



## MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement (“Agreement”) is effective this \_\_\_\_ day of Month, Year and is made by and between InCircuits, Inc., a Minnesota corporation, with an office at 4284 Reiland Lane, Shoreview MN 55126 and Your Company Name, a Your Company State corporation, with an office at Your Company Address, (collectively referred to as “the Parties”).

### Recitals

WHEREAS, the Parties wish to enter into a business relationship where either party may disclose (the “Disclosing Party”) confidential and proprietary information to the other party (the “Receiving Party”), which confidential and proprietary information is owned by the Disclosing Party, its affiliates or third parties to which the Disclosing Party has obligations regarding the protection of such information; and

WHEREAS, as a condition to the Disclosing Party’s release of such confidential and proprietary information to the other party, and in return for the receipt of such confidential and proprietary information, the Parties wish to enter this Agreement; and

WHEREAS, the Receiving Party further understands and acknowledges that the Disclosing Party, among other things, does not wish to make the Confidential Information generally public or common knowledge; and

NOW, THEREFORE, in consideration of the mutual premises herein, the Parties agree as follows:

### Agreement

**1. Confidential Information.** “Confidential Information” means any information, technical data, or know-how, including, but not limited to, research, product plans, products, product architecture, services, customers, markets, software, developments, methods of manufacture, trade secrets, business plans, vendors, personnel data, inventions, processes, designs, drawings, engineering, product configuration, marketing or finances which relates to the Disclosing Party’s products or projects, which is disclosed or made available by the Disclosing Party to the Receiving Party, and which is designated in writing or verbally as confidential or proprietary information. Verbal disclosures shall be committed to writing and provided to the Receiving Party within twenty (20) days of disclosure to be included as “Confidential Information”.

Notwithstanding the foregoing, Confidential Information shall not include any information which:

- a) is shown to have been known or developed by the Receiving Party independent of any disclosure by the Disclosing Party; or
- b) is or becomes available to the public through no breach of this Agreement; or
- c) is lawfully obtained from a third party without restriction and without breach of this or any other agreement; or
- d) is required by law to be disclosed in response to a valid order of a court of competent jurisdiction or authorized governmental agency, provided the Disclosing Party receives adequate notice to allow it to request a protective order and the Receiving Party reasonably cooperates with the Disclosing Party’s efforts to receive a protective order; or
- e) is approved for release by written authorization of the Disclosing Party.

**2. Disclosure/Discussion among the Receiving Party’s employees, agents and associates.** The Confidential Information may be disclosed to any persons or entities working for or with the Receiving Party who have a need to know, provided each such person and entity is advised of this Agreement and is first required to sign a copy of this Agreement prior to

receipt of the Confidential Information. In no event will the Receiving Party use less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care, to prevent the unauthorized use or disclosure of Confidential Information.

**3. Ownership.** Nothing in this Agreement, nor the disclosure of Confidential Information by the Disclosing Party to the Receiving Party, shall be construed to grant to the Receiving Party any rights of any kind in any of the Confidential Information, by license or otherwise. The Confidential Information shall at all times remain the property of the Disclosing Party. The Receiving Party shall not alter or obliterate any trademark, trademark notice, copyright notice, confidentiality notice or any notice of any other proprietary right of the Disclosing Party on any copy of the Confidential Information, and shall faithfully reproduce any such mark or notice on all copies of such Confidential Information.

**4. Duties of the Receiving Party.** The Receiving Party agrees that, with respect to any and all of the Confidential Information supplied to the Receiving Party pursuant to this Agreement, the Receiving Party will use reasonable efforts to prevent disclosure of the same to third parties and that the Receiving Party will not duplicate or use the same for any purpose other than as previously stated without first entering into a separate written agreement with the Disclosing Party authorizing said other use. No license to use is granted to either party under this Agreement regarding any information which is subject to this Agreement.

**5. Return of Confidential Information.** The Receiving Party will return all tangible material embodying Confidential Information (in any form including, without limitation, all summaries, copies and excerpts of Confidential Information) within ten (10) days of the Disclosing Party's written request.

**6. Enforcement.** The Parties agree to take all such steps as shall from time to time be necessary to ensure compliance with the provisions of this Agreement by each party's respective employees, agents, consultants, subcontractors and associates.

**7. Limited Scope.** Nothing in this Agreement shall be construed as requiring either party to invest in the other party nor for either party to manufacture or supply anything for the other party, nor as requiring either party to purchase anything from the other party.

**8. No Duplication.** The Receiving Party will not duplicate any materials containing Confidential Information except as necessary to accomplish the purposes of performing any services that shall be outlined by a separate agreement.

**9. Notice of Violation.** The Receiving Party agrees to notify the Disclosing Party as soon as reasonably possible if they learn of any use or disclosure of any Confidential Information in violation of this Agreement.

**10. Remedies.** If the Receiving Party breaches the terms of this Mutual Non-Disclosure Agreement, the Disclosing Party shall have all remedies available to it in law and equity. The prevailing party in any disputes regarding this Agreement shall be entitled to recover its reasonable costs, including but not limited to reasonable attorney fees. The Receiving Party agrees and acknowledges that breach of any of the Receiving Party's duties as set forth in this Agreement shall entitle the Disclosing Party to the entry of injunctive relief, or any other equitable remedy, as may be necessary under the circumstances. The pursuit or securing of any such injunctive relief shall not prohibit or limit the Disclosing Party's right to seek or obtain any other remedy provided under this Agreement or by law or in equity.

**11. Survival of Terms.** The terms of this Agreement shall survive the termination of any agreement between the Parties, and shall remain in effect for a period of five (5) years following the last date Confidential Information is provided to the Receiving Party.



**12. Relationship of Parties.** The Parties to this Agreement are independent of each other and shall not for any reason be deemed to be partners, co-adventurers, or agents with or for the other.

**13. Miscellaneous Provisions.**

- a) The failure of either party hereto to enforce any right under this Agreement shall not be construed to be a waiver of that right, or of damages caused thereby, or of any rights under this Agreement.
- b) This Agreement encompasses the entire agreement of the Parties regarding the subject matter of this Agreement.
- c) This Agreement may not be modified, rescinded, limited or amended except by a written agreement signed by the Parties.
- d) If any section or portion hereof is found to be unenforceable, illegal, contrary to public policy or are in some other manner declared to be unenforceable by a Court of competent jurisdiction, this Agreement shall remain in full force and effect except for that section or portion determined to be unenforceable.
- e) The Construction, interpretation and performance of this Agreement, and all transactions under it, shall be governed by the laws of the State of Minnesota, and the Parties hereby consent to the jurisdiction of the Courts in and for the State of Minnesota over any and all matters, disputes or issues involving this Agreement without regard to or application of conflicts of law rules or principles.
- f) This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors, representatives and assigns; provided, however, that neither party shall, without the express written consent of the other party, assign or transfer this Agreement or any Confidential Information to others.

Approved and Agreed:

Your Company Name

InCircuits, Inc.

\_\_\_\_\_  
(Authorized Representative)

\_\_\_\_\_  
(Authorized Representative)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)