

MUTUAL NON-DISCLOSURE AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT (this “**Agreement**”) is made as of the ___ day of _____, 20__ (the “**Effective Date**”), by and between Amiga, Inc., a Delaware corporation (“**Amiga**”), and _____, a _____ corporation (the “**Company**”). Amiga and the Company are referred to herein individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS, Amiga has and will have certain confidential and proprietary technical, business, marketing, financial, intellectual property, trade secret, know-how and other information with respect to Amiga’s business and technology;

WHEREAS, the Company has and will have certain confidential and proprietary technical, business, marketing, financial, intellectual property, trade secret, know-how and other information with respect to the Company’s business and technology;

WHEREAS, each Party may be given access to certain of the other Party’s Confidential Information (as defined in Section 1(g) hereof) for the purpose of permitting each Party an opportunity to evaluate whether or not to enter into a further business relationship with the other Party (the “**Stated Purpose**”); and

WHEREAS, the Parties intend that this Agreement, among other things, provide for the treatment of Confidential Information.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties do hereby agree as follows:

1. **Defined Terms**. As used in this Agreement, the following terms shall have the meanings ascribed to them below:
 - (a) “**Affiliate**” of any Person means each of the directors, officers, shareholders and other equityholders, managers, members, partners, employees, agents, representatives, advisors, contractors, consultants, attorneys, accountants or affiliated organizations of such Party, including any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified Person. For purposes of this definition, a specified Person shall be deemed to be “controlled by” another Person if such other Person either (a) holds, beneficially or of record, securities that would entitle such other Person to exercise fifty percent (50%) or more of the votes that could be cast in the election of members to the board of directors, board of managers or other governing body of such specified Person, or (b) possesses, directly or indirectly, power to direct or cause the direction of the management and policies of such other Person.
 - (b) “**Agreement**” has the meaning set forth in the preamble hereto.
 - (c) “**Amiga**” has the meaning set forth in the preamble hereto.

- (d) **“Amiga Information”** means information pertaining to any aspect of Amiga’s business or technology that is either information not known by the Company or actual or potential competitors of Amiga or proprietary information (whether of a technical nature or otherwise) of Amiga or its customers, its suppliers or others with which the Company has (from and after the Effective Date) and has had a business relationship.
- (e) **“Company”** has the meaning set forth in the preamble hereto.
- (f) **“Company Information”** means confidential and proprietary technical, business, marketing, financial, intellectual property, trade secret, know-how and other similar information with respect to the business and technology of Company.
- (g) **“Confidential Information”** means, with respect to Amiga, Amiga Information, and, with respect to the Company, Company Information, and includes, without limitation, the following: (1) information relating to Amiga, the Company and their respective businesses, as the case may be, whether conveyed in written, graphic, oral or physical form, including, but not limited to: trade secrets; product ideas; designs; configurations; processes; software; improvements; data; plans and strategies; sales and financial reports or forecasts; scientific knowledge; know-how; processes; compilations; data bases; prototypes; collaborations; inventions; techniques; business strategies; notes; analyses; studies; formulae; models; concepts; design concepts; products; business operations; customer and supplier lists; business relationships; specifications; drawings; working drawings; means of implementation and manufacture; cost and pricing data; bills; ideas; software materials (including object code, source code and documentation in the form of software notes); methods of encoding; preprocessing and all other proprietary information; patent, trademark and copyright applications; patentable or unpatentable and/or copyrightable descriptions of mathematics and/or any other written material referring to the same; and (2) any document, diagram, drawing, computer program, or other communication that is (A) marked “confidential” or “proprietary,” (B) known or reasonably known by the Company to be confidential, or (C) learned or disclosed in the course of discussions, studies or other work undertaken between the Parties.
- (h) **“Disclosing Party”** means the Party disclosing its Confidential Information to the other Party or any of such other Party’s Affiliates.
- (i) **“Effective Date”** has the meaning set forth in the preamble hereto.
- (j) **“Inventions”** means designs, trademarks, discoveries, formulae, processes, manufacturing techniques, trade secrets, inventions, improvements, enhancements, applications, works of authorship, creative works, useful ideas, and copyrightable works, including the rights to obtain, register, perfect or enforce such proprietary interests, or any other discoveries, works or improvements that consist of, are protected by or relate to, any form of

intellectual property or other proprietary information, and all tangible embodiments thereof.

- (k) “**Party**” or “**Parties**” have the meanings set forth in the preamble hereto.
- (l) “**Person**” means any individual, corporation, limited liability company, partnership, trust, joint stock company, unincorporated association, joint venture, governmental authority or other legal entity of any nature whatsoever.
- (m) “**Physical Property**” has the meaning set forth in Section 2(d) hereof.
- (n) “**Receiving Party**” means the Party receiving Confidential Information of the other Party.
- (o) “**Stated Purpose**” has the meaning set forth in the recitals hereto.
- (p) “**Term**” has the meaning set forth in Section 3 hereof.

2. **Confidential Information.**

- (a) **Confidentiality Obligations.** The Receiving Party may use Confidential Information of the Disclosing Party only under the following conditions:
 - (i) Except as otherwise expressly permitted to be disclosed pursuant to this Section 2, the Receiving Party agrees to hold in strict confidence and not directly or indirectly use or disclose to any other Person, any Confidential Information the Receiving Party or any of its Affiliates obtains of the Disclosing Party without the prior written permission of the Disclosing Party. The Receiving Party understands that disclosure of Confidential Information of the Disclosing Party could destroy the value of such Confidential Information and cause irreparable harm to the Disclosing Party. The Receiving Party shall use, and shall cause its Affiliates to use, at least the same level of care and protection of Confidential Information of the Disclosing Party as the Receiving Party uses to prevent unauthorized use and unauthorized disclosure of the Receiving Party’s own Confidential Information, but in any case using no less than a reasonable standard of care.
 - (ii) The Receiving Party will use Confidential Information of the Disclosing Party only for the Stated Purpose.
 - (iii) The Receiving Party shall provide to the Disclosing Party any and all test data and methods and evaluation results and reports produced in connection with its receipt of Confidential Information.
 - (iv) The Receiving Party shall not directly or indirectly copy, decompile, disassemble, reverse engineer, re-engineer, redesign, reconstruct, modify, destroy or otherwise alter any Confidential Information the Receiving

Party receives without the express, written prior consent of the Disclosing Party.

- (v) The Receiving Party shall not directly or indirectly duplicate or use any Confidential Information of the Disclosing Party to manufacture or sell products for commercial purposes unless a release, option or license granting the same is executed on behalf of the Disclosing Party prior to such use.
 - (vi) The Receiving Party shall not directly or indirectly use any Confidential Information of the Disclosing Party in Receiving Party's business or for its own benefit or for the benefit of any other Person except where expressly permitted by this Agreement or any other written agreement between the Parties.
 - (vii) The Receiving Party shall not directly or indirectly publish any data, results or other information that includes, is derived from or results from Confidential Information of the Disclosing Party without the express prior written consent of the Disclosing Party.
 - (viii) The Receiving Party shall not directly or indirectly copy any Confidential Information of the Disclosing Party, in whole or in part, for any purpose other than that contemplated by this Agreement and in accordance with the terms and conditions hereof, except that, subject to Section 2(e) hereof, the Receiving Party's counsel may retain one copy of Confidential Information of the Disclosing Party to be able to monitor the Receiving Party's obligations hereunder.
- (b) **Certain Exceptions to Confidentiality Obligations.** The restrictions on use and disclosure of Confidential Information of the Disclosing Party shall not apply to information that the Receiving Party can demonstrate, by written evidence:
- (i) was publicly known at the time of its communication by the Disclosing Party to the Receiving Party;
 - (ii) becomes publicly known, through no fault of the Receiving Party or its Affiliates, subsequent to the Disclosing Party's communication of such Confidential Information to the Receiving Party;
 - (iii) was in the Receiving Party's possession prior to the Disclosing Party's communication of such Confidential Information to the Receiving Party and is not otherwise subject to a confidentiality obligation; or
 - (iv) was rightfully obtained by the Receiving Party from a third party that is not under any obligation of confidentiality to the Disclosing Party and is otherwise authorized to make such disclosure without restriction.

- (c) **Disclosure Required by Law, Etc.** Notwithstanding anything in this Section 2 to the contrary, the Receiving Party or any of its Affiliates may disclose Confidential Information to others as required by court order, operation of law or government regulation; provided, that the Receiving Party or such Affiliates, as the case may be, promptly notifies the Disclosing Party of the specifics of such requirement prior to the actual disclosure, uses diligent efforts to limit such disclosure and to obtain confidential treatment or a protective order for the Confidential Information, and allows the Disclosing Party to participate in such process undertaken to protect the Confidential Information. The Receiving Party or such Affiliates, as the case may be, shall cooperate with the Disclosing Party, upon the Disclosing Party's reasonable request, to obtain such protective order or other reliable assurance that confidential treatment will be accorded to such Confidential Information. In the absence of a protective order or other appropriate remedy, the Receiving Party may, without liability under this Agreement, disclose only that portion of the Confidential Information that is legally required to be disclosed.
- (d) **Physical Property.** All documents, records, hardware, apparatuses, equipment, and other physical property, whether or not pertaining to the Confidential Information (such physical property, "**Physical Property**"), that are furnished to the Receiving Party or any of its Affiliates by the Disclosing Party, or that are produced by the Receiving Party or any of its Affiliates in connection with the Stated Purpose, shall be and shall remain the sole property of the Disclosing Party.
- (e) **Return of Confidential Information.** Upon completion of the Receiving Party's evaluation of Confidential Information of the Disclosing Party, the request of the Disclosing Party or the expiration or termination of this Agreement, the Receiving Party shall, and shall cause its Affiliates, (1) to discontinue use of and promptly return all Confidential Information of the Disclosing Party, and copies thereof (including, without limitation and for the avoidance of doubt, all drawings, specifications, documents, records, devices, models or any other material and copies or reproductions thereof provided to the Receiving Party or its Affiliates); (2) to discontinue use of and promptly return all Physical Property that is furnished to the Receiving Party or any of its Affiliates by the Disclosing Party, or that are produced by the Receiving Party or any of its Affiliates in connection with the Stated Purpose; and (3) delete all Confidential Information from any computers owned by the Receiving Party or its Affiliates, that the Receiving Party or its Affiliates use, and, in the case of Confidential Information that is of a nature such that it cannot be returned or so deleted by the Receiving Party or its Affiliate without such Person otherwise retaining a copy of such Confidential Information, destroy such Confidential Information. Upon the return of all such Confidential Information in accordance with this Section 2(e), an authorized representative of the Receiving Party shall certify on behalf of the Receiving Party that, in accordance with this Section 2(e), use of all such Confidential Information has been discontinued, returned and, if applicable, deleted or otherwise destroyed.

- (f) **Ownership of Confidential Information.** All Confidential Information disclosed to the Receiving Party by the Disclosing Party under this Agreement shall be and remain the property of the Disclosing Party. No licenses or rights under any registered or unregistered patent, copyright, trademark or trade secret, or application therefor, are granted to or are to be implied by this Agreement.
- (g) **Inventions.** Without compensation or other remuneration, the Receiving Party agrees that if, as a result of receiving Confidential Information of the Disclosing Party, the Receiving Party conceives of, discovers or develops any Inventions (whether patentable or not) or improvements thereto, the Receiving Party (i) promptly shall (A) disclose such inventions or improvements, as the case may be, to the Disclosing Party and (B) assign, or cause its Affiliates to assign (if applicable), the Receiving Party's entire right, title and interest in and to such Inventions or improvements thereto, as the case may be, (ii) irrevocably and unconditionally waive, and shall cause its Affiliates to irrevocably and unconditionally waive (if applicable), any rights the Receiving Party or its Affiliates, as applicable, may have or accrue therein to the Disclosing Party or its designee and (iii) from time to time thereafter execute and deliver such additional documents or instruments and take such further action as may be reasonably required to vest ownership of such Inventions or improvements thereto with the Disclosing Party or such designee.
- (h) **Prohibition on Removal, Export or Re-export of Confidential Information.** Neither Party will remove or export from the United States or re-export any Confidential Information of the other Party, or any direct product thereof, except in compliance with, and with all licenses and approvals required under, applicable export laws and regulations, including, without limitation, those of the U.S. Department of Commerce.
- (i) **No Representations or Warranties.** Each Party hereby acknowledges that neither the other Party nor any of its Affiliates makes any representation or warranty as to the accuracy or completeness of the Confidential Information disclosed by it. Neither the Disclosing Party nor any of its Affiliates shall be liable to the Receiving Party or any of its Affiliates in relation to or as a result of the Receiving Party's use of the Disclosing Party's Confidential Information.
- (j) **No Conflicts.** Each Party represents that its performance of all the terms of this Agreement does not and will not breach any agreement to keep in confidence proprietary information, knowledge or data acquired by either Party in confidence or in trust prior to this Agreement, and each Party agrees not to disclose to the other Party, or induce the other Party to use, any confidential or proprietary information or material belonging to any Person from which either Party may have obtained such information or material. Each Party agrees not to enter into any written or oral agreement that conflicts with the provisions of this Section 2.
- (k) **Reasonableness of Confidentiality Obligations.** The Parties agree that this Section 2 is reasonable in connection with the Stated Purpose and is reasonable to

protect the Confidential Information of the Disclosing Party and the Disclosing Party's business relationships, and, in particular, that its duration and geographic scope of the provisions of this Section 2 are reasonable under all the circumstances.

3. **Term; Termination.** (a) The term of this Agreement (the "Term") shall commence as of the Effective Date and shall automatically terminate upon the earlier of (i) completion of the Stated Purpose or (ii) one (1) year from the Effective Date; provided, however, that, prior to such expiration, either Party may terminate this Agreement at any time by written notice to the other. (b) Notwithstanding the expiration or termination of this Agreement pursuant to this Section 3, all obligations of confidentiality and non-use pursuant to this Agreement with respect to the Disclosing Party's Confidential Information shall survive for a period of not less than seven (7) years from the date of disclosure of such Confidential Information to the Receiving Party. (c) Neither Party shall be liable to the other in connection with any termination of this Agreement in accordance with the terms hereof or any refusal to renew or extend the Term.
4. **Press Releases.** Except upon the prior written consent of the Disclosing Party, or to the extent required by law, neither Party shall in any way or in any form disclose the terms of this Agreement, the discussions that gave rise to this Agreement, the fact that the Parties have entered into this Agreement or the fact that there have been, or will be, discussions or negotiations covered by this Agreement. Additionally, neither Party shall use the name of the other Party, either expressly or by implication, in any disclosure, news, publicity release, policy recommendation or commercial fashion, without the express prior written consent of the other Party.
5. **Limitation of Liability.** Notwithstanding anything to the contrary contained in this Agreement, except with respect to breaches of confidentiality hereunder, no Person shall be liable under this Agreement, whether as a result of breach of contract, breach of warranty, tort (including negligence) or otherwise, for any consequential, punitive, special, incidental or indirect damages, including, without limitation, lost profits.
6. **Parties in Interest.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, legal representatives and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any Person other than the Parties and their respective successors, legal representatives and permitted assigns, any rights or remedies under or by reason of this Agreement.
7. **Assignment.** This Agreement is not assignable by either Party, whether by operation of law or otherwise, without the express prior written consent of the other Party, which consent shall not be unreasonably denied, delayed or conditioned, and any attempt to assign the rights or obligations under this Agreement to the contrary shall be void *ab initio*.
8. **Remedies.** All remedies provided for in this Agreement shall be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at law, in equity or otherwise. The Parties agree that it would be difficult to measure any damages

10. **Survival.** Subject to Section 3(b) hereof, upon the expiration of the Term or termination of this Agreement in accordance with the terms and conditions hereof, all provisions of this Agreement shall survive.
11. **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter hereof and supersedes all prior agreements, understandings, negotiations, and discussions, correspondence, duties and obligations of the Parties, whether written or oral. Neither Party to this Agreement is obligated to purchase from or to provide to the other any service or product. Unless and until a definitive agreement regarding a transaction between the Parties has been executed, neither Party will have any legal obligations with respect to such transaction except for the matters specified herein. The Parties understand that nothing herein (a) requires either Party to disclose Confidential Information to the other Party or (b) requires either Party to proceed with any proposed transaction or business relationship.
12. **Amendment; Waiver.**
 - (a) This Agreement may not be amended or in any manner modified except by a written instrument signed by an authorized representative on behalf of each Party.
 - (b) This Agreement may not be waived except by a written instrument signed by an authorized representative on behalf of the Party against whom the waiver is to be effective. No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver or relinquishment of the future performance thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
13. **Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York as applied to agreements among residents of the State of New York entered into and to be performed entirely within the State of New York, without reference to principles of conflict of laws or choice of laws to the extent such principles would require or permit the application of the laws of another jurisdiction.
14. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. A facsimile, telecopy or other reproduction of this Agreement may be executed by either Party, and an executed copy of this Agreement may be delivered by either party by facsimile or similar instantaneous electronic transmission device pursuant to which the signature of or on behalf of such Party can be seen, and such execution and delivery shall be considered valid, binding and effective for all purposes as of the Effective Date. At the request of any Party, the Parties agree to execute an original of this Agreement as well as any facsimile, telecopy or reproduction hereof.

15. **Headings and Captions.** All section titles or captions in this Agreement are for convenience only and in no way define, limit, extend or describe the scope or intent of any provision hereof and are not to be considered in construing or interpreting this Agreement.
16. **Relationship.** Nothing in this Agreement shall imply: (a) a partnership, joint venture or other commercial relationship between the Parties; (b) the authority for either Party to act as the agent or representative of the other; (c) an agreement or commitment by either Party to sell, license, purchase, acquire, develop or use the products or services of the other Party; or (d) an encouragement to either Party to expend funds or other resources in the development of products or services. Unless and until a definitive agreement regarding a transaction among the Parties or their respective Affiliates, as the case may be, has been executed neither Party will have any legal obligations with respect to such transaction, except for the matters specified herein.
17. **Severability.** If any portion or provision of this Agreement is to any extent declared overly broad, illegal or unenforceable by a court of competent jurisdiction, then the Parties agree that the court shall reform the provision to the minimum extent necessary to make it enforceable and the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, will not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized representative on behalf of each Party as of the Effective Date.

AMIGA, INC.

By: _____

Name: William McEwen

Title: President/CEO

By: _____

Name: _____

Title: _____

Date: _____, 20__

Date: _____, 20__