

MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT (this "Agreement") is made as of [_____], by and between [_____] a [_____], and Sun Deep Incorporated, a California Corporation.

1. Purpose. The parties hereto wish to explore a business relationship (the "Relationship") in connection with which each party may disclose its Confidential Information (as defined below) to the other.
2. Definition of Confidential Information. "Confidential Information" means the party's confidential information and materials, including, but not limited to, any and all confidential and/or proprietary knowledge, trade secrets of every kind and nature, data, information or materials related to the business and activities of the party and their respective customers, suppliers, financing sources and any other persons with whom such persons do business which is disclosed to the other party, made known to a party, or generated by a party, including, without limitation (a) any information regarding business plans including, without limitation, plans for research, development, management strategies, project designs, new products, marketing and selling, market research, business methods, business models, practices, business contacts, budgets and financial statements, licenses, prices and costs, suppliers and customers; (b) scripts, training materials and sales techniques, information about software programs, source and object code, databases, database criteria, user profiles, algorithms, processes, designs, methodologies, technology, know-how, data, ideas, techniques, inventions, improvements (whether patentable or not), modules, features and modes of operation, internal documentation, works of authorship and technical plans; (c) any and all rights arising under or with respect to current and future worldwide patents, patent applications, works protected by copyright, copyright and trademark registrations and applications therefor, inventions, discoveries, utility models, industrial designs, models, drawings, mask works, and all intellectual property and/or industrial property rights of the United States or any other multinational union, state, country or jurisdiction, in each case, created by or on behalf of such party; (d) financial information, such as the party's earnings, assets, debts and other financial information, whether in relation to the party generally, or to particular services, projects or time periods; (e) client information, such as plans, projects, status of projects or negotiations, financial information, relationships with other persons, proposals or agreements between clients and the party, or related information about actual or prospective clients or projects; (f) personnel information, such as employee's personal or medical histories, compensation, or other terms of employment, actual or proposed promotions, hiring, resignations, disciplinary actions, termination or reasons therefore, training methods, performance, or other employee information or (g) any data, samples, technical and economic information, commercialization, clinical and research strategies, trade secrets, formulations, aggregations of information or data, know-how or other information related to the products, processes, techniques or systems utilized by the party. The term "Confidential Information" shall not mean or include information that (i) is when furnished or thereafter becomes publicly available other than as a result of a disclosure or action or inaction by the receiving party or such person's affiliates, directors, officers, employees, agents, legal counsel,

accountants, consultants and financial advisors, as well as any representative of any of the foregoing (any such person, a "Representative") in violation of this Agreement, (ii) the receiving party can demonstrate is already in the possession of or becomes available to the receiving party or its Representatives on a non-confidential basis from a source other than the disclosing party or its Representatives; provided that, to the receiving party's knowledge, such source is not and was not bound by an obligation of confidentiality to the disclosing party or its Representatives, (iii) the receiving party can demonstrate was independently developed by it or its Representatives without violation of this Agreement and without reference to the disclosing party's Confidential Information, or (iv) is approved by the disclosing party, in writing, for release; (v) is required to be disclosed by applicable law or proper legal, governmental or other competent authority; provided that the party whose information is to be disclosed shall be notified sufficiently in advance of such requirement so that it may seek a protective order (or equivalent) with respect to such disclosure, with which the other party shall fully comply. Confidential Information may be supplied in any tangible or non-tangible form, including orally or in writing, regardless of whether such information is labeled as Confidential Information. The parties shall treat any such information received from the other party as Confidential Information unless expressly indicated in writing by the disclosing party that such information is not Confidential Information.

3. Use and Nondisclosure of Confidential Information. Each party agrees not to use any Confidential Information disclosed to it by the other party for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Relationship. Neither party will disclose any Confidential Information of the other party to third parties or to employees of the party receiving Confidential Information, other than employees who are required to have the information in order to carry out the discussions regarding the Relationship; provided, however, that each party may disclose the Agreement or its content on a confidential basis, subject to the limitations and restrictions set forth herein, to its Representatives who are directly participating with the party in its evaluation of the potential business opportunity between the parties. Each party will have or has had employees to whom Confidential Information of the other party is disclosed or who have access to Confidential Information of the disclosing party sign a nondisclosure or similar agreement in content substantially similar to this Agreement. Each party agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the receiving party utilizes to protect its own Confidential Information of a similar nature. Each party agrees to notify the other in writing of any misuse or misappropriation of Confidential Information of the disclosing party which may come to the receiving party's attention. Each party further agrees not to reverse engineer or disassemble any formula, technology, method, process, or other matter disclosed and identified or identifiable as confidential by the other party.
4. Return of Materials. All Confidential Information, including, without limitation, all documents and other tangible objects containing or representing Confidential Information and all copies

thereof which are in the possession of the receiving party shall be and remain the property of the disclosing party and shall be promptly returned to the disclosing party or destroyed upon the disclosing party's request; provided, that the receiving party shall only be required to use commercially reasonable efforts to return or destroy any Confidential Information stored electronically, and neither the receiving party nor its Representatives shall be required to return or destroy any electronic copy of Confidential Information created pursuant to its or its Representatives' standard electronic backup and archival procedures so long as (a) personnel whose functions are not primarily information technology in nature do not access such retained copies and (b) personnel whose functions are primarily information technology in nature access such copies only as reasonably necessary for the performance of their information technology duties (e.g., for purposes of system recovery).

5. No License; Patent or Copyright Infringement. Nothing in this Agreement is intended to grant to the receiving party any right or license under any proprietary or intellectual property right of the disclosing party (including under any patents, copyrights, trademarks, trade secrets or other protection for intellectual property), by implication, estoppel or otherwise, except for the right to use the Confidential Information for the limited purposes contemplated by this Agreement. The terms of confidentiality under this Agreement shall not, however, be construed to limit the receiving party's right to independently develop or acquire products without use of, or reference to, the disclosing party's Confidential Information. Each party acknowledges that the other party may currently or in the future be developing information internally, or receiving information from other persons, that is similar to any Confidential Information. Accordingly, nothing in this Agreement shall be construed as a representation or agreement that the receiving party will not develop, or have developed for it, products, formula, ingredients lists, concepts, systems, or techniques that are similar to or compete with the products, formula, ingredients lists, concepts, systems or techniques contemplated by or embodied in any Confidential Information, provided that the receiving party does not violate any of its obligations under this Agreement in connection with such development.
6. Term. The foregoing commitments of each party shall survive any termination of the Relationship between the parties, and shall continue for a period terminating on the later to occur of the date (a) ten (10) years following the date of this Agreement or (b) ten (10) years from the date on which Confidential Information is last disclosed under this Agreement; provided, that all obligations of the parties with respect to the use and disclosure of Confidential Information shall survive termination of this Agreement.
7. Miscellaneous. This Agreement shall be binding upon and for the benefit of the undersigned parties, their successors and assigns; provided that Confidential Information of the disclosing party may not be assigned without the prior written consent of the disclosing party; provided, further, that this Agreement may be assigned to the successor to a party in connection with a change of control of such party. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party. This document contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof and thereof. If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable

to the greatest extent permitted by law. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto. The parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same agreement. Each undersigned, if signing on behalf of a company, represents and warrants that he or she has the authority to bind the company on whose behalf he or she is signing.

8. Governing Law. This Agreement shall bind and inure to the benefit of the parties hereto and heir successors and assigns, except that neither party may assign or transfer this Agreement, by operation of law or otherwise, without the other party's prior written consent. This Agreement shall be governed by the laws of the State of California, without reference to conflict of laws principles. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the federal or state courts of California for any actions, suits or proceedings arising out of or relating to this Agreement and the transactions contemplated hereby (and each party agrees not to commence any action, suit or proceeding relating thereto except in such courts, and further agree that service of any process, summons, notice or document by U.S. registered mail to its respective address set forth below shall be effective service of process for any action, suit or proceeding brought against such party in any such court, subject to providing the other party written notice of any change in address). Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in the courts of California, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. THE PARTIES IRREVOCABLY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY ACTION ARISING FROM OR RELATING TO THIS AGREEMENT.
9. Remedies. Each party agrees that its obligations provided in this Agreement are necessary and reasonable in order to protect the disclosing party and its business, and each party expressly agrees that monetary damages would be inadequate to compensate the disclosing party for any breach by the receiving party of its covenants and agreements set forth in this Agreement. Accordingly, each party agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the disclosing party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the disclosing party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the receiving party, without the necessity of proving actual damages.
10. No Obligation. Nothing herein shall obligate the disclosing party or the receiving party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.
11. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." THE DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE.

12. Required Disclosure. In the event that receiving party or any of receiving party's Representatives become legally compelled or are required by regulatory authorities having appropriate jurisdiction to disclose any of the Confidential Information, receiving party will promptly provide disclosing party with written notice so that disclosing party may seek, at its expense, a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. Receiving party will cooperate with disclosing party on an "all reasonable efforts" basis to obtain a protective order or other remedy. In the event that such protective order or other remedy is not obtained or disclosing party waives compliance with the provisions of this Agreement, receiving party will furnish only that portion of the Confidential Information which receiving party is advised by counsel in writing is required to be disclosed, and receiving party will exercise all reasonable efforts to obtain reasonable assurance that confidential treatment will be accorded the Confidential Information so furnished.

The parties have executed this Mutual Nondisclosure Agreement as of the date first above written.

By: _____

Name: _____

Title: _____

Sun Deep Incorporated

By: _____

Name: _____

Title: _____