

NON-DISCLOSURE AGREEMENT

Non-Disclosure Agreement # CON-001344-N

Parties and Points of Contact:

Name: TrellisWare Technologies, Inc. ("TrellisWare")	Name: XYZ ("Company")
Address: 10641 Scripps Summit Court, Suite 100	Address:
City/St/Zip: San Diego, CA 92131	City/St/Zip:
Agreement POC:	Agreement POC:
Email:	Email:
Phone:	Phone:
PI POC:	PI POC:
Email:	Email:
Phone:	Phone:

THIS NON-DISCLOSURE AGREEMENT (the "Agreement") is made and entered into by and between TrellisWare and Company to protect certain proprietary and confidential information of TrellisWare or of Company which may be disclosed under this Agreement solely for the Purpose (as defined below). In consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, TrellisWare and Company agree as follows:

1. THE PARTIES

TrellisWare and Company shall each be referred to herein as a "Party" or collectively as the "Parties." A Party disclosing information under this Agreement shall be referred to as the "Disclosing Party." A Party receiving information under this Agreement shall be referred to as the "Receiving Party."

2. PURPOSE

- (A) The purpose of this Agreement is to enable the Parties to exchange proprietary financial, business, and/or technical data (possibly including, but not limited to designs, processes, performance specifics and other sensitive data) relating to [insert purpose] to support discussions concerning an actual or contemplated business relationship between the Parties (hereinafter referred to as the "Purpose").

3. PROPRIETARY INFORMATION ("Proprietary Information")

- (A) For purposes of this Agreement, the term "Proprietary Information" shall mean all information disclosed hereunder by the Disclosing Party to the Receiving Party, which is marked as "Proprietary", "Confidential" or a similar marking. Proprietary Information shall also include information disclosed orally or visually, provided: (i) the information is identified as confidential or proprietary at the time of disclosure, (ii) a written summary of the disclosed information is delivered by the Disclosing Party to the Receiving Party within twenty (20) calendar days after the initial disclosure, and (iii) the written summary is marked as "Proprietary", "Confidential" or a similar marking. For the avoidance of doubt, during such twenty (20) day period, the Receiving Party shall treat all information disclosed orally or visually as Proprietary Information in accordance with the terms of this Agreement.
- (B) Notwithstanding the foregoing, Proprietary Information shall not include information which the Receiving Party can demonstrate by reasonable evidence: (i) is publicly available prior to the Effective Date (as defined below) or becomes publicly available after the Effective Date through no breach of this Agreement or other act or omission by the Receiving Party or any individual or entity to whom the Receiving Party discloses such information in accordance with the terms of this Agreement; (ii) is already in the possession of the Receiving Party on a non-confidential basis at the time of disclosure by the Disclosing Party; (iii) is obtained by the Receiving Party from a third party which, to the best of the Receiving Party's knowledge, was free to disclose

such information without restriction, unless the Receiving Party is notified by the Disclosing Party of misappropriation by said third party promptly after the Disclosing Party knew of such misappropriation; (iv) is independently developed by or for the Receiving Party without use of or reference to the Disclosing Party's Proprietary Information, as shown by documents and other competent evidence in the Receiving Party's possession; or (v) is approved for release in writing by the Disclosing Party.

- (C) Notwithstanding anything to the contrary herein, if the Disclosing Party discloses any Proprietary Information hereunder that is subject to a security classification by the U.S. Government, the Disclosing Party shall identify such classification at the time of disclosure and the Parties agree to handle such Proprietary Information in accordance with applicable U.S. Government requirements.
- (D) Notwithstanding anything to the contrary herein and subject to the requirements and exceptions stated below, if the purpose of this Agreement encompasses the submission of a proposal to a third party, then a Receiving Party submitting such proposal may disclose any Proprietary Information disclosed to it under this Agreement to such third party to the extent that such Receiving Party includes the Proprietary Information in the contemplated proposal, with the prior written consent of the Disclosing Party. The Disclosing Party may constrain the use or disclosure of its Proprietary Information pursuant to this Section 3(D) by providing written instruction to the Receiving Party. Any such disclosure pursuant to this Section 3(D) shall require that the Proprietary Information be indicated as such with its original "Proprietary", "Confidential" or similar markings, to the extent practical, and with any other restrictive legends necessary to preserve its confidentiality as specified by U.S. Government regulation or the regulations or procedures of any other customer, as applicable. Notwithstanding anything to the contrary herein or the termination of this Agreement, the Receiving Party may retain the Proprietary Information included in such proposal, as described in this Section 3(D), in accordance with its record keeping policies and subject to a continuing obligation to protect the Proprietary Information in accordance with Section 4 of this Agreement.

4. CONFIDENTIALITY OBLIGATIONS

- (A) Receiving Party Responsibilities. With respect to Proprietary Information transmitted hereunder, unless otherwise provided in this Agreement, the Receiving Party shall:
 - (i) protect and hold the Proprietary Information in strict confidence, exercising the same degree of care it exercises to protect its own Proprietary Information, but not less than a reasonable degree of care;
 - (ii) not use or copy the Proprietary Information for any purpose other than the Purpose;
 - (iii) not disclose, transfer or otherwise make available the Proprietary Information to any other individual or entity, except its employees, consultants, attorneys, auditors, financial advisors, and other professional advisors (collectively, "Representatives"), provided that such Representatives need to know such Proprietary Information for the Purpose and such Representatives are bound by confidentiality obligations that are at least as restrictive as those contained herein and such obligations apply to Disclosing Party's Proprietary Information;
 - (iv) not disclose, transfer or otherwise make available the Proprietary Information to any other third party, including subcontractors and affiliates, without obtaining the Disclosing Party's written approval prior to such disclosure, provided that (a) the Proprietary Information is only used for the Purpose, and (b) prior to disclosure to any such third party, the Receiving Party shall enter into a written agreement with such third party to protect the Disclosing Party's Proprietary Information from unauthorized use or disclosure containing terms no less restrictive than those of this Agreement, which shall expressly name Disclosing Party as a third party beneficiary, and shall provide a copy of such agreement to the Disclosing Party.
 - (v) not reverse engineer, disassemble or decompile any prototypes, hardware devices, software or other tangible objects which embody the Proprietary Information;
 - (vi) not remove, alter, or make illegible any markings contained on or in the Proprietary Information or any document containing Proprietary Information, including, without limitation, export control notices, trademarks, copyright notices, and proprietary information markings; and

(vii) in the event of an inadvertent disclosure or use, provide immediate notification to the Disclosing Party and take reasonable and appropriate measures to mitigate the effect of such disclosure or use of the Proprietary Information.

- (B) Compelled Disclosures. In the event the Receiving Party is compelled to disclose the Disclosing Party's Proprietary Information pursuant to a valid order of a court or other governmental body having jurisdiction, the Receiving Party shall not be liable for such disclosure provided that the Receiving Party (i) promptly and to the extent possible before making such disclosure, notifies the Disclosing Party of such an event and provides reasonable assistance at Disclosing Party's expense and direction to prevent such disclosure or require that such disclosure be made under a protective order, and (ii) only discloses Proprietary Information to the extent compelled.

5. TERM AND TERMINATION

- (A) This Agreement shall be binding and deemed effective on the date it is signed by the last Party to sign it, as indicated by the date stated under that Party's signature ("Effective Date"), and shall expire two (2) years thereafter, unless earlier terminated by either Party upon thirty (30) days' written notice to the other Party ("End Date").
- (B) Notwithstanding the expiration or termination of this Agreement, the Receiving Party's obligations under Section 4 for each item of Proprietary Information (a) shall continue for a period of five (5) years from the End Date of this Agreement or (b) for Proprietary Information which is source code or which the Disclosing Party has identified as being a trade secret, shall continue until that Proprietary Information no longer constitutes a trade secret under the California Uniform Trade Secrets Act (Cal. Civ. Code Secs.3426 et seq.) but in no case shorter than five (5) years from the End Date.
- (C) Upon termination or expiration of this Agreement or upon Disclosing Party's written request for any reason, the Receiving Party shall make no further use of the Proprietary Information, and if requested by Disclosing Party, shall within a reasonable time period after the request, promptly return to the Disclosing Party or provide written certification of destruction of all Proprietary Information that is in its possession or control, in whatever form, and all copies thereof. Notwithstanding anything to the contrary herein, Receiving Party may retain one copy of the Proprietary Information for routine backup purposes. Latent data, such as deleted files which are generally considered inaccessible without the use of specialized tools and techniques, will not be within the requirements for return or destruction as set forth in this provision.

6. NOTICES AND POINTS OF CONTACT

- (A) The Parties' primary points of contact responsible for coordinating the exchange of Proprietary Information ("PI POC") and administration/notices ("Agreement POC") are identified on the first page of this Agreement. Either Party may change its designation by written notice to the other Party. Any notice or other communication required or permitted hereunder shall be given in writing, to the other Party to the person listed as the "Agreement POC." For the avoidance of doubt, all Proprietary Information exchanged hereunder that is not disclosed or furnished by the respective Party's PI POC shall remain protected under this Agreement.
- (B) Any notice to be given hereunder shall be in writing and deemed effective: (i) upon delivery when delivered in person; (ii) upon transmission when delivered by verified facsimile transmission or e-mail with delivery receipt; (iii) when delivered by a recognized national or international overnight courier service; or (iv) when delivered by certified or registered mail with return receipt to the other Party's Agreement POC.

7. RESERVATION OF RIGHTS

Except as expressly set forth herein, nothing in this Agreement nor by any disclosure of information hereunder shall be construed as conveying any right or license with respect to any Proprietary Information, or with respect to any intellectual property of either Party, whether under any patent, copyright, trademark, trade secret or other intellectual property right.

8. WARRANTY DISCLAIMER AND LIMITATION OF LIABILITY

ALL PROPRIETARY INFORMATION IS PROVIDED "AS IS" AND THE DISCLOSING PARTY MAKES NO REPRESENTATIONS, GUARANTEES OR WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO THE PROPRIETARY INFORMATION, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO THE ACCURACY, COMPLETENESS, PERFORMANCE, MERCHANTABILITY, OR FITNESS OF ANY PROPRIETARY INFORMATION. THE PARTIES ACKNOWLEDGE AND AGREE THAT NONE OF THE PROPRIETARY INFORMATION TRANSMITTED OR EXCHANGED HEREUNDER SHALL CONSTITUTE ANY REPRESENTATION, WARRANTY, ASSURANCE, GUARANTY OR INDUCEMENT WITH RESPECT TO THE INFRINGEMENT OF ANY PATENTS, COPYRIGHTS, TRADEMARKS OR OTHER INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE DAMAGES ARISING OUT OF THIS AGREEMENT.

9. REMEDY FOR BREACH

The Parties acknowledge that monetary damages may not be an adequate remedy for any breach of this Agreement by the Receiving Party or its Representatives. In the event of breach or threatened breach of this Agreement by the Receiving Party or its Representatives, the Disclosing Party shall be entitled to seek both temporary and permanent injunctive relief from such breach or threatened breach. Temporary injunctive relief may be sought without the necessity of proving actual damages and without any requirement to post a bond or other security. The Parties agree that by seeking the remedies provided for in this Section 9, the Disclosing Party shall not in any respect waive its right to seek any other form of relief that may be available to it, including monetary damages.

10. EXPORT CONTROL

The Parties agree that all activities under this Agreement and use of the Proprietary Information will be conducted in strict compliance with United States export laws and regulations. The Parties acknowledge that the Proprietary Information and any related materials or information provided under this Agreement may include technical data or technology that is subject to United States export laws and regulations, including but not limited to the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. Parts 120-130) and the Export Administration Regulations ("EAR") (15 C.F.R. Parts 730-774). The Parties also acknowledge that export of such technical data or technology, including by the Parties' subsidiaries, foreign national employees, suppliers or sub-tier suppliers, without valid export license or other prior written governmental approval, may violate one or more export laws and/or regulations. The Receiving Party shall not export, disclose, distribute, or transfer any Proprietary Information and related materials or information except as in compliance with the United States export laws and regulations. The Receiving Party shall first obtain the written consent of the Disclosing Party prior to (i) submitting any request to any governmental entity for authority to export any Proprietary Information and related materials or information or (ii) conducting any export or reexport of Proprietary Information or related materials, services or information pursuant to the United States export laws and regulations.

11. APPLICABLE LAW AND DISPUTES

The construction, interpretation and performance of this Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to the choice or conflict of law provisions thereof. Any legal action or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in San Diego County, State of California and the Parties hereby irrevocably consent to the personal jurisdiction and venue therein. The Parties agree to waive their respective rights to trial by jury in any dispute arising under this Agreement.

12. MISCELLANEOUS

- (A) This Agreement does not obligate either Party to disclose information to the other Party. In addition, nothing herein shall obligate either Party to engage in any transaction with the other Party, and each Party reserves the right, in its sole discretion, to terminate any business discussions contemplated by the Purpose. This Agreement shall not constitute, create, give effect to, or otherwise imply a teaming arrangement, joint venture, partnership, subcontract or other business relationship between the Parties. The receipt of Proprietary Information under this Agreement will not in any way limit the Receiving Party from providing to others products and/or services which

may be competitive with those of the Disclosing Party, providing products or services to Disclosing Party's competitors, or assigning its employees in any way it may choose, provided that the confidentiality obligations set forth in Section 4 of this Agreement are met.

- (B) Neither Party may transfer or assign this Agreement without the prior written consent of the other Party, except that either Party may assign this Agreement without the prior written consent of the other Party to (a) its successor in connection with a merger, acquisition or consolidation, or (b) to the purchaser in connection with the sale of all or substantially all of its assets; provided, however, that prior notification to the non-assigning Party is required prior to such assignment. Any unauthorized assignment shall be void. No assignment shall relieve a Party of its obligations hereunder with respect to Proprietary Information disclosed to that Party prior to such assignment. Subject to the foregoing limitations, this Agreement will mutually benefit and be binding upon the Parties and their permitted successors and assigns.
- (C) This Agreement contains the entire understanding between the Parties and supersedes all prior or contemporaneous written or oral communications, understandings, and agreements between the Parties relating to the subject matter hereof. This Agreement may not be modified except by a writing signed by the duly authorized representatives of both Parties. It is understood and agreed that 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. No waiver of any terms or conditions of this Agreement shall be deemed to be a waiver of any subsequent breach of any term or condition. All waivers must be in writing and signed by the duly authorized representative of the Party sought to be bound.
- (D) If any part of this Agreement shall be held unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remainder of this Agreement will nevertheless remain in full force and effect.
- (E) The headings contained in this Agreement are for convenience of reference only and are not intended to have any substantive significance in interpreting this Agreement. This Agreement may be executed in counterparts, including by facsimile or other electronic means, each of which shall be deemed an original and all of which together shall constitute a single instrument.
- (F) The Parties are independent contractors and will so represent themselves in all regards. Neither Party is the agent of the other and neither may bind the other in any way.
- (G) The Parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either Party by reason of authorship.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

TRELLISWARE TECHNOLOGIES, INC.

OTHER PARTY

By:

By:

Name:

Name:

Title:

Title:

Date:

Date: