



CONFIDENTIAL INFORMATION NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement is dated as of _____, by and between Bandwave Systems, a limited liability company organized under the laws of the State of Pennsylvania with its principal office at 438 High Street, Burlington, NJ 08016 (the "Company") and _____, a company organized under the laws of the State of _____ with its principal office at _____ (the "Contracting Party").

RECITALS

The Company and the Contracting Party desire to establish a confidential relationship whereby Proprietary Information (hereinafter defined) that is to be exchanged between them shall be protected by the receiving party from a disclosure or use that is not authorized by the disclosing party.

The Company and the Contracting Party, for their mutual benefit, are desirous that the Company shall disclose to the Contracting Party and that the Contracting Party shall disclose to the Company certain confidential information for the purpose of exploring potential business relationships (the "Project").

The parties hereby agree as follows:

- 1.) **PROPRIETARY INFORMATION.** Information disclosed by either party during the course of the Project which is considered by such party to be confidential and proprietary (including, but not limited to, technical or business information about the disclosing party's processes, products, services, research and development, manufacturing, purchasing, accounting and finance, engineering, marketing, merchandising and selling) shall be disclosed in a tangible form and shall be marked as "Confidential", "Proprietary", or by any other appropriate legend clearly indicating the confidential and proprietary nature of the information ("Proprietary Information"). Proprietary Information, if first orally or visually disclosed, shall be identified by the disclosing party at the time of disclosure as being disclosed in confidence and shall be reduced to tangible form and marked as stipulated above and such tangible form shall be delivered to the receiving party within twenty (20) working days after the date of first disclosure.
- 2.) **USE.** Proprietary Information that is disclosed pursuant to this Agreement (including the fact that such information has been disclosed) shall not be used other than for the purposes of the Project, unless authorized in writing by the disclosing party, or disclosed to others, except employees of the receiving party whose positions necessitate such disclosure to facilitate the Project.
- 3.) **PROTECTION.** Each receiving party represents that it has adopted reasonable procedures and precautions for protecting confidential information and, when receiving such Proprietary Information from the disclosing party, shall protect such Proprietary Information with the same degree of care that it regularly employs to safeguard its own confidential and proprietary information from an unauthorized use or disclosure. If the Proprietary Information is reproduced in whole or in part, the reproduction shall carry a proprietary notice or legend similar to that which appears on the original.
- 4.) **GOVERNMENT REGULATIONS.** Such Proprietary Information may include United States developed technical data. Accordingly, the receiving party is responsible for complying with and does assure the disclosing party that it will comply with the United States Department of State International Traffic in Arms Regulations, 22 CFR Parts 120-130, the United States Department of Commerce Export Administration Regulations, 15 CFR Parts 730-799, and any other United States Government regulation applicable to the export of disclosure of such technical data or of the products thereof to nationals foreign to the United States, whether within or without the United States, including those associated with the receiving party. Nothing herein shall affect the rights, if any, to be obtained by the U.S. Government under the "Rights in Technical Data and Computer Software" clause of NASA FAR 18-227-74(a) or DFARS 52.227-7013 or other clauses which may be included in purchase orders (if any) issued from one party to the other party pursuant to either party's future contracts.

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- 5.) **PUBLIC INFORMATION.** It is acknowledged by the parties that any portion of such Proprietary Information:
- a.) that is or becomes part of the public domain without breach of this Agreement by the receiving party;
 - b.) that is or becomes available to the receiving party from third parties who have received such Proprietary Information from the disclosing party without restriction on further disclosure to other parties;
 - c.) that is independently developed by employees of the receiving party who have not had access to such Proprietary Information;
 - d.) that is already known to the receiving party as evidenced by tangible evidence;
 - e.) that is furnished to a third party by the disclosing party without a similar restriction on such third party's rights;
 - f.) that is publicly disclosed with the prior written approval of the disclosing party;

is not entitled to the protection provided herein.

- 6.) **PERMITTED DISCLOSURE.** Notwithstanding the foregoing, nothing in this Agreement shall prevent either party from disclosing such Proprietary Information pursuant to a judicial order, but only to the extent so ordered, provided, however, that the party receiving such order shall notify the other party of such order in sufficient time to permit such other party to intervene in response to such order.
- 7.) **NO WARRANTY OF NON-INFRINGEMENT.** None of the Proprietary Information disclosed hereunder constitutes any representation or warranty by the disclosing party that such Proprietary Information does not infringe any patent or other rights of any party.
- 8.) **INDEPENDENT DEVELOPMENT.** It is understood by both parties that each party has performed substantial independent development relating to the subject matter identified above and related products, technology, and services. This Agreement and any discussions hereunder shall not limit either party's independent development and marketing of products, systems, or services involving technology or ideas of the same or a similar nature to that disclosed, nor will this Agreement prevent either party from undertaking the same or similar efforts or discussions with third parties, provided that the obligations hereunder are not violated.
- 9.) **RETURN OF INFORMATION.** All such Proprietary Information and copies thereof shall remain the property of the disclosing party. All such Proprietary Information shall be returned to the disclosing party upon the first of the following events to occur:
- a.) within thirty (30) days after the termination of this Agreement under Section 11;
 - b.) upon completion of the Project; or
 - c.) upon the determination by the receiving party that it no longer desires to possess such Proprietary Information.

Alternatively, such Proprietary Information, and all copies thereof, may be destroyed by the receiving party within the same time parameters. Such destruction shall be proved by an affidavit to that effect submitted to the disclosing party within thirty (30) days of such destruction.

- 10.) **REMEDIES.** Upon breach of any of the obligations of this Agreement by the receiving party and upon demand by the disclosing party, such Proprietary Information, and all copies thereof, shall be returned to the disclosing party within ten (10) days of such demand. Alternatively, such Proprietary Information, and all copies thereof, may be destroyed by the receiving party. Such destruction shall be proven by an affidavit to that effect, submitted to the disclosing party within ten (10) days of such destruction. Each party hereby agrees that in the event of breach, the non-breaching party shall be entitled to injunctive relief in addition to any other legal or equitable remedies that may be available.

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11.) **TERMINATION.** This Agreement shall terminate five (5) years from the date of this Agreement, except that either party, upon thirty (30) days written notice to the other party, may terminate this Agreement with respect to disclosures made thereafter. All obligations to maintain confidentiality shall survive termination under this Section 11.

12.) **RELATIONSHIP.** This Agreement is not intended to be, nor shall it be considered as, a joint venture, partnership, or other business organization, and unless otherwise agreed, neither party shall have the right or obligation to share any of the profits or bear any of the risks or losses of the other party. At all times both parties shall remain independent contractors with each responsible for its own employees and representatives. Each party assumes no responsibility to the other party for costs, expenses, risks, and liabilities associated with the research, development, exchange, and use of each other's Proprietary Information. Neither party shall, without the consent of the other party, refer to such party or this relationship in its promotional materials.

13.) **NOTICES.** All notices, requests, demands, and other communications hereunder shall be in writing and shall be delivered by hand or mailed by certified mail, return receipt requested, postage prepaid, or by simultaneous fax transmission, as follows:

a.) If to the Company, to:

Company Name:	Bandwave Systems, LLC.	Attn:	Partner Program Manager
Address 1:	438 High Street	Phone:	888-396-7182
Address2:	Burlington, New Jersey 08016	Fax:	609-239-2662

b.) If to the Contracting Party, to:

Company Name:	_____	Attn:	_____
Address 1:	_____	Phone:	_____
Address 2:	_____	Fax:	_____

14.) **HEADINGS.** The Section headings in this Agreement are inserted solely as a matter of convenience for reference, and shall not in any way affect the meaning or interpretation of any of the provisions of the Agreement.

15.) **INTERPRETATION.** The rights and obligations provided by this Agreement shall take precedence over specific legends or statements associated with Proprietary Information when received. Such legends and statements shall not be binding on the receiving party unless otherwise agreed in writing.

16.) **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17.) **PRIOR AGREEMENTS.** This Agreement supersedes all prior agreements, oral and written, among the parties hereto with respect to the subject matter hereunder.

18.) **AMENDMENT WAIVER.** This Agreement may not be amended except by an instrument in writing signed by the parties hereto. No term or condition of this Agreement shall be deemed to have been waived, nor shall there be any estoppel against the enforcement of any provision of this Agreement, except by written instrument signed by the party charged with such waiver or estoppel. No such written waiver shall be deemed a continuing waiver unless specifically stated therein, and such waiver shall operate only as to the specific term or condition waived and shall not constitute a waiver of such term or condition for the future or as to any act other than that specifically waived.

19.) **SEVERABILITY.** Should any provision of this Agreement, or the application thereof, be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement, or alternative applications thereof, other than the provision(s) which shall be held invalid or unenforceable, shall not be affected thereby and shall continue to be valid and enforceable to the fullest extent permitted by law or equity.

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- 20.) **ASSIGNMENT.** Except as otherwise contemplated herein, this Agreement shall not be assignable by any of the parties hereto without the written consent of the other parties. Nothing contained in this Agreement, express or implied, is intended to confer upon any person or entity, other than the parties hereto and their permitted successors, assigns, and transferees any rights or remedies under or by reason of this Agreement.
- 21.) **BINDING EFFECT.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective permitted successors, assigns, and transferees.
- 22.) **TIME OF ESSENCE.** Time is of the essence in this Agreement.
- 23.) **GOVERNING LAW.** This Agreement has been executed and delivered in Burlington, New Jersey and its validity, interpretation, performance, and enforcement shall be governed by, and construed and enforced in accordance with, the laws of New Jersey.

The parties have caused this Agreement to be executed on their behalf by their duly authorized officers effective as of the date first above written.

Contracting Party:

Company:

Printed Name

Bandwave Systems, LLC

Signature / Title

Signature / Title

Facility

Facility

Date

Date

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