



ESS Technology, Inc.

MUTUAL NON-DISCLOSURE AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT (the "Agreement") is made as of _____, ("Effective Date") by and between:

ESS Technology, Inc.
237 South Hillview Drive
Milpitas, California 95035
acting on its own behalf and on behalf of each of its subsidiaries
(hereinafter called "ESS")

And

(Print full business / entity name)

(Print Address)

(hereinafter called "Company")

1. **Purpose.** To explore a mutually beneficial business relationship ESS and Company wish to discuss commercial and technical matters, which include: _____ (the "Relationship").

This Relationship may result in the disclosure by each party of certain of its Confidential Information (as defined below) to the other. To permit the parties to further the purpose of the Relationship, the parties agree to be bound by the terms and conditions set forth in this Agreement.

2. **Definition of Confidential Information.** "Confidential Information" shall mean any information, technical data or know-how (whether disclosed before or after the date of this Agreement), including, but not limited to that which relates to products, processes, designs, drawings, research, developments, formulas, test data, customer lists, business, product, marketing, or service plans, financial projections, pricing strategies, business forecasts, sales and merchandising, patents, patent applications, computer object or source code, hardware or software configurations, engineering, or finance, which information is designated in writing (either at the time of or within thirty (30) days after disclosure) to be confidential or proprietary. Confidential Information does not include information, technical data or know-how which: (i) is known to, or in the possession of, the receiving party (the "Receiving Party") before its disclosure by the disclosing party (the "Disclosing Party"), as shown by the Receiving Party's files and records immediately prior to the time of disclosure; (ii) is now or hereafter becomes available to the public through no fault of the Receiving Party; (iii) is released from the confidentiality obligations of this Agreement per the prior written approval of a duly authorized representative of the Disclosing Party; (iv) is independently developed by the Receiving Party without any use of the Disclosing Party's Confidential Information, as demonstrated by files and records created at the time of such independent development; (v) is disclosed to the Receiving Party by a third party, which, to the Receiving Party's knowledge, is under no obligation of secrecy or confidentiality to the Disclosing Party, and such disclosure occurs without a violation by the Receiving Party of this Agreement or the Disclosing Party's rights; (vi) is disclosed generally to third parties by the Disclosing Party without restrictions similar to those contained in this Agreement; or (vii) is disclosed pursuant to the order or requirement of a court, administrative agency or other governmental body; provided, however, that the Receiving Party shall provide prompt and sufficient advance written notice thereof to the Disclosing Party so that the Disclosing Party may seek a protective order (or its equivalent) with respect to such disclosure, which the Receiving Party shall fully comply with.

3. **Non-Disclosure of Confidential Information.**

3.1 **Nondisclosure.** The parties each agree to: (i) not use or reproduce the Disclosing Party's Confidential Information for any purpose other than the purpose of the Relationship stated in Section 1 of this Agreement; (ii) not disclose or permit disclosure of any of the Disclosing Party's Confidential Information to any third party; (iii) take all reasonable steps to protect the secrecy of, and avoid improper disclosure or use of, the Disclosing Party's Confidential Information, including, without limitation, exercising at least the same degree of care, but at no time less than reasonable care, than the Receiving Party utilizes to protect its



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own Confidential Information of a similar nature; (iv) not modify, reverse engineer, create other works from, or disassemble any software or device contained in the Disclosing Party's Confidential Information unless otherwise authorized in writing by the other party; and (v) notify the Disclosing Party immediately of any misuse or misappropriation of the Disclosing Party's Confidential Information, which comes to the attention of the Receiving Party.

- 3.2 Disclosure to Employees.** Each Party agrees that it shall disclose the Confidential Information of the other party only to those of its employees, agents, or consultants: (i) who have a bonafide need to know such information, and then only to the extent necessary to effectuate the purpose of the Relationship; and (ii) who have previously agreed in writing, either as a condition to their employment or retention, or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to the terms of this Agreement. At the Disclosing Party's request, the Receiving Party will promptly notify the Disclosing Party in writing of the names of any such persons.
- 3.3 Publicity.** Neither party will, without the prior written consent of the other party, disclose to any third party the fact that Confidential Information has been disclosed under this Agreement, that discussions or negotiations are taking place between the parties, or any of the terms, conditions, status or other facts with respect thereto, except as required by law, and then only with prior written notice to the other party.
- 3.4 Independent Development.** Disclosing Party understands that Receiving Party develops and acquires technology for its own products which may be the same as, or of similar nature to, Confidential Information, and that existing or planned technology developed or acquired by Receiving Party, either alone or in conjunction with third parties, may contain ideas and concepts similar or the same as those contained in Confidential Information. Disclosing Party agrees that entering into this Agreement shall not preclude Receiving Party from developing or acquiring technology, similar to Confidential Information, without obligation or liability to Disclosing Party, provided Receiving Party does not use Confidential Information to develop such technology.
- 4. Return of Confidential Information.** Each party agrees to promptly return, or to certify the destruction of, all documents, media, or materials, in whatever form, including, without limitations, all copies thereof and all forecasts, studies, drawings, specifications, analyses, summaries, or other materials prepared by or for Receiving Party, which contain or otherwise reflect the Disclosing Party's Confidential Information within ten (10) days after: (i) the termination of the Relationship; or (ii) receipt of a written request from the Disclosing Party for the return of such materials. This provision shall not apply to Confidential Information stored in electronic format as a matter of routine information technology backup or to Confidential Information or copies thereof which must be stored by the Receiving Party by law, provided that such Confidential Information or copies thereof shall be subject to the confidentiality and use limitations of this Agreement.
- 5. No Rights Granted.** Nothing in this Agreement is intended to grant any right, title, or interest in or to any patent, copyright, trademark or other intellectual property right of the other party, nor shall this Agreement grant the Receiving Party any ownership of the Disclosing Party's Confidential Information.
- 6. Representation and Warranties.** Each party to this Agreement represents and warrants to the other party that: (i) such party has the full corporate right, power and authority to enter into this Agreement and perform the acts required of it hereunder; (ii) the execution of this Agreement by such party, and the performance by such party of its obligations and duties hereunder, does not and will not violate any agreement to which such party is a party or by which it is otherwise bound; and (iii) when executed and delivered by such party, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms.
- 7. Term and Termination.**
- 7.1 Term.** This Agreement shall become effective as of the Effective Date and shall remain in effect until the Relationship is terminated pursuant to this Section 7.
- 7.2 Termination.** The Relationship may be terminated by either party by providing written notice thereof to the other party.
- 7.3 Survival.** The obligations of Section 3.1, 3.2 and 3.3 hereunder shall survive any termination of the Relationship between the parties, and shall remain in effect for three (3) years after termination of this Agreement.
- 8. Remedies.** Each party agrees that its obligations provided in this Agreement are necessary and reasonable in order to protect the Disclosing Party and its business, and each party expressly agrees that monetary damages would be inadequate to compensate the Disclosing Party for any breach by the Receiving Party of any of its representations, obligations, or agreements set forth in this Agreement. Accordingly, each party agrees that any violation or threatened violation of this Agreement by the Receiving Party will cause irreparable injury to the Disclosing Party and that, in addition to any other available remedies, the Disclosing Party shall be entitled to seek injunctive relief against the breach or threatened breach of this Agreement by the Receiving Party, without the necessity of proving actual damages, as well as reasonable attorneys fees and costs associated therewith.



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- 9. **No Further Obligation.** Neither party shall be obligated under this Agreement nor by any subsequent discussions or correspondence between the parties to enter into any business transaction, any agreement, or any understanding with the other party; only a formal written agreement signed by an authorized representative of each party shall be binding with respect to any such transaction, agreement, or understanding.
- 10. **Miscellaneous.**
- 10.1 **Assignment.** Neither party shall transfer or assign any rights or delegate any obligations hereunder, in whole or in part, whether voluntary or by operation of law, without the prior written consent of the other party, which shall not be unreasonably withheld. Notwithstanding the above, either party shall have the right to assign this Agreement and the obligations hereunder to any successor-in-interest by way of a merger, acquisition, or sale of all or substantially all of that party's assets on condition that the assignee of this Agreement will assume all obligations and liabilities of the assignor under or in connection with this Agreement and agrees to be bound by the terms and conditions of this Agreement.
- 10.2 **Amendment or Modification.** This Agreement may not be amended, modified or supplemented by the parties in any manner, except by an instrument in writing signed on behalf of each of the parties by a duly authorized officer or representative.
- 10.3 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without reference to conflicts of law rules.
- 10.4 **Severability.** If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in force.
- 10.5 **Notices.** All notices or reports permitted or required under this Agreement shall be in writing and shall be by personal delivery, courier, or by first class U.S. mail, and shall be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of courier delivery. Notices shall be sent to the addresses set forth at the beginning of this Agreement or such other address as either party may specify in writing.
- 10.6 **Relationship of Parties.** Neither this Agreement, nor any terms and conditions contained herein may be constructed as creating or constituting a partnership, joint venture or agency relationship between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
- 10.7 **Waiver.** No failure of either party to exercise or enforce any of its rights under Agreement will act as a waiver of such rights.
- 10.8 **Entire Agreement.** This Agreement constitutes the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing any and all prior agreements, communications, and understandings (both written and oral) regarding such subject matter.
- 10.9 **Other Agreements.** Neither party shall agree to any contractual provision or term in any agreement with any third party which contains a provision or term which would cause such party to be in breach of or violate this Agreement.
- 10.10 **Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute a single instrument. Execution and delivery of this Agreement may be evidenced by facsimile transmission.

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

ESS TECHNOLOGY, INC.

COMPANY: _____

SIGNATURE: _____

SIGNATURE: _____

NAME: (Print) _____

NAME: (Print) _____

TITLE: _____

TITLE _____

DATE: _____

DATE: _____