



MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement ("Agreement") is made this _____ day of _____, 2011 ("Effective Date") by and between **Biometric Associates LP**, (hereinafter referred to as "BAL"), a Maine limited partnership with its principal place of business at 9475 Deereco Road – Suite 304, Timonium, MD 21093, and _____ (hereinafter referred to as _____), a _____ Corporation ("Company") with its principal place of business at _____, each or both of which shall hereinafter be referred to as the "party" or the "parties" respectively and who hereby agree as follows:

Background

1. The parties are entering into discussions regarding a business relationship and expect to disclose certain Confidential Information in connection with such discussions and in connection with any resulting business relationship.
2. The parties are only willing to disclose such information under the terms set forth in this Agreement.

Agreement

In order to extend confidentiality protections to all Confidential Information and facilitate the discussions between the parties, the parties agree to the following terms and conditions:

1. Definitions. For the purposes hereof:

- a. "Representatives" means the affiliates of either party, and the respective directors, officers, employees, attorneys, consultants, and other agents and advisors of either party or of the affiliates of either party. For purposes of this Agreement, an affiliate shall mean any entity that controls, is controlled by, or is under common control with a party.
- b. "Confidential Information" means any information that a party learns or develops during the course of discussions with the other party that (i) is not generally known to the public, and (ii) has commercial value in that party's business. Such information includes, but is not limited to, designs, products, inventions, ideas, strategies, forecasts, sales, product development, manufacture or sale processes, formulae and engineering information, information about new or future products or services, marketing plans and goals, unpublished financial information, lists of customers or prospects, information about customer or prospect purchases and preferences, information regarding research and development, consulting processes, management systems, computer software and programs, means of accessing computer systems or networks, algorithms, hardware configurations and any other confidential information which provides Company with a competitive advantage. Confidential Information also includes information of third parties regarding which Company has accepted obligations of confidentiality. Confidential Information includes Trade Secrets as defined below. Confidential Information may take the form of documentation, drawings, specifications, software, technical, or engineering data, or other physical or electronic writings, or account information of end users, reports, analyses, studies, or other materials in which Confidential Information is incorporated, including without limitation, materials prepared jointly developed between the parties utilizing Confidential Information.

- c. "Trade Secret" means information, including, but not limited to, a formula, pattern, compilation, program, device, method, technique or process, which both: (i) derives independent economic value, actual or potential, from not being generally known to or readily ascertainable by people who can obtain economic value from its disclosure or use; and (ii) is the subject of a party's efforts to maintain its secrecy that are reasonable under the circumstances.

2. Confidentiality Undertaking. The parties agree that

- a. All Confidential Information disclosed by either party to the other shall be deemed confidential and subject to this Agreement unless otherwise confirmed in writing by the disclosing party. Each party agrees that it and its Representatives shall:
- (i) limit access to any Confidential Information to Representatives who have a need-to-know such information in connection with the parties discussions and/or business relationship;
 - (ii) advise any Representatives having access to the Confidential Information of the proprietary nature thereof and of the obligations set forth in this Agreement;
 - (iii) take appropriate action by instruction or agreement with any Representatives having access to the Confidential Information to fulfill its obligations under this Agreement;
 - (iv) not use and/or reproduce the Confidential Information, except in connection with and where necessary for the transactions between the parties under consideration; and
 - (v) hold the Confidential Information in confidence and not disclose, release or share the Confidential Information with any persons other than its Representatives, exercising a commercially reasonable degree of care, which shall not be less than the degree of care used to protect its own confidential or proprietary information from disclosure.
- b. With respect to Confidential Information disclosed under this Agreement, each party shall be responsible for any breach of this Agreement by its Representatives.

3. Exclusions from Confidentiality Undertaking. The receiving party shall have no obligation to preserve the confidential nature of any information that, and Confidential Information shall not include information that:

- a. was previously known to such party free of any confidentiality obligation;
- b. is or becomes publicly available by means other than unauthorized disclosure;
- c. is developed by or on behalf of such party independent of any Confidential Information furnished under this Agreement; or
- d. is received from a third party whose disclosure does not violate any confidentiality obligation.

4. Required Disclosure. In the event that the receiving party or its Representatives are required by law, regulation, government agency or any legally enforceable court order, discovery request, subpoena, or civil investigative demand to disclose any Confidential Information, then the receiving party shall use reasonable efforts to minimize such disclosure and to obtain an assurance that the recipient shall accord confidential treatment to the Confidential Information, shall notify the disclosing party in advance of such disclosure, and shall afford the disclosing party an opportunity that is reasonable under the circumstances to take such steps as it make choose to obtain confidential treatment to the Confidential Information.

5. Ownership and Certain Obligations.

- a. Ownership. Confidential Information shall be deemed the property of the disclosing party and each party retains the right in its sole discretion, to determine whether to disclose any Confidential Information to the other party.
- b. Destruction. Within ten (10) days following written request from the disclosing party, the receiving party shall return to the disclosing party or destroy all Confidential Information in tangible form that is in the receiving party's possession, custody, or control, including all compilations or other derivative or secondary records of any such Confidential Information including without limiting the generality of the foregoing, all memoranda, notes, records, drawings, manuals, records, and other documents or materials (and all copies of same, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) pertaining to or including the Confidential Information. If the receiving party chooses to destroy Confidential Information, the receiving party shall, if so requested by the disclosing party, certify such destruction to the disclosing party in such form as the disclosing party may reasonably request.
- c. No Warranty of Information. Each party acknowledges that neither party makes any representation or warranty (express or implied) as to the accuracy or completeness of any Confidential Information, and agrees to assume full responsibility for all conclusions it may derive from the Confidential Information. Each party expressly disclaims any and all liability that may be based, in whole or in part, on any Confidential Information, errors therein, or omissions there from.
- d. No License or Grant of Rights. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed, or under any trademark, patent, trade secret, copyright, or any other intellectual property right of either party. Confidential Information shall not constitute any representation, warranty, assurance, guarantee, or inducement by either party to the other of any kind, especially with respect to the non-infringement of trademarks, patents, trade secrets, copyrights, or any other intellectual property right. The receiving party agrees that it will not modify, adapt, translate, duplicate, disassemble, reverse assemble, reverse compile, or reverse engineer, or take similar action with respect to any Confidential Information provided by the disclosing party in connection with this Agreement for any purpose, or otherwise attempt to discover the underlying source code of any software provided by the disclosing party. Each party shall comply with any and all export laws and regulations applicable to the Confidential Information.
- e. Equitable Relief; Remedies. The parties acknowledge that the provisions of this Agreement are necessary to protect the trade, commercial and financial interests of the parties and that money damages would not be a sufficient remedy for breach of the confidentiality and other obligations of this Agreement. Accordingly, in addition to all other remedies that the parties may have, the parties shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any breach of the confidentiality and other obligations of this Agreement. Each party shall reimburse the other party for all costs and expenses, including reasonable attorneys' fees, incurred by either party in attempting to enforce the obligations of the parties or its Representatives pursuant to this Agreement.
- f. No Obligation. Neither this Agreement nor the disclosure by the parties of the Confidential Information or other information to the parties shall result in any obligation on the part of either party to enter into any further agreement with the other with respect to the Purpose or otherwise, to purchase any products or services from the other or to require either party to disclose any particular information to the other. Nothing in this Agreement shall imply any partnership, joint venture or other business relationship between the parties or be construed to create any agency relationship between the parties, or be construed to create any agency relationship between the parties.

6. Miscellaneous.

- a. **Effective Date and Duration.** This Agreement shall become effective as of the Effective Date, and shall cover all Confidential Information disclosed under this Agreement during the period of the parties discussions and/or any resulting business relationship, and for two (2) years following the termination of their discussions or business relationship. The obligations under this Agreement with respect to Confidential Information disclosed under this Agreement shall terminate at the end of such period.
- b. **Governing Law.** This Agreement shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Virginia without regard to conflict of laws principles.
- c. **Whole Agreement, Amendments.** This Agreement constitutes the entire understanding and supersedes all prior agreements between the parties with respect to Confidential Information provided in connection with the transactions between the parties and binds each party with respect to all Confidential Information disclosed hereunder prior to the termination or expiration of this Agreement. This Agreement shall benefit and be binding upon the parties hereto and their respective successors and assigns. No amendment or modification of this Agreement shall be valid or binding on the parties unless made in writing and executed on behalf of each party by its duly authorized representative.
- d. This Agreement may be executed in any number of counterparts, including signatures sent via facsimile, each of which shall constitute an original, but all of which together shall constitute one instrument notwithstanding that all parties are not signatories to the same counterparts.

IN WITNESS WHEREOF, each party has caused this Agreement to be executed on its behalf as of the Effective Date.

Biometric Associates, LP

Company

By: _____

By: _____

Name: Scott T. Johnson

Name: _____

Title: Executive Vice President & COO

Title: _____

Date: _____

Date: _____