

SILVER PEAK SYSTEMS, INC.
MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT (this “**Agreement**”) is made as of the last date set forth below (the “Effective Date”) between Silver Peak Systems, Inc. with its principal place of business at 2860 De La Cruz Blvd, Santa Clara, CA 95050, USA and

_____ with its principal place of business at
(name of counterparty)

(address)

1. *Purpose.* The parties wish to explore a business opportunity of mutual interest (the “**Opportunity**”), and in connection with the Opportunity, each party may disclose to the other confidential information that the disclosing party desires the receiving party to treat as confidential.

2. “**Confidential Information**” means (a) any information disclosed by either party to the other party designated in writing as “confidential,” “proprietary” or some similar designation, including, without limitation, business plans, customer data, designs, engineering information, financial information and forecasts, market information, marketing plans, prototypes, products, product plans, software and source code. Confidential Information shall not, however, include any information that (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) comes into, or is already in, the possession of the receiving party, without confidentiality restrictions, and without breaching this Agreement; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession. If a receiving party is required by law to make any disclosure that is prohibited or otherwise constrained by this Agreement, the receiving party will provide the disclosing party with prompt written notice of such requirement, if legally permissible, so that the disclosing party may seek a protective order or other appropriate relief. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects that embody the other party's Confidential Information and that are provided to the party under this Agreement.

3. *Maintenance of Confidentiality.* Each party agrees that it shall take reasonable measures to protect the confidentiality of the Confidential Information. Without limiting the foregoing, each party shall take at least those measures that it takes to protect its own confidential information of a similar nature, but in no case less than reasonable care (including, without limitation, all precautions the receiving party employs with respect to its confidential materials). If the Opportunity is the evaluation of Silver Peak products or services for purchase, Silver Peak may disclose Confidential Information to its reseller and distributor partners.

4. *No Obligation.* Nothing in this Agreement shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the Opportunity.

5. *No Warranty.* ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS.” EACH PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF THE CONFIDENTIAL INFORMATION.

6. *Return of Materials.* Upon the written request and at the expense of the disclosing party, all Confidential Information of the disclosing party shall be destroyed or returned by the receiving party to the disclosing party. Notwithstanding the foregoing, a receiving party may retain Confidential Information for the purpose of performing any obligations or exercising any rights under this Agreement, as required by law, and as a part of ordinary course automatic electronic archiving procedures, but not for any other use or purpose.

7. *No License.* Nothing in this Agreement is intended to grant any rights to either party under any patent, mask work right, copyright, trade secret or other intellectual property right of the other party, nor shall this Agreement grant any party any rights in or to the other party's Confidential Information.

8. *Term.* The term of this Agreement shall be for three years from the Effective Date. The obligations of each receiving party under this Agreement shall survive until such time as all Confidential Information of the other party disclosed hereunder becomes publicly known and made generally available through no action or inaction of the receiving party, but in no event more than 2 years after the last disclosure of Confidential Information under this Agreement.

9. *Availability of Equitable Relief.* Each party understands and agrees that its breach or threatened breach of this Agreement may cause irreparable injury to the other party and that money damages may not provide an adequate remedy for such breach or threatened breach, and both parties hereby agree that, in the event of such a breach or threatened breach, the non-breaching party will also be entitled, without the requirement of posting a bond or other security, to seek equitable relief, including injunctive relief and specific performance. The parties' rights under this Agreement are cumulative, and a party's exercise of one right shall not waive the party's right to assert any other legal remedy.

10. *Severability.* If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law.

11. *Counterparts.* The parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same agreement. This Agreement may be delivered by electronic transmission, and such copies of executed signature pages shall be binding as originals.

12. *Miscellaneous.* This Agreement shall benefit and bind the parties and their respective successors, heirs, legal representatives and permitted assigns. This Agreement shall be governed by the laws of California without regard to California's conflicts of law rules. This Agreement constitutes the entire agreement between the parties with respect to the matters herein and supersedes all prior written and oral agreements between the parties regarding the subject matter of this Agreement, and neither party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other party except as set forth in this Agreement. No provision of this Agreement may be waived except by a writing executed by the party against whom the waiver is to be effective. A party's failure to enforce any provision of this Agreement shall neither be construed as a waiver of the provision nor prevent the party from enforcing any other provision of this Agreement. No provision of this Agreement may be amended or otherwise modified except by a writing signed by each of the parties to this Agreement.

Silver Peak Systems, Inc.

(name of counterparty)

By: _____

By: _____

Name:

Name:

Title:

Title:

Date:

Date: