

MUTUAL NON-DISCLOSURE AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT (this “Agreement”) is effective as of this ____ day of _____, 20____ (“Effective Date”), between Abaco Systems, Inc. (Abaco), a DE corporation with a place of business located at 475 Quality Cir, Ste 100, Huntsville, AL 35806 and _____ (the “Company”), a ____ corporation with a place of business located at _____.

WHEREAS, the Company and Abaco (each, a “Party” and, collectively, the “Parties”) are presently engaged in discussions with respect to _____ (the “Purpose”); and

WHEREAS, in connection with these discussions, each Party (the “Disclosing Party”) may disclose Confidential Information (as defined below) to the other Party (the “Receiving Party”); and

WHEREAS, the Parties desire to formally set forth their understanding and agreement with respect to the treatment of the Confidential Information.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

1. Definition. For purposes of this Agreement, “Confidential Information” means any information disclosed to the Receiving Party, its affiliates and/or their respective officers, directors, managers, shareholders, members, employees, contractors, agents, consultants or representatives (collectively, “Representatives”), regardless of form or medium, by Disclosing Party or its Representatives, including without limitation, the Disclosing Party’s financial information, technical and non-technical data, products, services, processes, operations, reports, samples, specifications, know-how, trade secrets, and the names and addresses of the Disclosing Party’s suppliers, customers or employees, or any information derived from any of the foregoing. Without limiting the generality of the foregoing, the Parties acknowledge and agree that all analyses, compilations, studies or other materials prepared by the Receiving Party or its Representatives containing or based in whole or in part upon information furnished by the Disclosing Party or its Representatives shall constitute Confidential Information hereunder. Confidential Information shall also include the fact that the Parties are in discussions with respect to the Purpose, and the terms, conditions and existence of this Agreement.

2. Exclusions. Confidential Information shall not include information which:

a. Is or becomes publicly known other than as the consequence of a breach of this Agreement by the Receiving Party;

b. Is actually known to or in the possession of the Receiving Party at the time of receipt from the Disclosing Party (as established by the Receiving Party’s contemporaneous records) free of any limitation on use or disclosure;

c. Is rightfully received by the Receiving Party from a third party in possession of such information who is not under obligation to the Disclosing Party not to disclose the information; or

d. Is independently developed by the Receiving Party without reference to or use of the Disclosing Party's Confidential Information (as established by the Receiving Party's contemporaneous records).

3. Non-disclosure and Non-use Obligations. The Receiving Party and its Representatives shall hold the Confidential Information in strictest confidence and shall not use, disclose or permit the use or disclosure of any of such Confidential Information without the prior written consent of the Disclosing Party. Notwithstanding the preceding sentence to the contrary, the Receiving Party may disclose Confidential Information to its Representatives who need to know such information to enable the Receiving Party to evaluate the Purpose and who are bound by confidentiality obligations no less stringent than those set forth in this Agreement, and then only to the extent necessary to carry out the legitimate use of the Confidential Information. The Receiving Party and its Representatives shall use the Confidential Information only in connection with the evaluation of the Purpose and not for any other purpose whatsoever. Receiving Party will exercise reasonable care to preserve the confidentiality of the Confidential Information and will employ at least the same safeguards as it uses to protect its own confidential information of a similar nature. Without limiting the generality of the foregoing, the Receiving Party shall not reverse engineer, copy, disassemble, design, re-design, reformulate, chemically analyze or otherwise attempt to reconstruct any physical embodiments, prototypes, methods, software or products provided by the Disclosing Party. The Receiving Party shall require any of its Representatives who obtain Confidential Information to comply with this Agreement and shall be responsible for any breach of this Agreement by such Representatives.

4. Compelled Disclosure. Notwithstanding the foregoing, the Receiving Party shall be permitted to disclose Confidential Information pursuant to a court order, government order or any other legal requirement of disclosure, or pursuant to the listing rules of any stock exchange to which such party is subject, in each case if no suitable protective order or equivalent remedy is available, provided that the Receiving Party gives the Disclosing Party written notice of such court order, government order, legal requirement or listing rule requiring disclosure promptly upon knowledge thereof and allows the Disclosing Party a reasonable opportunity to seek to obtain a protective order or other appropriate remedy prior to such disclosure to the extent permitted by law, and further provided that the Receiving Party shall furnish only that portion of the Confidential Information which it is advised by a written opinion of counsel is legally required, and will exercise reasonable efforts to obtain a protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information so disclosed.

5. No Warranty. Each Party acknowledges that the Confidential Information is provided "AS IS, WHERE IS," without warranty of any kind. The Disclosing Party shall not have any duty or obligation to update or correct any such Confidential Information.

6. Ownership of Confidential Information. The Disclosing Party shall at all times retain all right, title, and interest in and to its Confidential Information. Except as expressly provided for in this Agreement, the Receiving Party shall not obtain any proprietary interest or intellectual property rights, by license or otherwise, in any Confidential Information of the Disclosing Party. Nothing in this Agreement shall be construed as granting or transferring any rights in, or license to use, any trademark, patent, copyright, trade secret or other intellectual property.

7. Return of Confidential Information. Upon termination or expiration of this Agreement,

or at any time upon the Disclosing Party's earlier request, the Receiving Party shall return to the Disclosing Party or destroy any and all Confidential Information of the Disclosing Party in its possession or under its control, including all copies or duplicates of the Confidential Information or summaries or synopses thereof prepared by the Receiving Party or its Representatives; provided, however, that the Receiving Party shall have the right to retain copies of any Confidential Information (a) stored electronically pursuant to an existing routine data back-up exercise on servers or back-up sources or (b) in accordance with bona fide policies and procedures implemented in accordance with applicable law or for internal compliance purposes. All Confidential Information retained by the Receiving Party pursuant to this paragraph will remain subject to the provisions of this Agreement.

8. Equitable Remedies. The Receiving Party understands that in the event it or any of its Representatives fails to comply with this Agreement, the Disclosing Party may suffer irreparable harm which would not be adequately compensated for by monetary damages alone. The Receiving Party, therefore, agrees that in the event of its breach or threatened breach of this Agreement, the Disclosing Party shall be entitled to seek injunctive and/or other preliminary or equitable relief, in addition to any other remedies available at law, without having to prove actual damages or to post a bond.

9. Term and Termination. This Agreement shall terminate two (2) years from the Effective Date. Either Party may terminate this Agreement prior to that time by sending the other Party no less than thirty (30) days' prior written notice of such termination. The obligations of the Parties under this Agreement shall survive any termination of this Agreement for a period of five (5) years after the Effective Date.

10. No Obligation. Nothing in this Agreement shall impose any obligation upon the Parties to consummate the Purpose or to enter into any discussion or negotiation with respect thereto.

11. No Export. The Receiving Party shall not remove or export from the United States or re-export from any location any Confidential Information received from the Disclosing Party or any product derived from or incorporating any Confidential Information received from the Disclosing Party, except in compliance with, and with all licenses and approvals required under all applicable U.S. and foreign export laws and regulations, including, without limitation, those of the U.S. Department of Commerce, the U.S. Department of State and the U.S. Department of Treasury.

12. Development. The Parties acknowledge and agree that either Party may currently or in the future be developing information internally or receiving information from third parties that is the same as or similar to the Disclosing Party's Confidential Information. Neither the discussions between the Parties with respect to the Purpose nor the disclosure of Confidential Information shall be construed as requiring any Party to refrain from engaging in any business or developing any products or services that, without breach of this Agreement, are the same as, similar to, or compete with the products or services contemplated by the Disclosing Party's Confidential Information.

13. Compliance with Securities Laws. Each Party acknowledges that it and its Representatives may receive material non-public information in connection with the Purpose and it is aware that the United States securities laws impose restrictions on trading in securities when in possession of such information, and that neither it nor its Representatives shall utilize the Confidential Information in order to engage in any activities in violation of United States securities laws.

14. Assignment; Binding Effect. Neither Party may assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of the heirs, successors and permitted assigns of the Parties hereto.

15. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to any conflict of laws principles. Any action or claim brought by either Party under this Agreement shall be brought in, and each Party hereby consents to the exclusive jurisdiction of, the state and federal courts in the Commonwealth of Pennsylvania.

16. Entire Agreement; No Waiver. This Agreement constitutes the entire understanding between the Parties concerning the subject matter hereof and supersedes all prior and contemporaneous discussions, representations and writings with respect to such subject matter. No modification or waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by both Parties hereto.

17. Severability. If any term or provision is held to be invalid, unenforceable, or illegal, the term or provision shall be amended to accomplish as close as possible the intended effect, and the remaining provisions shall remain in full force and effect.

18. General. Neither party, by execution of this Agreement, shall be committed to the consummation of the any proposed transaction until such time as a written agreement is executed by and between the parties. This Agreement may be signed in any manner that clearly evidences the Parties' intent to be bound, including via faxed, imaged, electronic or digital signatures, and in one or more counterparts, all of which shall be considered one and the same agreement. If this Agreement is signed electronically, then both Parties (i) have agreed to use electronic signatures; and (ii) have agreed to be subject to the provisions of the U.S. E-SIGN Act (i.e., the Electronic Signatures in Global and National Commerce Act (enacted June 30, 2000, and codified at 15 U.S.C. § 7001 et seq)).

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

ABACO SYSTEMS, INC.

[INSERT COMPANY NAME]

By: _____

By: _____

Title: _____

Title: _____