



THREE-WAY NON-DISCLOSURE AGREEMENT

between

MILTOPE CORPORATION

and

“ _____ ”

and

“ _____ ”

This NON-DISCLOSURE AGREEMENT (“NDA”) is made this ____ day of _____, 20____ (“Effective Date”) by and between Miltope Corporation, a corporation organized and existing under the laws of the State of Alabama, with an office at 3800 Richardson Road South, Hope Hull, Alabama 36043, _____, a corporation organized and existing under the laws of the State of _____, with an office at _____ (“_____”), and _____, a corporation organized and existing under the laws of the State of _____, with an office at _____ (“_____”). Hereinafter, Miltope, _____, and _____ may be referred to as “PARTY” or, collectively, “PARTIES”.

RECITALS

WHEREAS, MILTOPE represents that it possesses or may in the future possess certain intellectual property, technical, business, financial and other information of a sensitive nature related to its operations, hereinafter called “PROPRIETARY” or “PROPRIETARY INFORMATION”; and

WHEREAS, (“_____”) represents that it possesses or may in the future possess certain intellectual property, technical, business, financial and other information of a sensitive nature related to its operations, hereinafter called “PROPRIETARY” or “PROPRIETARY INFORMATION”; and

WHEREAS, (“_____”) represents that it possesses or may in the future possess certain intellectual property, technical, business, financial and other information of a sensitive nature related to its operations, hereinafter called “PROPRIETARY” or “PROPRIETARY INFORMATION”; and

WHEREAS, the Parties contemplate engaging in business discussions or business arrangements during which it may become necessary to exchange PROPRIETARY INFORMATION, and desire to establish a mutual understanding concerning the preservation and safeguarding of such sensitive information solely for the purpose of _____ (herein after referred to as “Purpose”).

AGREEMENTS

NOW, THEREFORE, in consideration of these premises, and of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definition: PROPRIETARY INFORMATION is defined as all proprietary, confidential, and/or trade secret information disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party") pertaining to the program or subject matter noted on the title page, and that such information shall be handled in accordance with Section 10 of this Agreement.

2. Authorized Arrangement: That this NON-DISCLOSURE AGREEMENT shall not be construed as a sales agreement, teaming agreement, joint venture or other such arrangement; rather, the Parties expressly agree that this NON-DISCLOSURE AGREEMENT is solely for the purpose of protecting PROPRIETARY INFORMATION.

3. License/Warranty: That nothing in this NON-DISCLOSURE AGREEMENT shall be deemed to grant a license, directly or by implication, estoppel, or otherwise, under any intellectual, industrial, or other property right associated with any information disclosed under this NON-DISCLOSURE AGREEMENT, whether such information is PROPRIETARY or not. Each party warrants that it has the right to make the disclosures under this Agreement. No other warranties are made by either party under this agreement. Any information exchanged under this agreement is provided "AS IS".

4. Privity: That any communications by the Company (or its authorized resellers/partners on its behalf) directly with the Government or Miltope's prime customer shall only be done through prior written approval from a Miltope authorized representative, or if communications is initiated by the Government or Miltope's prime customer, Company shall immediately refer any such direct communications to Miltope in order for Miltope to respond to the Government or Prime's query/concern/clarification.

5. Protection under NDA: During the term of this NON-DISCLOSURE AGREEMENT, the Parties, to the extent of their right to do so, may exchange information that is considered by the disclosing Party to be PROPRIETARY. If such information is in a written format, including electronic media, then for such information to be considered PROPRIETARY and subject to this NON-DISCLOSURE AGREEMENT, it shall be identified in writing at the time of disclosure by an appropriate legend, marking, stamp or positive written identification on the face thereof to be deemed PROPRIETARY. If such information is exchanged between the Parties orally or visually, then for such information to be considered PROPRIETARY and subject to this NON-DISCLOSURE AGREEMENT, it shall be identified as PROPRIETARY orally or visually at the time of disclosure and in writing within fourteen (14) calendar days after the oral or visual disclosure.

6. Point of Contact: That the points of contact for the Parties with respect to the exchange of PROPRIETARY INFORMATION are as follows:

MILTOPE:

Contact Name: _____

Contact Title: _____

Contact Address: _____

Contact Phone #: _____

Contact Email: _____

_____ :
Contact Name: _____
Contact Title: _____
Contact Address: _____
Contact Phone #: _____
Contact Email: _____

_____ :
Contact Name: _____
Contact Title: _____
Contact Address: _____
Contact Phone #: _____
Contact Email: _____

Each Party may revise its designation by written notice to the other at the address set forth above.

7. Use of Proprietary Data: That such PROPRIETARY INFORMATION delivered by the Disclosing Party to the Receiving Party shall be used solely for the purpose(s) described herein. No other use of the said PROPRIETARY INFORMATION is granted without the prior written consent of the Disclosing Party.

8. Disclosure of Proprietary Information: That from the date PROPRIETARY INFORMATION is disclosed until one (1) year after the date of termination of this NON-DISCLOSURE AGREEMENT, the receiving Party shall take reasonable steps to preserve in confidence PROPRIETARY INFORMATION and prevent disclosure thereof to third parties. Reasonable steps shall mean that the Receiving Party shall exercise the same degree of care to preserve and safeguard the Disclosing Party's PROPRIETARY INFORMATION as the Receiving Party uses to preserve and safeguard its own PROPRIETARY INFORMATION, but in no event less than reasonable care. If the Receiving Party becomes aware of an unauthorized disclosure it shall promptly act to mitigate any effect thereof, restrict further disclosure of PROPRIETARY INFORMATION, and provide notification to the Disclosing Party of the event, to include actions taken to preclude further disclosure. The Receiving Party shall further restrict disclosure of such PROPRIETARY INFORMATION to those of its employees and affiliates who have a need to know and who have been advised of and agreed, in writing, to the restrictions in this NON-DISCLOSURE AGREEMENT.

9. Term/Termination: That this NON-DISCLOSURE AGREEMENT shall (unless extended by written mutual NON-DISCLOSURE AGREEMENT) automatically terminate three (3) years from the effective date. However, either party may terminate this Agreement before that date by providing a thirty (30) calendar days written notice to the other party. Termination shall not, however, affect the rights and obligations contained herein with respect to PROPRIETARY INFORMATION supplied prior to termination.

10. Applicability: That this NON-DISCLOSURE AGREEMENT shall apply in lieu of and

notwithstanding any preexisting legend or statement associated with any particular information or data exchanged, and the duties of the Parties with respect to protecting PROPRIETARY INFORMATION shall be determined exclusively by the terms and conditions of this NON-DISCLOSURE AGREEMENT.

11. Exceptions: That the obligations with respect to disclosing and using such PROPRIETARY INFORMATION, as set forth in paragraphs 7 and 8 of this NON-DISCLOSURE AGREEMENT are not applicable to any information that is:

- A. In the public domain at the time of receipt or later enters the public domain thereafter through no fault of the Receiving Party, or
- B. Known to the Receiving Party on an unrestricted basis prior to disclosure by the Disclosing Party as substantiated through antedated documentation, or
- C. Independently developed by the Receiving Party as substantiated through antedated documentation, or
- D. Lawfully disclosed on an unrestricted basis to the Receiving Party by a third party under conditions permitting such disclosure, or
- E. Required to be disclosed pursuant to regulatory or judicial authority; provided, however, that in such case the Receiving Party shall notify the Disclosing Party of such requirement in sufficient time to permit the Disclosing Party to object.

12. Reverse Engineering/Removal of Notices: That the Receiving Party shall not reverse-engineer, de-compile, or disassemble any hardware provided or software disclosed to it under this Non-Disclosure Agreement and shall not remove, overprint or deface any notice of confidentiality, copyright, trademark, logo, legend or other notices of ownership or confidentiality from any originals or copies of Confidential Information or objects that embody such confidential information that recipient obtains from the Disclosing Party.

13. Assignment: That the Parties hereto are independent contractors. Neither this NON-DISCLOSURE AGREEMENT nor any rights and obligations granted hereunder shall be assignable or otherwise transferable to any third party without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

14. Export Compliance: That each Party agrees to comply with their respective laws and regulations concerning export control, which may be applicable to this Agreement. Each of the Parties also agrees to comply with the United States' export regulations including regulations pertaining to re-export. The United States' export regulations set forth in the International Traffic in Arms Regulation and the Export Administration Regulations require approval by the United States Government before the exchange of technical data subject to export control. The Disclosing Party may withhold the disclosure of any information pending compliance with all applicable laws and regulations concerning export control, at its sole discretion, without liability to the Receiving Party.

15. Release of Information: That neither Party will refer to this Agreement, or to any related activity or relationship with any other Party, for any promotional purpose or in any news release or public announcement without the prior written approval of the other Party.

16. Modifications/Choice of State: That neither party has an obligation under this Agreement to purchase any product or service from the other party. All additions or modifications to this Agreement must be made in writing and signed by both parties. This Agreement is the full understanding of the Parties relative to the protection of PROPRIETARY INFORMATION and supersedes all other understandings, any and all prior oral discussions and/or written correspondence or agreements between the parties with respect thereto. Neither party acquires any licenses or any other intellectual property rights of the other party under this Agreement. That this NON-DISCLOSURE

AGREEMENT shall be governed by and interpreted in accordance with the laws of the State of Alabama.

17. Return or Destroy Proprietary Information: That the termination of this Agreement shall not affect either party's obligations and rights hereunder with respect to PROPRIETARY INFORMATION disclosed prior to termination. Upon termination, all written information and materials, and all copies thereof shall be either returned to the Disclosing Party or certified as destroyed by the Receiving Party to the Disclosing Party.

18. Amendment: This Agreement shall not be amended or modified, nor shall any waiver of any right hereunder be effective unless set forth in a document executed by duly authorized representatives of the Parties.

19. Waiver: The failure to exercise any right under this Agreement shall not be deemed to be a waiver of such right, and shall not affect the right to enforce each and every right hereof. The waiver of any breach of any term, provision, covenant or condition herein contained shall not be deemed to be a waiver of any subsequent, actionable breach.

20. Severability: If any term of this NON-DISCLOSURE AGREEMENT shall be held to be illegal or unenforceable by a court of competent jurisdiction, the remaining terms shall remain in full force and effect.

21. Entire Understanding: That this NON-DISCLOSURE AGREEMENT contains the entire understanding between the Parties relative to the protection of PROPRIETARY INFORMATION relating to the purpose stated herein and supercedes all prior and collateral communications, and understandings between the Parties in respect thereto. No change, modification, alteration, or addition to any provision hereof shall be binding unless in writing and signed by authorized representatives of both Parties

IN WITNESS WHEREOF, the PARTIES hereto have executed this NDA as of the day and year written above.

| | | |
|----------------------------|--------------|--------------|
| MILTOPE CORPORATION | _____: | _____: |
| _____ | _____ | _____ |
| Signature | Signature | Signature |
| _____ | _____ | _____ |
| Printed Name | Printed Name | Printed Name |
| _____ | _____ | _____ |
| Title | Title | Title |
| _____ | _____ | _____ |
| Date | Date | Date |