

CONFIDENTIAL DISCLOSURE AGREEMENT

XACTIV of Fairport, New York, and _____
("Company"), the parties to this Agreement, hereby agree as follows:

1. To further the business relationship between XACTIV and Company, it is necessary and desirable that XACTIV and Company disclose to one another confidential information (hereinafter referred to as "Confidential Information") concerning any or all of the following: the names and business of customers; current, future, or proposed contracts that XACTIV or Company has with its customers; current or future business information, product information or technology information of XACTIV or Company. "Confidential Information" if disclosed in tangible form shall be marked as being confidential, or some similar designation. Confidential information disclosed orally or visually shall be verbally identified at the time of disclosure as being confidential, and shall be submitted later in writing and designated confidential within ten (10) business days of disclosure.

2. Neither party shall communicate Confidential Information to any third party and shall use its best efforts to prevent inadvertent disclosure of Confidential Information to any third party.

3. Neither party shall either use Confidential Information or circulate it within its own organization or any affiliated organizations except to the extent necessary for:

- (a) negotiations, discussions and consultations with personnel or authorized representatives of the other party;
- (b) supplying the other party with goods or services at its order;
- (c) preparing bids, estimates and proposals for submission to the other party; and
- (d) any purpose either party may hereinafter authorize in writing.

4. The obligations of paragraph 2 and 3 hereof shall terminate with respect to any particular portion of the Confidential Information

(i) when:

- (a) It was in the public domain at the time of the communication;
- (b) It entered the public domain through no fault of the receiving party subsequent to the time of the communication;
- (c) It was in the possession of the receiving party free of any obligation of confidence subsequent to the time of communication thereof; or
- (d) It was developed by employees or agents of the receiving party independently of or without reference to any Confidential Information or other information that was disclosed in confidence to any third party;

or (ii) when it is communicated to a third party free of any obligation of confidence.

Notwithstanding the aforementioned conditions, any remaining Confidential Information shall continue to be subject to the obligations of paragraph 2 and 3 hereof.

5. All materials including without limitation, documents, drawings, models, apparatus, sketches, designs, and lists furnished under this Agreement which are designated in writing to be the

property of one of the parties shall remain the property of that party and shall be returned promptly at its request with all copies made thereof.

6. This agreement shall be effective upon execution and shall automatically terminate three (3) years after its effective date, unless extended by mutual agreement of both parties prior to its termination, except for the obligations of The Receiving Party with respect to Proprietary Information received prior to termination of the Agreement which shall survive such termination for a period of five (5) years. This Agreement may be terminated by either party with at least a 30-day prior written notice to the other party.

7. Neither party shall export, directly or indirectly, any technical data acquired under this Agreement or any products utilizing any such data to any country for which the US Government or any agency thereof at the time of export requires an export license or other Government approval without first obtaining such license or approval.

8. This Agreement shall be construed in accordance with the laws of New York State.

BY:

XACTIV

COMPANY: _____

Signed: _____

Signed: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____