



NONDISCLOSURE AGREEMENT

This NONDISCLOSURE AGREEMENT (“Agreement”), effective from the ____ day of _____, 20__, is made by and between **AsteelFlash** and _____, for themselves and their respective affiliates and agents (“_____”) collectively the “Parties”.

WHEREAS, the Parties have or will be exposed to certain proprietary information of each others (“**Confidential Information**”) including without limitation technical data, business, financial and marketing plans, technology and product roadmaps, present and future product and integration plans, information on strategic partnerships and alliances, customer relationships, and merger and acquisition transactions and other technical and business information.

NOW THEREFORE, in consideration of the aforesaid disclosures and further in consideration of the rights, obligations and covenants hereinafter set forth, it is hereby agreed as follows:

- I. The Parties will hold in confidence any and all Confidential Information disclosed by the other Party (including, without limitation, any Confidential Information of a third party, which shall be considered to be Confidential Information of the Party for purposes of this Agreement) and will exercise the same amount of diligence in preserving the secrecy of that information as the diligence used in preserving the secrecy of their own most valuable Confidential Information, but in no event less than reasonable diligence.
- II. The Parties acknowledge that the Confidential Information comprises valuable trade secrets and proprietary information and agree not to disclose to any third party Confidential Information disclosed by a Party nor to offer for sale or manufacture or otherwise dispose of to any third party devices or technology utilizing any Confidential Information (unless otherwise agreed by each other in writing).
- III. Information received from a Party shall not be deemed to be Confidential Information if:
 - A. The information is or becomes generally available to the public, except as the result of an unauthorized disclosure;
 - B. The information is known prior to receipt, and is not subject to a separate non-disclosure commitment.
 - C. The information is or becomes available on an unrestricted basis to a third party other than from someone acting under its control (except that an affiliate of a Party shall not be deemed a "third party" hereunder); or
 - D. The information is independently developed without use of or recourse to the Confidential Information

In the event that a court or any other governmental entity (“Authority”) orders a Party to produce any of the other Party’s Confidential Information, then they may produce only the information specifically required to be disclosed. In the event that any such order is proposed or issued, the Party will immediately notify the other Party in writing of the order, and shall cooperate to object before the Authority regarding the disclosure.

- IV. Confidential Information shall be made available only to those employees of each Party who have signed nondisclosure agreements containing terms at least as stringent as those contained in this Agreement and who have reasonable need for such information in order to perform their duties.
- V. Confidential Information and all intellectual property rights fixed, embodied, or otherwise subsisting therein or arising there from, and in all works, inventions, discoveries, know-how, techniques, processes, methods, systems, ideas and other elements thereof, are, and will remain the sole and exclusive property of the releasing Party, over which the Party retains all ownership and all right, title, and interest. Nothing in this Agreement shall be construed to grant to the other Party any right or license under any patents, patent applications, trademarks, copyrights, mask works, trade secrets or know-how of the other Party, except for the limited purpose of carrying out their duties to each other. Each Party agrees that it will not use any of the other Party’s Confidential Information, and to the fullest extent permissible under applicable law, will not modify, reverse engineer, reverse-compile, reverse assemble, synthesize or in any way use any chip or chip set or other Confidential Information to facilitate or aid in the design or debugging of, a component, chip, chip set, semiconductor device, or integrated circuit whether for internal consumption or open market sale, or for any other purpose inconsistent with this Agreement.
- VI. Neither Party nor any of its employees, officers, representatives, agents or affiliates may copy Confidential Information, in whole or in part, absent the prior written consent of the other Party. Within 10 days of a Party’s written request, the other Party will promptly return all Confidential Information received, together with all copies, recordings, summaries or other reproductions thereof and all notes and/or other works prepared or based thereon, or certify in writing that all such Confidential Information and copies have been destroyed.
- VII. The obligations of the Parties under paragraphs I, II, and III shall continue for a period of three (3) years from the effective date of disclosure of the Confidential Information. The remainder of the terms of this Agreement shall survive in perpetuity.
- VIII. This Agreement constitutes the full and final understanding of the Parties with respect to the subject matter hereof. This Agreement merges and supersedes any and all other agreements and representations, written or oral, relating to that subject matter. This Agreement may not be amended except by a writing expressly referring to this Agreement and signed by the authorized representatives of both Parties. Any waiver of the requirements in this Agreement must be in writing and should not in any way be deemed a waiver to enforce any other requirements or provisions of this Agreement. If any provision of this Agreement is deemed unenforceable, then such provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.

- IX. Each Party acknowledges that the unauthorized disclosure of Confidential Information may cause irreparable harm to the other Party that monetary damages alone may not redress. The offended Party is entitled to seek, from any court of competent jurisdiction, injunctive or other equitable relief to stop or prevent the unauthorized disclosure of Confidential Information.
- X. Each Party will adhere to all applicable laws and regulations of the U.S. Export Administration and will not export or re-export any technical data or products received from the other Party, or the direct product of such technical data, to any prescribed person or country listed in the U.S. Export Administration regulations unless properly authorized by the U.S. government.
- XI. Confidential Information is provided "as is." **NO REPRESENTATIONS OR WARRANTIES ARE MADE OR IMPLIED REGARDING THE ACCURACY, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OF CONFIDENTIAL INFORMATION.** A disclosing party shall have no liability or responsibility for any expense, losses, damages, or action incurred or undertaken by the other as a result of the receipt of Confidential Information.
- XII This Agreement will be interpreted under California law, notwithstanding the choice of law rules of California or any other jurisdiction. In the event of any action or proceeding to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to seek reimbursement for all costs of such action or proceeding, including attorney's fees and costs.

AsteelFlash and _____ hereby execute this Agreement as of the day and year first above written.

AsteelFlash

Sign _____

Name _____

Title _____
