

DATED .....

MOTIONTOUCH LIMITED

-and-

.....

CONFIDENTIALITY AGREEMENT

\_\_\_\_\_

AMNDA3.5-01.11.07

THIS AGREEMENT is dated \_\_\_\_\_ day of \_\_\_\_\_ 2007 BETWEEN

(1) MOTIONTOUCH LIMITED of Dunsfold Park, Cranleigh, Surrey, GU6 8TB, UK ("the Company") and

(2) .....of

.....

.....

("the Customer")

RECITALS

- 1. The parties wish to exchange Confidential Information in connection with a project which they plan to undertake together concerning.....("the Project") and they recognise that the unauthorised disclosure or use of the Confidential Information could cause the Parties commercial harm
- 2 They have therefore agreed to enter into this Agreement in accordance with the provisions of this Agreement

IT IS AGREED as follows:-

1. Definitions

In this Agreement the following words shall have the following meanings:-

- 1.1 "Confidential Information" means the business commercial economic financial operational technical administrative marketing planning and staff information and data relating to the Disclosing Party whether in written oral pictorial or other form and all other information, data, know-how, formulae, processes, designs, photographs, drawings, specifications, software programmes, samples or other material attributed to or deriving its existence from the Discussions
- 1.2 "Disclosing Party" means the party to this Agreement that discloses Confidential Information directly or indirectly to the Receiving Party under or anticipation of this Agreement
- 1.3 "Receiving Party" means the party to this Agreement that receives Confidential Information directly or indirectly from the Disclosing Party
- 1.4 "the Discussions" means:

- 1.4.1 any discussions relating to the Project or constituting advice in respect of it and
- 1.4.2 any discussions that would or could result in the parties entering into any contractual relationship (other than this Agreement) with each other or any agreement that would or could constitute the parties a partnership association joint venture or other co-operative entity in each case to the extent that the same relate to the Project
- 1.5 "Permitted Purpose" shall mean that the Confidential Information may only be used by the Receiving Party for the purpose of considering whether to enter into a further Agreement with the Disclosing Party relating to the Project
- 2. Obligations of the Receiving Party  
For a term of 5 years from the date of this Agreement except as provided for in clauses 2.4 and 9 the Receiving Party undertakes to the Disclosing Party to:
  - 2.1 receive and keep the Confidential Information secret and confidential and not disclose such Confidential Information to any third party.
  - 2.2 take all reasonable precautions to ensure that such undertaking is enforced and is enforceable and receive and keep the Confidential Information secret and confidential and not disclose such take such action as to ensure that patent liability is not destroyed through making information available to the public for instance by written or oral description
  - 2.3 use the Confidential Information only for the Permitted Purpose
  - 2.4 only disclose the Confidential Information under binding obligations of confidence (which it undertakes to enforce and to which it is legally responsible) to those of its subsidiaries, employees, sub-contractors, seconded staff, officers, agents, consultants and collaborators as need to have access thereto wholly necessarily and exclusively for the purposes of the Project
  - 2.5 not without the Disclosing Party's prior written consent make any commercial use or make any commercial gain from the Confidential Information or seek to obtain any protection of the intellectual property contained in the Confidential Information and
  - 2.6 promptly notify the Disclosing Party it becomes aware that any of the Confidential Information falls within the provisions of clause 3
- 3. Limitation of the obligations of the Receiving Party  
Clause 2 shall not apply to Confidential Information which:
  - 3.1 was known to the Receiving Party prior to its communication by or through the Disclosing Party (as evidenced by the Receiving Party's records) or
  - 3.2 is or becomes in the public domain except by any default or fault of the Receiving Party or any person acquiring it from the Receiving Party or
  - 3.3 becomes known to the Receiving Party by the action of another person not in breach of any obligation of confidentiality owed to the Disclosing Party or
  - 3.4 is developed by any of the Receiving Party's employees who have not had any direct or indirect access to or use or knowledge of the Information imparted by the Disclosing Party
- 4. Return of Confidential Information
  - 4.1 Upon termination of this Agreement in the event that the Receiving Party is in breach of any of the conditions of this Agreement and at any other time on the written request of the Disclosing Party the Receiving Party will immediately return the Confidential Information and any copies thereof made by or in the possession of or under the control of the Receiving Party pursuant to this Agreement and make no further use or disclosure of any of the Confidential Information If

the Disclosing Party so dictates the Confidential Information shall be destroyed under the above circumstances

5. Limitation of Transferred Rights

- 5.1 The Receiving Party acknowledges and agrees that the property and copyright in Confidential Information disclosed to it by the Disclosing Party including any documents, files and other items containing any Confidential Information belongs to the Disclosing Party and will not be removed from the Receiving Party's address nor be given to any other person or parties
- 5.2 This Agreement shall neither prejudice nor limit the rights of the Disclosing Party in respect of any intellectual property rights in the Confidential Information
- 5.3 Except as provided for herein the Receiving Party may not assign or transfer any rights or obligations hereunder without the prior written consent of the Disclosing Party
- 5.4 This Agreement shall not be construed:
  - 5.4.1 to grant the Receiving Party any licence or rights other than as expressly set out herein in respect of Confidential Information nor
  - 5.4.2 to require the Disclosing Party to disclose any Confidential Information to the Receiving Party

6. Foreground Intellectual Property

- 6.1 In the event that the Receiving Party makes or observes any new discovery, improvement or invention ("Invention") relating to the Confidential Information or as a direct result of the Project then the Receiving Party will bring this to the attention of the Disclosing Party
- 6.2 The Disclosing Party will at all times retain the right to use an Invention for non-commercial research purposes

7. Validity

- 7.1 If any provision of this Agreement is or becomes invalid, illegal or unenforceable in any respect under the law of any jurisdiction whether or not pursuant to any judgment or otherwise:
  - 7.1.1 the validity, legality and enforceability under the law of that jurisdiction of any other provision and
  - 7.1.2 the validity, legality and enforceability under the law of any other jurisdiction of that or any other provisionshall not be affected or impaired in any way
- 7.2 If any provision of this Agreement is held to be void or declared illegal, invalid or unenforceable for any reason whatsoever that provision shall be divisible from this Agreement and shall be deemed to be deleted from it and the validity of the remaining provision shall not be affected. If any such deletion, materially affects the interpretation of this Agreement the parties shall use their best endeavours to negotiate in good faith with a view to agreeing a substitute provision as closely as possible reflecting the commercial intention of the parties

8. Remedies

- 8.1 The rights and remedies provided for by this Agreement are cumulative with and not exclusive of any rights or remedies provided by law
- 8.2 Without prejudice to any other rights or remedies of the parties each party acknowledges for the benefit of the other that damages might not be an adequate remedy for any breach of the provisions of this Agreement and that accordingly either party shall be entitled to the remedies of injunction and specific performance and other equitable remedies for any threat or actual breach of the provision of this Agreement by the other

9. Publication

The parties shall not arrange nor permit the publication of any information regarding the results or outcome of the Confidential Information without the prior written consent of the other Party such consent shall not be unreasonably withheld

10. Limitation of Liability of Disclosing Party

The parties give no warranties in relation to the Confidential Information disclosed by it hereunder and in particular (but without limiting the foregoing) no warranty or representation express or implied is given by the Disclosing Party as to the accuracy, efficacy, completeness, capabilities or safety of any materials or information provided under this Agreement

11. Notices

All notices required to be served pursuant to this Agreement shall be made in writing to the addresses at the head of this Agreement

12. Law and Disputes

The validity, construction and performance of this Agreement shall be governed by English Law. Any dispute arising or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English Courts to which the parties to this Agreement hereby submit

Agreed by the parties through their authorised signatories

Signed By

MOTIONTOUCH LIMITED

Director

Signed by the Customer.....

Print name.....

For.....