

## **CONFIDENTIALITY AGREEMENT**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ between \_\_\_\_\_  
\_\_\_\_\_ ("Recipient") and Gravic, Inc. ("Gravic"), 17 General Warren  
Blvd., Malvern, PA 19355-1245 USA. Gravic and Recipient, intending to be legally bound hereby, agree as follows:

### **1. DISCLOSURE OF INFORMATION**

- a) During a period up to the next 365 days, Gravic may disclose to Recipient certain information ("Information") about its products and services in order that Recipient may evaluate a potential business relationship with Gravic, and Recipient may disclose to Gravic certain information about its business.
- b) The parties recognize that, notwithstanding the provisions of this Agreement, each may legitimately refuse to disclose, or may defer disclosure of, any of its respective Information.
- c) All written or printed Information that each party intends to protect as confidential under this Agreement ("Confidential Information") shall bear the legend "Confidential" or "Proprietary" on the first or cover page or on each of the document pages. Information that is disclosed in non-written form will be considered Confidential Information if it is reduced to writing or electronic form, marked as "Confidential" or "Proprietary," and is sent to the receiving party within ten (10) days of the disclosure. In lieu of marking Information as "Confidential" or "Proprietary," the disclosing party may, within ten (10) days of disclosing Information, cause the Information to be Confidential Information by providing written notice of such determination to the receiving party.
- d) Gravic hereby designates \_\_\_\_\_ as the sole individual that is authorized to receive Confidential Information from Recipient, and Recipient hereby designates \_\_\_\_\_ as the sole individual that is authorized to receive Confidential Information from Gravic.

**2. CONFIDENTIALITY** As of the date first written above, a confidential relationship shall arise and exist between the parties. During the term of this Agreement and for a period of five (5) years thereafter, each party shall (except as otherwise provided in paragraph 3 below) hold in confidence any Confidential Information disclosed by the other party (whether received orally, in writing, or by any other method of communication), and shall not disclose that Confidential Information to any third party other than its employees and consultants who have a need to know the Confidential Information and who have entered into a similar written confidentiality agreement with their respective employer.

**3. DUTY OF CONFIDENTIALITY** Each party's duty of confidentiality with regard to Confidential Information disclosed by the other party, shall not extend to:

- a) Any Information that, at the time of disclosure, is in or, after disclosure, becomes part of the public domain, other than by the breach of this Agreement;
- b) Any Information that, prior to disclosure by one party, was already in the possession of the other party, as evidenced by written records kept by the other party in the ordinary course of its business, or as evidenced by proof of actual prior use by the other party; or
- c) Any Information which, subsequent to disclosure, is obtained from a third party who 1) is lawfully in possession of the Information; 2) is not in violation of any contractual, legal, or fiduciary obligation to the other party with respect to that Information; and 3) is not prohibited from disclosing the Information to others.

**4. USE OF CONFIDENTIAL INFORMATION** During the term of this Agreement and for a period of five (5) years thereafter, each party shall (except as provided in paragraph 3 above) use any Confidential Information disclosed by the other party for the sole purpose described in paragraph 1(a) above and shall not use or exploit such Confidential Information in its business or otherwise in any other way. Each party agrees that all right, title, and interest in the other's Confidential Information, including but not limited to all discoveries, concepts and ideas derived from the Confidential Information, are the exclusive property of the party providing the original Confidential Information. Neither party is obligated to enter into any further contract or business relationship with the other.

5. **TERM OF AGREEMENT** This Agreement shall take effect, after execution by the parties, on the date written above and shall continue in effect for a period of 365 days and for a period of five (5) years thereafter as provided in paragraphs 2 and 4 above, unless extended by further written agreement.

6. **RETURN OF INFORMATION** Upon request by one party, the other shall return all documents delivered to it that relate to the Information, together with all copies, summaries, and extracts of that Information, and shall certify in writing to the requesting party its compliance with this paragraph.

7. **BINDING EFFECT; ASSIGNMENT** This Agreement shall survive termination, for any reason, of current discussions between the parties. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors. Neither party may assign its rights and obligations to any third party, except to a successor to substantially all of its assets or capital stock, without the prior written consent of the other party.

8. **INDEPENDENT DEVELOPMENT** Each party understands that the other party may currently or in the future be developing information internally, or receiving information from other parties that may be similar to Information disclosed to it hereunder. Accordingly, nothing in this Agreement will be construed as a representation or an inference that either party will not develop products or services, or have products or services developed for it, that, without violation of this Agreement, compete with the products or services contemplated by the other party's Information. Each party retains sole discretion to assign or reassign the job responsibilities of its employees.

9. **LAW** This Agreement shall be construed in accordance with the laws of the Commonwealth of Pennsylvania, USA. The parties consent to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Pennsylvania, USA, provided the disclosing party may seek injunctive relief or enter a judgment in any applicable jurisdiction. Each party acknowledges that the restrictions contained in this Agreement, in view of the nature of the business in which the other is engaged, are reasonable and necessary in order to protect the legitimate interests of each party, that violation thereof would result in irreparable injury to the disclosing party, and consents to injunctive and equitable relief, without the necessity of posting bond, and reimbursement of legal and court costs of the disclosing party, in the event of any actual or threatened violation of this Agreement. In the event any provision of this Agreement is held unenforceable, such provision shall be deemed modified to the minimum extent necessary to make such provision enforceable, or if not feasible, shall be deleted and the remaining provisions shall continue in full force and effect.

10. **ENTIRE AGREEMENT, MODIFICATION & WAIVER** This Agreement embodies the entire understanding and agreement between the parties, and supersedes all prior agreements, whether written or oral, with regard to the subject matter hereof. No modification or waiver of any provision of this Agreement shall be valid unless in writing and signed by the party against whom the modification or waiver is sought to be enforced.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representatives:

Gravic, Inc. \_\_\_\_\_, Recipient

By: \_\_\_\_\_  
Authorized Signature

By: \_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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Title

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