

MUTUAL CONFIDENTIALITY AGREEMENT

THIS MUTUAL CONFIDENTIALITY AGREEMENT (this “Agreement”), dated as of [DATE], is by and between **WavePoint Solutions LLC**, a Delaware limited liability company (“WavePoint”) with an address at 7155 Columbia Gateway Drive, Suite C, Columbia, MD 21046 and [COUNTERPARTY] (“Counterparty”) with an address at [ADDRESS]. The parties hereto are sometimes referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS, each Party desires to disclose to the other Party certain information for the sole purpose of evaluating a business relationship (such purpose shall be hereinafter referred to as the “Activities”).

NOW, THEREFORE, in consideration of the foregoing and of the promises and covenants herein contained, the Parties hereby agree as follows:

1. The term “Confidential Information” shall mean all information, oral and written, and all materials (in any medium), disclosed or delivered by one Party (in such capacity, the “Discloser”) to the other Party (in such capacity, the “Recipient”) whether or not marked as confidential and whether provided prior to, on or after the date hereof up to the effective date of any termination of this Agreement; provided that Confidential Information of Discloser does not include information that: (a) through no breach of this Agreement is or becomes publicly available, (b) is or was lawfully obtained from a third party, on an unrestricted basis, without breach of any obligation between the third party and the Discloser, (c) was already known by Recipient, on an unrestricted basis, at the time of disclosure by Discloser as evidenced by documents maintained in the ordinary course of business or (d) was independently developed by or on behalf of Recipient without use of or reference to the Discloser’s Confidential Information as evidenced by Recipient’s written records. Without limiting the foregoing, “Confidential Information” of WavePoint shall include any and all internal photos, user’s manuals, schematics, block diagrams, operational descriptions, parts lists and tune-up information related to any product or device designed, manufactured, sold, in development or otherwise related to WavePoint’s business.

2. In consideration of the disclosure of the Confidential Information, the Recipient shall not use or duplicate any Confidential Information of the Discloser except as necessary to evaluate the Activities and Recipient shall keep confidential and not disclose any Confidential Information of the Discloser to any person or entity, other than to those employees of the Recipient whose knowledge is necessary to evaluate the Activities and to its professional advisors (e.g., attorneys and accountants) provided that all such employees and professional advisors are advised of their obligations to maintain the confidentiality of Discloser’s Confidential Information and to not use such Confidential Information except as necessary to evaluate the Activities and are bound by written agreements or, in the case of professional advisors, ethical duties, respecting the Confidential Information in the manner set forth in this Agreement. The Recipient shall be responsible for any breach of this Agreement caused by any act or omission by any employee or professional advisor of the Recipient to whom such Confidential Information of Discloser may be disclosed by the Recipient. Without limiting any of the foregoing, the Recipient shall protect the Confidential Information of the Discloser with at least the same degree of care as it exercises to protect its own confidential information, but in no event less than reasonable care. Neither Party shall disclose to any person or entity, other than its employees and professional advisors any information relating to the Activities or the fact that the Parties are discussing or evaluating any type of potential transaction or relationship; provided, however, that a Party may disclose this Agreement to any bona fide potential or actual investor, acquirer, merger partner or other financial partner (including their professional advisors) for the sole purpose of evaluating an actual or potential investment, acquisition, transaction or other business relationship provided that, in each case, the recipients are bound by written obligations of confidentiality and non-use no less restrictive than those contained in this Agreement. Nothing in this Agreement, express or implied, shall grant the Recipient a right or license to use any of the information in, or otherwise practice any invention set forth in, the Discloser’s patents or patent applications even after the

expiration or termination of this Agreement or Recipient's obligations hereunder and even if such information does not constitute Confidential Information.

3. Notwithstanding Section 2 herein, the Recipient may produce or disclose Confidential Information of the Discloser if and to the extent required pursuant to applicable laws, regulations or court order; provided that, to the extent permitted by applicable law, the Recipient has given the Discloser reasonable prior written notice thereof so that the Discloser may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If such protective order or other remedy is not obtained, or the Discloser waives compliance with the provisions of this Agreement, the Recipient shall furnish only that portion of the Confidential Information of the Discloser that the Recipient is legally required to disclose and shall exercise all commercially reasonable efforts to obtain reliable assurance that confidential treatment shall be accorded such Confidential Information.

4. The Parties acknowledge and agree that:

(a) As between the Parties, all Confidential Information of the Discloser is and shall remain the exclusive and valuable property of the Discloser;

(b) The Recipient does not hereby obtain any express or implied license or other interest in or to Confidential Information of the Discloser or the subjects thereof;

(c) Upon the Discloser's written request, the Recipient shall (i) return to the Discloser or shall destroy, at the Discloser's discretion, any and all Confidential Information of Discloser (including all copies and reproductions thereof); provided, however, that Recipient shall destroy those portions of documents, memoranda, notes, studies and analyses prepared by Recipient that contain, incorporate or are derived from such Confidential Information and shall certify to the Discloser in writing such destruction; and provided, further, that Recipient shall be permitted to retain any computer records or files containing such Confidential Information that have been created solely by Recipient's automatic or routine archiving and back-up procedures, to the extent created and retained in a manner consistent with Recipient's standard archiving and back-up procedures, but not for any other use or purpose; and (ii) immediately cease use of Confidential Information of Discloser as well as any information or materials that contain, incorporate or are derived from such Confidential Information. Notwithstanding the return or destruction of the Confidential Information of Discloser, Recipient will continue to be bound by its obligations under this Agreement; and

(d) Neither Party has any obligation to enter into an agreement related to the Activities by virtue of this Agreement or otherwise unless a definitive legal document related to the Activities subsequently is executed by the Parties.

5. This Agreement shall remain in effect until it is terminated by either party with thirty (30) days prior written notice. The confidentiality and non-disclosure obligations set forth in this Agreement shall survive for one (1) year beyond the effective date of any such termination with respect to Confidential Information that is disclosed prior to the effective date of termination.

6. Miscellaneous

(a) The Recipient acknowledges that the restrictions on the use, duplication and disclosure of the Confidential Information of the Discloser set forth herein are reasonable to protect the Discloser's business interests. Since unauthorized disclosure of Confidential Information of the Discloser would cause irreparable harm, in the event of any breach or threatened breach by the Recipient of any of its obligations hereunder, the Discloser shall be entitled to equitable relief to protect its interest therein including, but not limited to, injunctive relief and specific performance, as well as monetary damages and attorneys' fees and expenses incurred to enforce this Agreement.

(b) Recipient agrees to notify the Discloser promptly in writing if Recipient becomes aware of any breach of this Agreement with respect to the Confidential Information of the Discloser in Recipient's possession.

(c) Recipient shall not, without Discloser's prior written consent, (i) reverse engineer, disassemble or decompile any prototypes or other tangible objects that embody the Confidential Information of Discloser or 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 the Confidential Information of Discloser, or (ii) directly or indirectly interfere with, circumvent or attempt to circumvent, avoid, by-pass or obviate Discloser's interest, or the interest or relationship between Discloser and any of its acquisition targets, technology providers, manufacturers or other vendors to obtain rights or access to technologies or processes directly. In the event that samples or demonstration materials are exchanged between Discloser and the Recipient, such samples and demonstration materials shall not be analyzed or decoded to determine their composition or method of manufacture without the written consent of Discloser.

(d) Nothing in this Agreement shall compel the Discloser to disclose to the Recipient any information that it does not wish to disclose. All Confidential Information of the Discloser PROVIDED TO THE RECIPIENT IS PROVIDED "AS IS." NO WARRANTIES WITH RESPECT TO SUCH CONFIDENTIAL INFORMATION, EITHER EXPRESS OR IMPLIED, ARE MADE BY DISCLOSER HEREUNDER. Each Party represents to the other Party that neither the execution of this Agreement nor the discussions with the other Party related to the Activities will conflict with any law, rule or regulation applicable to such Party or any agreement to which such Party is a party or is otherwise subject.

(e) If any term or provision of this Agreement is determined to be illegal, unenforceable or invalid in whole or in part for any reason, such illegal, unenforceable or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this Section 6(e), then such stricken provision shall be replaced, to extent possible, with a legal, enforceable and valid provision that is as similar in tenor to the stricken provision as is legally possible.

(f) This Agreement shall not be modified except in writing signed by both of the Parties. Neither Party may transfer or otherwise assign its rights, duties or obligations under this Agreement to any other person or entity, in whole or in part, without the prior written consent of the other Party; provided that no such prior written consent shall be required in connection with a bona fide merger, consolidation or transfer or sale of all or substantially all of a Party's assets. Any assignment in contravention of this Agreement shall be null and void.

(g) Recipient shall not export, directly or indirectly, any technical data acquired pursuant to this Agreement or any product utilizing any such data to any country for which the U.S. Government or any agency thereof at the time of export requires an export license or other governmental approval without first obtaining such license or approval and the prior written consent of Discloser.

(h) Waiver of any default or breach hereunder shall not constitute a waiver of any other default or breach whether similar or otherwise.

(i) This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Delaware, without regard to principles of conflicts of law.

(j) The Parties (i) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Delaware and to the jurisdiction of the United States District Court for the District of Delaware for the purpose of any suit, action, or other proceeding arising out of or based upon this Agreement; (ii) agree not to commence any suit, action, or other proceeding arising out of or based upon this Agreement except in the state courts of Delaware and the United States District Court for the District of Delaware; and

(iii) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action, or proceeding; any claim that it is not subject personally to the jurisdiction of the above-named courts; that the suit, action, or proceeding is brought in an inconvenient forum; that the venue of the suit, action, or proceeding is improper; or that this Agreement or the subject matter hereof may not be enforced in or by such court.

(k) This Agreement constitutes the entire agreement between Recipient and Discloser and supersedes all prior communications, representations, understandings and agreements, with respect to the subject matter hereof.

(l) All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid or (iii) one (1) business day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. Notices shall be sent to the addresses set forth in the introductory paragraph of this Agreement or such other address as either Party may specify in writing to the other Party in accordance with this Agreement.

(m) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same document. This Agreement may be executed by facsimile or other electronic signatures.

[Signatures on following pages]

IN WITNESS WHEREOF the Parties have, by their duly authorized representatives, executed this Mutual Confidentiality Agreement as of the date first written above.

WAVEPOINT SOLUTIONS LLC

By: _____
Name: David J Smith
Title: President

By: _____
Name:
Title: