

MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement dated _____

BY AND BETWEEN: Photo Sciences, Inc. 2542 West 237th Street, Torrance, California USA, 90505, a company incorporated under the laws of the State of California (hereinafter "PSI")

AND: _____

(company name and address)

(Hereinafter "Company")

WHEREAS both PSI and Company, and members of their respective Groups which, for the purposes of this Agreement means, in respect of a company, that company and any company which from time to time is a holding company or parent undertaking or a subsidiary or subsidiary undertaking of that company or a subsidiary or a subsidiary undertaking of any such holding company or parent undertaking hereinafter the "Parties", owns, possesses or controls certain trade secrets and confidential information acquired through the expenditure of time, effort and money, of a technical and business nature relating to their businesses, including, without limitation, proprietary intellectual property, business plans, financial projections and statements, documentation, specifications, product and other plans and data (the "Information");

WHEREAS each Party desires to receive, and each Party is willing to supply to the other Party, Confidential Information on the terms and conditions set forth herein solely for the purpose of (enter specific purpose). (the "Purpose");

NOW THEREFORE the Parties hereto agree as follows:

1. Scope. This Agreement shall apply to Confidential Information regardless of its form or medium, whether conveyed verbally or in written, graphic, electromagnetic or other form, including, without limitation, technical, legal, financial and business information and models, names of customers or partners (whether potential or existing), proposed business deals, corporate strategies, reports, plans market and/or financial projections and other data of or relating to the Disclosing Party, together with such portions of notes, analyses, work papers, compilations, comparisons, studies or other documents prepared by Receiving Party or its directors, officers, employees or representatives which contain, reflect, are based on or generated from, in whole or in part, the Information. For the purpose of this Agreement, the term "Residual Information" means information, in either tangible or non-tangible form, which is developed by a Receiving Party either directly or through its employees, directors, officers or representatives who have had access to Confidential Information, and which may have been inspired by, related to, or derived with reference to Confidential Information, but which does not incorporate or otherwise utilize the Confidential Information itself, either wholly or in part. Each Party hereto may retain or derive its own independent Residual Information, and shall retain all right, title, and interest therein.

2. Tangible Information. To the maximum extent possible, all information provided by a Disclosing Party to a Receiving Party shall be disclosed in documentary or other tangible form, identified as Confidential Information by the Disclosing Party at the time of Disclosure, and marked with a suitable restrictive legend: provided however that any failure in good faith by the Disclosing Party to comply

with the provisions of this section 1 shall not cause the Disclosing Party to lose the protection and benefit of this agreement.

3. Intangible Information. To the extent reasonably practical, any Confidential Information disclosed by a Disclosing Party in any form other than tangible documentary form shall be identified as Confidential Information by the Disclosing Party at the time of disclosure, and shall be reduced to a tangible documentary form, marked with a suitable restrictive legend, and delivered to the Receiving Party within 30 days of the date of disclosure. Where such reduction to a tangible documentary form is not reasonably practical, the Disclosing Party shall instead deliver in advance of disclosure to Receiving Party a memorandum outlining the scope, nature, and extent of such intangible Information in such a way as to permit the Receiving Party, its employees, directors, officers and representatives, to properly judge whether and when they may be in receipt of such intangible Confidential Information: provided however that any failure in good faith by the Disclosing Party to comply with the provisions of this section 3 shall not cause the Disclosing Party to lose the protection and benefit of this Agreement.

4. Duration of Agreement and Survival of Terms. This Agreement will expire 3 (three) years after the date of this Agreement. The obligations on any Receiving Party in respect of any Disclosure under this Agreement will expire 3 (three) years after the Date of Disclosure.

5. Disclosure and Use of Information. Either Receiving Party shall not, directly or indirectly, disclose, allow access to, transmit or transfer to any third party, or induce or permit any third party to use, any of the Information for any purpose whatsoever without prior written authorization from the Disclosing Party. The Receiving Party shall only disclose the Confidential Information to such persons in its employment who have a need to have access to, and knowledge of, the Confidential Information, or to any third party representatives or agents, who have a need to have access to, and knowledge of, the Confidential Information who will then also be bound by at least the same confidentiality obligations as stated in this Agreement. A Party that intends to disclose Confidential Information to third party representatives or agents must have these persons sign a confidentiality agreement containing confidentiality obligations at least as restrictive as the ones in this Agreement prior to disclosure of Confidential Information. In no event shall the Receiving Party use the Information in any manner except as reasonably required for the Purpose.

Either Receiving Party shall utilize at least the same degree of care, or employ any and all reasonable efforts, to protect the Disclosing Party's interest in the Confidential Information as it would employ with respect to its own sensitive business information of like nature, and shall keep same confidential, and shall maintain all copies of the Confidential Information at the premises of the Receiving Party. When requested by the Disclosing Party, the Receiving Party will promptly provide a list containing the full name, title, location and function of each employee having access to or copies of the Information. Recipient shall be fully responsible to ensure that each such employee handles the Confidential Information as required by this Agreement and the Non-Disclosure Agreement signed by the employee, and the Recipient shall be liable for any loss or damage resulting from any such employee failing to do so. The Receiving Party shall notify the Disclosing Party promptly of any unauthorized use of the Confidential Information that comes to Receiving Party's attention. Upon written demand by the Disclosing Party and in any event upon completion of the Purpose, the Receiving Party shall:

- i) cease using the Confidential Information,
- ii) return the Confidential Information and all copies, notes or extracts thereof to the Disclosing Party within seven (7) days of receipt of demand, and
- iii) upon request of the Disclosing Party, certify in writing that the Receiving Party has complied with the obligations set for the in this paragraph.

6. **Reproduction of Confidential Information.** The Confidential Information shall not be copied, reproduced in any form or stored in a retrieval system or database by the Receiving Party without the prior written consent of the Disclosing Party, except for such copies and storage as may reasonably be required internally by the Receiving Party for the Purpose. All copies of the Confidential Information shall contain the same proprietary notices of the Disclosing Party, which may appear on the original Confidential Information. The Receiving Party shall not reverse-engineer, decompile, or disassemble any software, or other product, disclosed to it, and shall not remove, overprint or deface any notice of copyright, trademark, logo, legend, or other notices of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party.

7. **Non –Protected Information.** The Receiving Party shall have no obligation hereunder with respect to information which:

- i) was rightfully in possession of or known to the Receiving Party without any obligation of confidentiality prior to receiving it from the Disclosing Party;
- ii) is, subsequently becomes, legally an publicly available without breach of this Agreement;
- iii) is rightfully obtained by the Receiving Party form a source other than the Disclosing Party without any obligation of confidentiality;
- iv) is developed by or for the Receiving Party without use of the Confidential Information, where such independent development can be demonstrated by documentary evidence;
- v) becomes available to the Receiving Party by wholly lawful inspection or analysis of products offered for sale; or
- vi) is disclosed by the Receiving Party pursuant to a valid order issued by a court or government agency of competent jurisdiction, provided that the Receiving Party provides the Disclosing Party with: (a) prior written notice of such obligation, and (b) the opportunity to oppose such disclosure.

8. **Independent Product Development.** This Agreement shall not be construed to limit either Receiving Party's right to independently develop or acquire products without use of the Confidential Information. The Disclosing Party acknowledges that the Receiving Party may currently, or in the future, be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement shall be construed as a representation or an Agreement that the Receiving Party will not develop or have developed for it products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development. Further, the Receiving Party shall be free to use for any purpose its own Residual Information, provided that the Receiving Party shall maintain the confidentiality of the Confidential Information as provided herein. The Receiving Party shall have no obligation to limit or restrict the assignment of persons, of pay royalties for any work, resulting from the use of its own Residual Information.

9. **Title to Information.** All right, title and interest in and to the Confidential Information, including all proprietary rights, patent rights, trade secrets and copyrights, shall remain the exclusive property of the Disclosing Party and the Confidential Information shall be held in trust and confidence by the Receiving Party for the Disclosing Party. The Disclosing Party shall retain title to all tangible media on which the Confidential Information resides, including documentation, diskettes, and all copies thereof. No interest, license for any right respecting the Information, other than expressly set out herein, is granted to the Receiving Party under this Agreement by implication or otherwise.

10. **No Representation, Warranty.** The Confidential Information is provided on an 'as is " basis. Each Disclosing Party makes no representation and provides no guarantee or warranty with respect to the

accuracy, validity, completeness, or fitness for purpose of the Confidential Information. None of the Confidential Information constitutes any representation, warranty, assurance, guarantee or inducement by the Disclosing Party to the Receiving Party with respect to (i) the infringement of trademarks, patents, or copyrights; (ii) any right of privacy; or (iii) any rights of third persons.

11. Indemnity. Each Receiving Party hereby agrees to indemnify and hold harmless the Disclosing Party from and against any loss, costs, damage, or expenses (including reasonable attorney's fees and costs) resulting from any breach of this Agreement by itself or by its affiliates, employees, agents, or representatives.

12. Injunctive Relief. Each Receiving Party acknowledges that a breach of this Agreement may result in irreparable and immediate harm to the Disclosing Party and agrees that in the event of such breach the Disclosing Party, in addition to any other right or relief, shall be entitled to equitable relief by way of temporary or permanent injunction and to seek such other relief that any court may deem just and proper.

13. Entire Agreement. This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes and cancels any and all prior oral or written discussions, written correspondence, understandings or agreements between the Parties with respect, thereto.

14. Amendments, Assignments. This Agreement may be modified or amended only by written agreement signed by both Parties. Neither this Agreement nor any right granted hereunder shall be assignable or otherwise transferable by either Party hereto.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of California.

16. Attorneys Fees. If either party incurs attorneys' fees to enforce this Agreement or because of a breach of this Agreement by the other party, the prevailing party shall be entitled to recover reasonable attorney's fees and costs as set by the court or other arbiter from the other party.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first hereinabove mentioned.

PHOTO SCIENCES, INC.

Signature

Name

Position or Title

(Insert Company name)

Signature

Name

Position or Title