



**THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (the “**Agreement**”) is entered into by and between PaR Systems, Inc., a Delaware corporation, and its wholly-owned subsidiaries and affiliates (collectively, the “**Company**”); and the party identified below (“**Supplier**”), and is effective upon the latter signature below (the “**Effective Date**”).

**1. Purpose.** Each of the Company and Supplier desires to receive Confidential Information (as defined below) of the other for the purpose of considering a commercial transaction and/or ongoing business relationship with the other (the “**Authorized Purpose**”). For purposes of this Agreement, the party disclosing Confidential Information is hereinafter referred to as the “**Disclosing Party**” and the party receiving Confidential Information is hereinafter referred to as the “**Recipient**”. In connection with the Authorized Purpose, certain trade secrets and business information proprietary to the Disclosing Party, and which the Disclosing Party considers confidential, may be provided to the Recipient.

**2. Definition.** “**Confidential Information**” means any information, technical data, or know-how (including, but not limited to, information relating to research, products, software, services, development, inventions, processes, engineering, marketing, techniques, customers, pricing, internal procedures, business and marketing plans or strategies, finances, employees and business opportunities) disclosed by the Disclosing Party to the Recipient, either directly or indirectly, in any form whatsoever (including, but not limited to, in writing, in machine readable or other tangible form, orally or visually): (i) that is a trade secret under applicable law; (ii) that has been marked as “confidential” or “proprietary” or similar legend; (iii) whose confidential nature has been made known by the Disclosing Party, orally or in writing, to the Recipient; (iv) that due to its character and nature, a reasonable person under like circumstances would treat as confidential; or (v) discussions relating to such information whether these discussions occur prior to, concurrent with, or following disclosure of such information.

**3. Exclusions.** Confidential Information does not include, or shall cease to include, information or material that the Recipient can demonstrate by then-contemporaneous written records: (i) is in the Recipient’s possession at the time of disclosure as shown by the Recipient’s files and records immediately prior to the time of disclosure; (ii) before or after it has been disclosed to Recipient, becomes part of public knowledge or literature, not as a result of any action or inaction of the Recipient; (iii) is approved for release by written authorization of the Disclosing Party; (iv) is disclosed to the Recipient by a third party not in violation of any obligation of confidentiality; or (v) is independently developed by the Recipient without reference to Confidential Information.

**4. Use Limitations.** The Recipient (i) agrees not to use the Confidential Information for its own use or for any purposes except the Authorized Purpose expressly set forth above; (ii) shall not use the Confidential Information for purposes of unfair or improper competition; and (iii) agrees not to copy, alter, modify, disassemble, reverse engineer or decompile any of the materials unless permitted in writing by the Disclosing Party (any copies that are authorized to be made will be identified as belonging to the Disclosing Party and marked as “confidential”, “proprietary” or with similar legend). Nothing in this Agreement shall limit or restrict the rights of the Disclosing Party to assert infringement or other intellectual property claims against the Recipient or to impose on either party any obligation to disclose any Confidential Information, to purchase or sell any products, or to otherwise enter in to any type of business relationship.

**5. Non-Disclosure.** The Recipient agrees not to disclose the Confidential Information to any third parties or to any of its employees, directors, officers, agents, contractors, consultants, advisors, or other representatives (collectively “**Representatives**”), except those Representatives who have a need to know the Confidential Information for accomplishing the Authorized Purpose described herein. In such instance(s), the Representatives (i) shall be made aware that the Confidential Information is confidential; and (ii) that such Representatives’ disclosure of the Confidential Information is restricted as set forth herein. Notwithstanding the foregoing, the Recipient may disclose the Disclosing Party’s Confidential Information to the extent required by a valid order of a court of competent jurisdiction or other governmental body, or by applicable law; provided, however, that the Recipient will use all reasonable efforts to promptly notify the Disclosing Party of the obligation to make such disclosure in advance of the disclosure, unless otherwise prohibited by law or court order, so that the Disclosing Party will have a reasonable opportunity to object to such disclosure. The Recipient and its Representatives shall cooperate in all reasonable respects with the Disclosing Party in seeking to prevent or limit disclosure; and, in the event that a protective order or other remedy is not obtained, the Recipient will limit disclosure to the Confidential Information actually required to be disclosed, provided the Recipient exercises its reasonable efforts to obtain reasonable assurances that confidential treatment will be accorded to the Disclosing Party’s Confidential Information. The Recipient agrees that it shall treat the Confidential Information with the same degree of care as it accords to its own confidential and proprietary information of a similar nature; provided that in no event shall the Recipient exercise less than reasonable care to protect the Confidential Information commensurate with the sensitivity of such information. The Recipient agrees to advise the



Disclosing Party in writing of any misappropriation or misuse by any person of such Confidential Information of which the Recipient may become aware.

The Recipient acknowledges and agrees that certain Confidential Information will be subject to export restrictions under the Arms Export Control Act (22 U.S.C. 2751 et seq.) or Executive Order 12470. In such instances, in addition to general non-disclosure restrictions set forth above, such Confidential Information shall not be transferred to any foreign person in the United States or abroad, except where authorized by the United States Department of State (ITAR) or the United States Department of Commerce (EAR). Such Confidential Information shall be appropriately marked and identified at the time of transfer.

**6. Third Party Information.** No party shall communicate any information to another party in violation of the proprietary rights of any third party.

**7. Return of Materials.** Any materials or documents of the Disclosing Party that are furnished to the Recipient, and all copies thereof, at the earlier of the Disclosing Party's request for return of the materials, or the termination of the business relationship between the Disclosing Party and the Recipient, at the Disclosing Party's option, will either be (subject to the Disclosing Party's reasonable instructions): (i) promptly returned to the Disclosing Party and/or (ii) destroyed by the Recipient, including materials stored on the Recipient's computing environment, or electronic storage media, to the extent technically feasible (with the Recipient providing written certification of such destruction).

**8. No License.** The Disclosing Party shall retain the sole ownership and right to possess its Confidential Information, and any derivatives thereof. No license is granted to the Recipient under any patents, copyrights, mask work rights or other proprietary rights by the disclosure of any information hereunder, nor is any warranty made as to such information.

**9. Remedies.** The Recipient understands and agrees that the Disclosing Party is providing the Confidential Information to the Recipient in reliance upon this Agreement, and the Recipient will be fully responsible to the Disclosing Party for any damages or harm caused to the Disclosing Party by a breach of this Agreement by the Recipient or any of its Representatives. The Recipient acknowledges and agrees that a breach of any of its promises or agreements contained herein will result in irreparable injury to the Disclosing Party for which there will be no adequate remedy at law, and the Disclosing Party shall be entitled to equitable relief, including specific performance and injunctive relief, in the event of any breach or threatened breach or intended breach of this Agreement by the Recipient. Such remedies, however, shall not be deemed to be the exclusive remedies for any breach of the Agreement, but shall be in addition to all other remedies available at law or in equity.

**10. Governing Law; Venue.** The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of Delaware, excluding its conflict of law principles. The parties agree that all litigation or other legal proceedings arising out of or related to this Agreement shall be brought in the state courts of the State of Minnesota and the United States District Courts located therein, and the parties hereby submit to the exclusive personal jurisdiction and venue of such courts.

**11. Attorneys' Fees.** In the event of any litigation or other legal proceedings arising out of or related to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all costs of proceedings incurred in enforcing this Agreement.

**12. Term; Termination.** This Agreement shall govern all communications among the parties that are made from the date Confidential Information was first provided to or obtained by the Recipient (even if prior to the Effective Date) through the date on which a party receives from the other party written notice that such party is terminating this Agreement. The Recipient's obligations under this Agreement with respect to Confidential Information it has received or obtained prior to such termination shall continue until as long as the Confidential Information remains a trade secret or for a period of five (5) years after the date of disclosure, whichever is later.

**13. Notices.** All notices or other communications required or permitted to be given under this Agreement shall be in writing and addressed to the receiving party at its corporate office, or as otherwise designated in writing, and shall be deemed effectively given on the earliest of : (i) when delivered, if personally delivered; (ii) on the third (3<sup>rd</sup>) business day following the date of mailing if delivered by certified or registered mail, return receipt requested; (iii) on the date of transmission, if delivered by facsimile or email transmission; (iv) the scheduled day of delivery if delivered via express courier; or (v) when received by the party to whom notice is intended or required to be given.



**14. General.** This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings. This Agreement may be amended or modified only in writing signed by an authorized representative of each party. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity shall not affect the other provisions of this Agreement and the unenforceable or invalid provision shall be construed to be amended in order to avoid such unenforceability or invalidity while preserving as closely as possible the intent of the parties. This Agreement shall not be construed to establish a joint venture, partnership or other business relationship between the parties. No party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party(ies), which consent may be withheld in the sole discretion of such party(ies); provided, however, the Company may freely assign or transfer any or all of its rights or obligations hereunder (i) to an affiliate or other subsidiary, as applicable; (ii) pursuant to merger, consolidation or other similar business combination; or (iii) to an acquirer of substantially all of the assets of the Company. This Agreement shall be binding upon the permitted successors and assigns of both parties. The relationship created under this Agreement is confidential and is to be treated as Confidential Information according to the terms of this Agreement. No waiver by a party of the conditions herein or of compliance with the provisions hereof, nor any delay by a party in exercising its rights, remedies or privileges hereunder, shall have the effect of preventing such party from exercising its rights, remedies or privileges hereunder at any future period or in any other circumstance, and no waiver shall be binding unless in writing. This Agreement may be signed in counterparts, each which shall constitute an original.

The parties hereto have caused this Supplier Mutual Confidentiality and Non-Disclosure Agreement to be duly executed by a duly authorized representative of such party as of the Effective Date.

**ACKNOWLEDGED AND AGREED:**

<p><b>PAR SYSTEMS, INC.</b>  <b>(on behalf of itself and its wholly-owned subsidiaries and affiliates):</b></p> <p>By: _____  Authorized Signature</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p><i>Supplier Name: (*Enter Company Name Here*)</i></p> <p>_____</p> <p>By: _____  Authorized Signature</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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