**NON-DISCLOSURE AGREEMENT**

**(DISCLOSURES BY <company name>)**

This Agreement is made and entered into, as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Effective Date”) Between \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Company”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having a principal address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Recipient”).

1. **Definition of Confidential Information**. “Confidential Information” means (a) any technical and non-technical information related to the Company’s business and current, future and proposed products and services of Company, including for example and without limitation, information concerning research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information, marketing plans and business plans, in each case whether or not marked as “confidential” or “proprietary” and (b) any information that Company has received from others that may be made known to Recipient and that Company is obligated to treat as confidential or proprietary, whether or not marked as “confidential” or “proprietary”.
2. **Nondisclosure and Nonuse Obligations**. Recipient will not use any Confidential Information, except to the extent necessary for the purpose described below the signatures to this Agreement (the “Purpose”) and Recipient will not disseminate or in any way disclose any Confidential Information to any person, firm, business or governmental agency or department, except where the disclosure is expressly permitted in this Agreement. Furthermore, Recipient may not disclose the existence of any negotiations, discussions or consultations in progress between the parties to any person, firm or business or to any form of public media without the prior written approval of Company. Recipient shall treat all Confidential Information with the same degree of care as Recipient accords to Recipient’s own confidential information, but in no case shall Consultant use less than reasonable care. Recipient shall disclose Confidential Information only to those of its employees who have a need to know the information to assist Recipient with respect to the Purpose. Recipient certifies that each of its employees will have agreed, either as a condition of employment or in order to obtain the Confidential Information, to be bound by terms and conditions substantially similar to those terms and conditions applicable to Recipient under this Agreement. Recipient shall immediately give notice to Company of any unauthorized use or disclosure of the Confidential Information. Recipient shall assist Company in remedying the unauthorized use or disclosure of the Confidential Information.
3. **Exclusions from Nondisclosure and Nonuse Obligations**. Recipient’s obligations under Section 2 do not apply to any Confidential Information that Recipient can document (a) was in the public domain at or subsequent to the time the Confidential Information was communicated to Recipient by Company through no fault of Recipient; (b) was rightfully in Recipient’s possession free of any obligation of confidence at or subsequent to the time the Confidential Information was communicated to Recipient by Company; or (c) was independently developed by employees, contractors or agents of Recipient without use of, or reference to, any Confidential Information. A disclosure of any Confidential Information (a) in response to a valid order by a court or other governmental body or (b) as otherwise required by law will not be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that Recipient provides prompt prior written notice thereof to Company to enable Company to seek a protective order or otherwise prevent the disclosure.
4. **Ownership and Return of Confidential Information and Other Materials**. All Confidential Information, and any Derivatives (defined below) thereof, whether created by Company or Recipient, shall be the property of Company and no license or other rights to Confidential Information or Derivatives is granted or implied hereby. For purposes of this Agreement, “Derivatives” shall mean: (a) for copyrightable or copyrighted material, any translation, abridgment, revision or other form in which an existing work may be recast, transformed or adapted; (b) for patentable or patented material, any improvement thereon; and (c) for material protected by trade secret, any new material derived from the existing trade secret material, including new material that may be protected under copyright, 2 patent and/or trade secret laws. Recipient hereby does and agrees to irrevocably assign to Company all of Recipient’s rights, title in interest and interest in and to the Derivatives. All materials and items (including, without limitation, software, equipment, tools, artwork, documents, drawings, papers, diskettes, tapes, models, apparatus, sketches, designs and lists) that Company furnishes to Recipient (whether or not they contain or disclose Confidential Information) are the sole and exclusive property of Company or Company’s suppliers or customers. Recipient agrees to keep all of the foregoing at Recipient’s premises unless otherwise permitted in writing by Company. Within five (5) days after any request by Company, Recipient shall destroy or deliver to Company, at Company’s option, (a) all Company-furnished materials and items and (b) all materials and items in Recipient’s possession or control (even if not Company- furnished) that contain or disclose any Confidential Information. Recipient will provide Company a written certification of Recipient’s compliance with Recipient’s obligations under this Section.
5. **No Warranty**. All Confidential Information is provided “AS IS” and without any warranty, expressed, implied or otherwise, regarding any Confidential Information’s completeness, accuracy or performance.
6. **No Export**. Recipient will obtain any licenses or approvals the U.S. government or any agency thereof requires prior to exporting, directly or indirectly, any technical data acquired from Company pursuant to this Agreement or any product utilizing that data.
7. **Term**. This Agreement will govern all communications from Company to Recipient that are made from the Effective Date to the date on which either party receives from the other party written notice that subsequent communications shall not be so governed, except that Recipient’s obligations under Section 2 (Nondisclosure and Nonuse Obligations) will continue in perpetuity with respect to Confidential Information of Company that Recipient has previously received unless those obligations terminate earlier pursuant to Section 3 (Exclusions from Nondisclosure and Nonuse Obligations).
8. **Publicity**: Neither Recipient nor any Recipient employee shall issue or authorize, directly or indirectly, the dissemination of any publicity or other information regarding the existence of this Agreement or the relationship between Recipient and Company, to any person or entity for any purpose whatsoever, without the prior written consent of Company.
9. **No Assignment**. Recipient shall not assign its rights, or delegate any performance, under this Agreement without the prior written consent of Company. Any purported assignment of rights or delegation of performance in violation of this paragraph is void.
10. **Competition**: It is understood that the Company and Recipient may each be in discussions with other parties regarding matters and possible business relationships which may be similar to those discussed pursuant to this Agreement. Nothing in this Agreement shall: (a) prohibit either Party from undertaking operations similar to those undertaken by the other Party or from discussing with third parties matters and possible business relationships which may be similar to those discussed pursuant to this Agreement, so long as such undertakings and discussions do not violate the terms hereof; or (b) obligate either Party to proceed with any transaction between them.
11. **Injunctive Relief**. A breach of this Agreement will cause irreparable and continuing damage to Company for which money damages are insufficient, and Company is entitled to injunctive relief, a decree for specific performance, and all other relief as may be proper (including money damages if appropriate), without the need to post a bond.
12. **Intellectual Property**: Company and Recipient shall each retain ownership of, and all right, title and interest in and to, their respective, preexisting Intellectual Property (as hereinafter defined), and no license therein, whether express or implied, is granted by this Agreement or as a result of the Services performed hereunder. To the extent the parties wish to grant to the other rights or interests in pre-existing Intellectual Property, separate license agreements on mutually acceptable terms will be executed. As used herein, "Intellectual Property" shall mean inventions (whether or not patentable), 3 works of authorship, trade secrets, techniques, knowhow, ideas, concepts, algorithms, and other intellectual property incorporated in any Deliverable. The parties may elect to use a mutually agreeable separate license Agreement to grant and for use of Company’s Intellectual Property.
13. **Notices**. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when actually delivered; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or to such other address as either party may provide in writing.
14. **Governing Law; Forum; Legal Fees**. The laws of Alabama and Lee County of govern all matters arising out of or relating to this Agreement without giving effect to any conflict of law principles. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and provincial courts located in Alabama, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of the federal or provincial courts located in Delaware; personal jurisdiction will be non- exclusive. Additionally, notwithstanding anything in the foregoing to the contrary, a claim for equitable relief arising out of or related to this Agreement may be brought in any court of competent jurisdiction. If a proceeding is commenced to resolve any dispute that arises between the parties with respect to the matters covered by this Agreement, the prevailing party in that proceeding is entitled to receive its reasonable attorneys’ fees, expert witness fees and out-of-pocket costs, in addition to any other relief to which that prevailing party may be entitled.
15. **Severability**. If a court of law holds any provision of this Agreement to be illegal, invalid or unenforceable, (a) that provision shall be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision and (b) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected.
16. **Waiver; Modification**. If Company waives any term, provision or Recipient’s breach of this Agreement, such waiver shall not be effective unless it is in writing and signed by Company officer. No waiver shall constitute a waiver of any other or subsequent breach by Recipient. This Agreement may be modified only if authorized representatives of both parties’ consent in writing.
17. **Entire Agreement**. This Agreement constitutes the final and exclusive agreement between the parties with respect to the treatment of Confidential Information disclosed hereunder. It supersedes all agreements, whether prior or contemporaneous, written or oral, concerning the treatment of the Confidential Information.

IN WITNESS WHEREOF, the parties are signing this Agreement as of the Effective Date.

“Company” FLASHTRACT INC. “Recipient”

By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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