

## **CONFIDENTIALITY & NON-DISCLOSURE AGREEMENT**

THIS AGREEMENT is dated as of \_\_\_\_\_ between **OPEX Corporation**, having its principal office at 305 Commerce Drive, Moorestown, NJ, USA 08057-4234 ("OPEX"), and \_\_\_\_\_, having an office at \_\_\_\_\_ ("Company").

In consideration of the mutual covenants herein contained, the parties agree as follows:

**1. PURPOSE.** The parties wish to assure the confidentiality of certain confidential and proprietary information and other materials which have been or may be revealed by or pass through a party to this Agreement ("Disclosing Party") to the other party to this Agreement ("Receiving Party") in the course of pursuing, evaluating, establishing, performing or continuing a business relationship (the "Engagement").

**2. CONFIDENTIAL INFORMATION.** For purposes of this Agreement, "Confidential Information" shall mean and include, all tangible and intangible information and materials being disclosed in connection with the Engagement, in any form or medium (and without regard to whether the information is owned by either party or by a third party), that satisfy any one of the following criteria:

- (i) Information related to either party's, or its affiliates', trade secrets, customers (including identities, characteristics and activities), business plans, strategies, forecasts or forecast assumptions, operations, methods of doing business, records, finances, assets, intellectual property, technology (including computer software and hardware products, data bases, programs, data processing and communications networking systems), data, codes or other information that reveal the research, technology, practices, procedures, processes, methodologies, know how, or other systems or controls by which either party's existing or future products, services, applications and methods of operations or doing business are developed, conducted or operated, and all information or materials derived therefrom or based thereon;
- (ii) Information designated as confidential in writing, whether by letter or an appropriate proprietary stamp or legend, prior to or at the time such information is disclosed;
- (iii) Information disclosed orally or visually, or in writing without an appropriate letter, proprietary stamp or legend, if it would be apparent to a reasonable person, familiar with either party's business and the industry in which it operates, that such information is of a confidential or proprietary nature;
- (iv) Information related to the existence or content of the parties' current communications, discussions, evaluations or negotiations in connection with a potential Engagement; and
- (v) Information of an OPEX-proprietary nature related to OPEX products and / or systems, including but not limited to schematics, electrical / block diagrams, operational / functional descriptions, user manuals, or service manuals.

**3. LIMITATION ON OBLIGATIONS.** The obligations of confidentiality assumed by the parties pursuant to this Agreement shall not apply to the extent the Receiving Party can demonstrate, by clear and convincing evidence, that such information: (i) is part of the public domain without any breach of this Agreement by the Receiving Party; (ii) was disclosed to it by a third party who is not required to maintain its confidentiality; (iii) was independently developed by the Receiving Party; or (iv) is the subject of a written agreement whereby either party consents to the disclosure of such Confidential Information by the Receiving Party on a non-confidential basis.

**4. DUTY OF NON-DISCLOSURE AND SECURITY PRECAUTIONS.**

(a) The Receiving Party shall not use Confidential Information of the Disclosing Party for any purpose other than the limited purposes of the Engagement. The Receiving Party shall hold the Disclosing Party's Confidential Information in confidence, and shall not disclose such Confidential Information to any persons other than those directors, officers, employees, agents, accountants and advisors of the Receiving Party and/or its affiliates ("Representatives") who have a business-related need to have access to such Confidential Information in furtherance of the limited purposes of this Agreement and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Agreement. The Receiving Party shall be responsible for the breach of this Agreement by any of its Representatives.

(b) The Receiving Party shall institute and/or maintain such procedures as are reasonably required to maintain the confidentiality of the Confidential Information, and shall apply at least the same level of care as it employs to protect its own confidential information of like nature. If the Receiving Party becomes aware of any actual or

threatened breach of this Agreement (including any threatened or actual unauthorized use or disclosure of any Confidential Information), or in the event of any loss of, or inability to account for, Confidential Information previously received, the Receiving Party shall promptly notify the Disclosing Party and will reasonably cooperate with the Disclosing Party's efforts to seek appropriate injunctive relief or otherwise to prevent or curtail such threatened or actual breach, or to recover its Confidential Information.

(c) The Receiving Party shall ensure that all copyright or other proprietary notice or indication of confidentiality contained on or included in any item of Confidential Information shall be reproduced by the Receiving Party on any reproduction, modification or translation of such Confidential Information. If requested by the Disclosing Party, the Receiving Party shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain Confidential Information of the Disclosing Party, as the Disclosing Party shall direct.

**5. LEGAL DISCLOSURE.** If the Receiving Party or any of its Representatives shall be under a legal obligation in any administrative or judicial circumstance to disclose any Confidential Information, the Receiving Party shall give the Disclosing Party prompt notice thereof (unless it has a legal obligation to the contrary) so that the Disclosing Party may seek a protective order or other appropriate remedy. In the event that such protective order is not obtained, the Receiving Party and its Representatives shall furnish only that portion of the information that is legally required and shall disclose the Confidential Information in a manner reasonably designed to preserve its confidential nature.

**6. NO LICENSES.** The parties acknowledge and agree that the Disclosing Party is and shall remain the owner of all proprietary and intellectual property rights in and to the Confidential Information. No license or conveyance of any rights to the Receiving Party under any patent, copyright, trade secret or trademark, nor any other proprietary or intellectual property right, is granted or implied by any disclosure of the Disclosing Party's Confidential Information hereunder.

**7. DISCLAIMER OF WARRANTIES.** Each party warrants that it has the right to enter into this Agreement and that either it is the owner of, or has the right to disclose, its respective Confidential Information. Disclosure of Confidential Information by the Disclosing Party to the Receiving Party shall not constitute any representation, warranty, assurance, guarantee or inducement by the Disclosing Party to the Receiving Party of any kind, including with respect to the non-infringement of intellectual property or other rights of the Disclosing Party or of third parties. The foregoing includes a disclaimer of any implied warranties, as well as a disclaimer of THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. The Disclosing Party disclaims any and all liability that may be based on the Confidential Information, including any errors or omissions with respect thereto, as well as ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS OR REVENUE.

**8. RETURN OF CONFIDENTIAL INFORMATION.** The Receiving Party shall immediately and unconditionally return to the Disclosing Party, or suitably account for or destroy, all tangible materials and record-bearing media within its possession or control comprising, containing, derived from, or based on the Disclosing Party's Confidential Information (including all copies thereof) upon the earlier of: (i) the written request of the Disclosing Party, or (ii) the completion of the Engagement. Upon written request, the Receiving Party shall certify in writing its compliance with the foregoing provision.

**9. EQUITABLE RELIEF.** Both parties agree that the terms and conditions of this Agreement and the Confidential Information disclosed pursuant to this Agreement are of a special, unique, and extraordinary character to the Disclosing Party. The parties further agree that disclosure of the Confidential Information in violation of this Agreement would cause the Disclosing Party to suffer irreparable harm which would not be compensable by money damages and for which the Disclosing Party would not have an adequate remedy available at law. Accordingly, the Receiving Party specifically agrees that the Disclosing Party shall be entitled to obtain injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Agreement or under applicable law.

**10. CONSTRUCTION.**

(a) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one instrument.

(b) **Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey without regard to conflict of law principles. The parties hereto irrevocably consent to the jurisdiction of, and venue in, any federal or state court of competent jurisdiction located in New Jersey in connection with any dispute based on or arising out of or in connection with this Agreement.

(c) **Severability.** Each party acknowledges that the provisions of this Agreement are reasonable and waives any defense to the strict enforcement thereof by the other party. If any provision of this Agreement is invalid or unenforceable under applicable law, that provision shall be enforced to the maximum extent possible and the remaining provisions shall remain in full force and effect.

(d) **Complete Understanding; Modification; No Waiver; Survival.** This Agreement contains the full and complete understanding of the parties with respect to the subject matter hereof, and supersedes all prior representations and understandings, whether oral or written. This Agreement may be modified only by a written instrument that specifically purports to do so and that is executed by a duly authorized representative of each party. No failure or delay by the Disclosing Party in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial waiver by the Disclosing Party preclude any other exercise of such right, power or privilege hereunder. The provisions of this Agreement that, by their nature and content, are intended to survive the termination of this Agreement shall so survive and continue to bind the parties.

(e) **Definitions.** The word "include," "includes" or "including," as used herein, means "including without limitation."

(f) **Subsequent Dealings.** The Receiving Party's obligations under this Agreement will apply to all Confidential Information that is furnished or made accessible by the Disclosing Party to the Receiving Party during the term of the Engagement. Neither this Agreement nor the disclosure of Confidential Information shall obligate either party (i) to disclose any additional Confidential Information, (ii) to further establish a business relationship, (iii) to enter into any other agreements or negotiations with the other party hereto, or (iv) to refrain from entering into agreements or negotiations with any other party.

(g) **Assignment.** Neither party may assign all or any of its rights or interests hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld.

**IN WITNESS WHEREOF**, the parties hereto, through their duly authorized officers, have executed this Agreement as of the date first above written.

***OPEX Corporation***

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

***Company***

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_