduced by the Recipient except as necessary to accomplish the intent of this Agreement.

c. **Information Not Included.** The term "Confidential Information" shall not include information that: (i) becomes generally available to the public other than as a result of an improper disclosure; (ii) was or becomes available to the Recipient on a non-confidential basis, from a source other than the disclosing party, provided that such source is not bound by a confidentiality agreement with the disclosing party or is not otherwise prohibited from transmitting the information; or (iii) the Recipient can clearly show that compelling proof was already known or available to the Recipient prior to its disclosure hereunder.

2. **Patent or Copyright Infringement.** Nothing in this Agreement is intended to or shall grant any rights under any patent or copyright of either party, nor shall this Agreement grant Recipient any rights in or to the disclosing party's Confidential Information other than the limited right to review such Confidential Information in connection with a possible business relationship between the parties.

3. **Return of Proprietary Information.** Within fifteen (15) days of the effective date of the termination of this Agreement, as set forth below, the Recipient shall return to the disclosing party all Confidential Information furnished by the disclosing party and shall not retain duplicates or other record of such information. Further, if so requested by the disclosing party, the Recipient shall cause the destruction of all written material, memoranda, notes, and other writings or recordings whatsoever based upon the Confidential Information, wherever located and, if requested, such destruction shall be certified in writing by the Recipient, upon Recipient's actual first-hand knowledge thereof.

4. **Equitable Relief.** Each party agrees that its obligations as set forth by this Agreement are necessary and reasonable in order to protect the other and its business and each party expressly agrees that monetary damages would be inadequate to fully compensate the disclosing party for any breach by the Recipient of its covenants, obligations and agreements set forth in the Agreement. Accordingly, each party agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, equity or otherwise, the disclosing party shall be entitled to seek equitable relief, including, but not limited to temporary and permanent injunctive relief against any threatened breach or the continuation of any breach of this Agreement, without the necessity of proving actual damages.

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5. **Governing Law.** This Agreement shall be governed by, and construed in accordance with the laws of the Gujarat, India. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

6. **Choice of Forum.** For the purposes of any dispute arising out of the subject matter of this Agreement, the parties agree that they shall submit solely to the jurisdiction of the Municipal Courts or the High Courts of the State of Gujarat and/or the Supreme Court of India, as appropriate.

7. **Prevailing Party Entitled to Costs.** In a dispute arising out of the subject matter of this Agreement, the prevailing party shall be entitled to recover from the other its costs of suit, including reasonable attorneys' fees.

8. **Binding Nature.** This Agreement sets forth the agreement between the parties on certain material terms and conditions regarding the confidentiality and use of information transferred during the discussions that the parties have conducted and intend to continue to conduct. This Agreement is intended to be and shall be construed as binding upon the parties.

9. **Waiver.** No failure or delay by either party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power, or privilege hereunder.

10. **Termination.** This Agreement shall continue in effect until the latter to occur of a date: (i) five (5) years following the date of this Agreement, or (ii) three (3) years from the date on which any Confidential Information is last disclosed under this Agreement. Unless the parties agree otherwise in writing, this Agreement shall remain in place if the parties reach a formal agreement to enter into a business relationship. The covenants and obligations relating to the Confidential Information, as set forth in this Agreement, shall survive the completion of discussions between the parties.

11. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to confidentiality, non-use and non-disclosure and supercedes and replaces any prior or contemporaneous agreements or understandings related to such subject matter, whether oral or written, between the parties.

12. **Counterparts, Facsimile Copies.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. The parties agree that they may exchange, via facsimile, copies of the originally executed Agreement and that upon receipt, any such facsimile copy shall constitute the valid and binding agreement of the sender.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

Gateway

Client

By: _____

By: _____

Name:

Name:

Title:

Title: