

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement is made and entered into as of the _____ of _____, 20__ (the “Effective Date”), by and between _____, a _____ corporation, with offices located at _____, and IntelliVen, L.L.C. (“the Parties”).

WHEREAS the Parties to this agreement anticipate entering into a business relationship, whether formal or informal, which is or may be established between the Parties;

WHEREAS it may be necessary for the Parties to disclose confidential information during these discussions for the purpose of evaluating a business relationship; and

WHEREAS the Parties are willing to disclose such information provided that the party receiving such information agrees to protect the confidentiality of the information.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definition of Disclosing and Receiving Party. The “Disclosing Party” shall mean a party to this agreement who discloses Confidential Information to another party to this agreement. The “Receiving Party” shall mean a party to this agreement who receives Confidential Information from another party to this agreement.

2. Definition of Confidential Information. “Confidential Information” shall mean confidential and proprietary information concerning the intellectual property, technology, business, and/or current or potential customers of the Disclosing Party, including, without limitation, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, tracings, diagrams, models, samples, flow charts, data, computer programs, source code, software, disks, diskettes, tapes, customer lists, customer addresses, products and services provided to specific customers, sales volumes, customer pricing, equipment specifications, locations and use, network configurations, capacities and capabilities, current or prospective relationship with vendors and independent contractors (including, without limitation, information regarding the types of products and services contracted for and the cost of such products and services to the Disclosing Party), implementation of technology, data and programs, finance, sales, marketing, and development of internet, telecommunication and related technology and services. Confidential Information may include information furnished before, on, or after the date of this agreement, and may include information provided orally, in writing, or otherwise.



3. Limitations on Confidential Information. The term “Confidential Information” does not include any information which:

(a) Is or becomes generally available to or known by the public (other than as a result of a disclosure directly or indirectly by the Receiving Party);

(b) Is independently developed by the Receiving Party without breach of this agreement;

(c) Is lawfully received by the Receiving Party without restriction from a third party who obtained the Confidential Information other than as a result of a breach of any confidentiality obligation; or

(d) Is disclosed by the Receiving Party pursuant to judicial action or governmental regulations, provided that the Receiving Party notifies the Disclosing Party prior to such disclosure and the Receiving Party cooperates with the Disclosing Party in the event that the Disclosing Party elects legally to contest and avoid such disclosure.

4. Marking of Confidential Information. Confidential Information which is disclosed in writing shall be clearly marked by the legend “Confidential Information” or a similar designation. Confidential Information which is conveyed disclosed orally or visually shall be identified as being Confidential Information by notifying the Receiving Party before or at the time of disclosure, and if the Confidential Information is technical in nature, by providing a written summary within a reasonable time after the disclosure. Any uncertainty regarding the confidentiality expectations of the Disclosing Party regarding particular information shall be submitted to the Disclosing Party for determination.

5. Use of Confidential Information. The Receiving Party agrees that the Confidential Information will be used solely in connection with the discussions and/or business relationship with the Disclosing Party, and not for any other purpose, except as otherwise agreed by the Parties in writing.

6. Ownership of Confidential Information. The Receiving Party acknowledges that the Disclosing Party claims the Confidential Information as its sole and exclusive property (or that the Disclosing Party is a valid licensee of such information) and that the Receiving Party shall not have any right, title, or interest in or to such Confidential Information except as expressly provided in this agreement.

(a) Confidential Information may be disclosed to the officers, directors, employees, agents, or representatives (collectively, “Representatives”) of the Receiving Party on a “need to know” basis for the purpose of evaluating a potential transaction between the Parties or in connection with a business relationship between the Parties, provided that (i) each such Representative will be informed of the confidential nature of such Confidential Information and will agree to be bound by the terms of this agreement and not to disclose such Confidential Information to any other person, and (ii) each Party



agrees to accept full responsibility for any breach of this agreement by that Party's Representatives; and

(b) Confidential Information of the Disclosing Party may be disclosed by the Receiving Party upon the prior written consent of the Disclosing Party.

7. Disclosure of Discussions. Each Party agrees not to disclose, and will direct its Representatives not to disclose, to any person that discussions or negotiations are taking place between the Parties unless otherwise required by law or upon the prior written consent of the other Party. This paragraph applies, without limitation, to any use, other than strictly internal use, by a Party of the other Party's name and marks.

8. Return of Confidential Information. The Receiving Party agrees, upon the request of the Disclosing Party, to promptly deliver to the Disclosing Party (or, with the Disclosing Party's consent, destroy) the originals and all copies of the Disclosing Party's Confidential Information then in the Receiving Party's possession or control, including, without limitation, the portion of the Confidential Information that consists of analyses, compilations, programs, reports, proposals, studies, or other documentation prepared by a Receiving Party or its Representatives.

9. Term. The terms and conditions of this agreement shall continue for a period of three years from the date hereof; provided, however, that the Parties agree that the obligations of confidentiality hereunder shall survive such term.

10. No License: Patents and Copyrights. This agreement shall not be construed to grant the Receiving Party a license or other right except as expressly stated herein. In the event that any Confidential Information becomes the subject of a patent or copyright, the Receiving Party agrees and understands that the Disclosing Party will have all the rights and remedies available under the law as a result of such patent or copyright.

11. Specific Performance. The Parties acknowledge and agree that the rights being protected by the terms of this agreement are of a special, unique, unusual and extraordinary character, which gives them a particular value, and that the breach of any provision of this agreement shall cause irreparable injury and damage to the nonbreaching Party. In such event, the nonbreaching Party shall be entitled to require specific performance of all of the acts and the undertakings required of the breaching Party hereunder and to obtain injunctive and other equitable relief in any court of competent jurisdiction to prevent the violation or threatened violation of any of the provisions of this agreement. Neither this paragraph 12 nor any exercise by the nonbreaching Party of its right to equitable relief or specific performance herein granted shall constitute a waiver by the nonbreaching Party of any other rights which it may have to damages or other relief.



12. Enforceability. If any of the provisions contained in this agreement is held to be unenforceable, in whole or in part, by a court of competent jurisdiction, the Parties agree to be bound by all other provisions of this agreement.

13. Successors. The Parties agree that this agreement shall be binding upon the successors and assigns of such Party and shall inure to the benefit of, and be enforceable by, such successors and assigns, and any officers or directors thereof.

14. Waiver. The Parties agree that a Party’s failure at any time to require performance of any provision of this agreement shall in no way affect such Party's right at a later time to enforce that provision. No waiver by a Party of a breach of a term contained in this agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of such breach of any other term of this agreement.

IN WITNESS WHEREOF, the Parties have caused this Confidentiality Agreement to be executed and delivered by their respective duly authorized representatives, effective as of the date and year first set forth above.

By: _____
Name: _____
Title: _____
Date: _____

IntelliVen, L.L.C.
By: _____
Name: _____
Title: _____
Date: _____

