



**HAMMER TECHNOLOGIES INC.  
MUTUAL NON-DISCLOSURE AGREEMENT**

This Mutual Non-Disclosure Agreement ("**Agreement**") is entered effective as of [START DATE], (the "**Effective Date**") by and between Hammer Technologies Inc., a Delaware corporation with offices at 600 Technology Park Drive, Suite 100, Billerica, MA 01821 ("**Hammer Technologies Inc.**"), and the party identified at the signature line below (individually referred to a "**Party**;" collectively referred to as the "**Parties**").

**WHEREAS**, Hammer Technologies Inc. and the Party wish to discuss the possibility of establishing or pursuing a business relationship, which in part may be related to the specific business transactions as follows (collectively, the "**Opportunities**"):

[SPECIFIC SUBJECT OF THE NDA]

**WHEREAS**, in furtherance of such discussions, each Party may elect to share with one another certain Confidential and proprietary technical, financial or business information.

**NOW, THEREFORE**, the Parties agree to the following:

1. Definitions

- a. As used in this Agreement, the term "Confidential Information," means all technical, engineering, pricing, financial, customer, marketing, strategic, personnel, business data, code, specifications, models, reports and reporting formats, plans, forecasts, or other information which (i) as provided by the disclosing Party (the "Owner") to the receiving Party ("Recipient"), is labeled or marked as "Proprietary," "Confidential" or the like, or (ii) if conveyed orally, is identified as Confidential or proprietary at the time it is conveyed and promptly confirmed in writing to Recipient by the Owner. Notwithstanding the lack of label or legend, and subject to subparagraph (c) below, any code, data, information, plans or other matter relating to the Opportunities and disclosed by Owner in written format which, by its nature or the manner in which it is disclosed, is or should be reasonably understood to be of a Confidential nature, shall presumptively be deemed to be Confidential Information of the Owner. Either Party shall have the right to correct any inadvertent failure to designate information as Confidential Information by written notification as soon as practical (but in no event later than five (5) business days) after such error is determined. Recipient receiving said notification shall, from that time forward, treat such information as Confidential Information.
- b. As used in this Agreement, the term "Affiliate" shall mean any person or entity controlling, controlled by or under at least fifty percent (50%) common control with a Party.
- c. Notwithstanding the foregoing, the restrictions set forth in this Section on use and disclosure of Confidential Information shall not apply to information that: (i) is already known to Recipient at the time of its disclosure or subsequently becomes publicly known through no wrongful act of Recipient; (ii) is received from a third-party free to disclose it to Recipient; (iii) is developed by Recipient independently of and without reference to any of Owner's Confidential Information or other information that Owner disclosed in confidence to any third-party; (iv) is communicated by Recipient to a third-party with the express written consent of the Owner; or (v) is lawfully required to be disclosed to any governmental agency or judicial body or is otherwise required to be disclosed by law, provided that before making such disclosure the Recipient shall cooperate with and provide the Owner, at Owner's expense, an adequate opportunity to object or to assure Confidential treatment of such information.

- 2. This Agreement shall govern the disclosure of Confidential Information for the period of two (2) years beginning on the effective date of this Agreement (the "Term"). The Parties may extend the Term by mutual written agreement. Either Party may terminate this Agreement by written notice to the other. Notwithstanding the termination of this Agreement, all rights and obligations hereunder shall survive with respect to Confidential Information disclosed prior to such termination and



continue for a period of three (3) years after such termination, except with respect to trade secrets, for which the rights and obligations hereunder shall continue indefinitely.

3. The Recipient shall not, without the express written consent of the Owner, disclose, publish, or make accessible any Confidential Information to any person or entity, other than the employees, consultants and agents of Recipient and its Affiliates ("Representatives") who have a need to know and who have agreed to abide by the terms of this Agreement. The Parties agree that each has adequate and current agreements with their respective Representatives to assure compliance with the obligations of this Agreement; and, in any case, each Party shall be responsible for any breach of this Agreement by any of its Representatives. The Parties agree on behalf of themselves and their Representatives that they shall not use any Confidential Information received by them for any purpose other than evaluating the Opportunities and participating in discussions with the other Party regarding the same. Each Party agrees to use the same care and discretion to limit disclosure of Confidential Information as it uses with similar Confidential Information of its own, but, in any case, with no less than reasonable care.
4. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed to the Recipient which shall at all times remain the property of the Owner. Upon the written request of the Owner, the Recipient shall promptly return all Confidential Information which was provided to Recipient in tangible form (whether written, incorporated in computer software or held in electronic storage or other tangible media), including all copies and duplicates thereof (whether provided by Owner or created by or for Recipient); provided that Recipient may maintain one (1) copy for archival purposes only. Any abstracts, notes, memoranda or other documents containing any Confidential Information or any description, summary or analysis of any Confidential Information shall be destroyed by the Recipient upon such written request, and such destruction shall be certified in writing by an officer of the Recipient.
5. The furnishing of Confidential Information hereunder shall not obligate either Party to enter into any further agreement or negotiation with the other or, except as may be expressly provided for herein, to refrain from entering into an agreement or negotiation with any other Party. The Parties agree that, unless and until a definitive agreement between the Parties with respect to any transaction relating to the Opportunities has been executed and delivered, none of the Parties will be under any legal obligation of any kind whatsoever with respect to such a transaction by virtue of this or any written or oral expression with respect to such a transaction except, in the case of this Agreement, for the matters specifically agreed to herein.
6. Each Party acknowledges that the Confidential Information is valuable and unique, that disclosure in breach of this Agreement may cause irreparable injury to the Owner, and that the Owner may not have an adequate remedy at law if the Recipient breaches its obligations under this Agreement. Accordingly, it is agreed that, in the event of a Party's breach of any of its obligations hereunder, the other Party shall have the right to obtain equitable relief to prevent the breaching Party from taking any actions which are prohibited by, or to require the breaching Party to comply with the provisions of, this Agreement. The provisions of this paragraph are in addition to any other legal rights or remedies the Owner may have under applicable law.
7. Except as may be required by law, without the prior written consent of the other Party, neither Hammer Technologies Inc. nor the other Party or its representatives will disclose to any person (except its representatives with a need to know) either the fact that discussions or negotiations are taking place concerning a possible transaction between Hammer Technologies Inc. and the other Party, or any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.
8. Each Party understands and acknowledges that the Owner makes no warranty with respect to Confidential Information, including its accuracy, completeness and freedom from claims of third-party infringement of patents, copyrights or other third-party proprietary rights, and that the Owner shall not have any liability or responsibility for errors or omissions in, or any business decisions made by Recipient in reliance on, any Confidential Information disclosed hereunder.
9. This Agreement: (a) is the complete agreement of the Parties and supersedes any prior or contemporaneous agreement with respect to the subject matter hereof; (b) may not be amended or in any manner modified except in writing signed by the Parties; and shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to its conflicts of law provisions. If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited



extent required to permit its enforcement in a manner most closely approximating the intention of the Parties as expressed herein.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date identified above.

**HAMMER TECHNOLOGIES INC.**

**[COUNTERPARTY LEGAL ENTITY NAME]**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

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

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

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

Title/Position: \_\_\_\_\_

**Notice Address:**

**[COUNTERPARTY ADDRESS]**