

EDSA-202
ISA Security Compliance Institute –
Embedded Device Security Assurance

Application and Contract for Chartered Laboratories

Commencement Date: _____

LICENSOR:

Automation Standards Compliance Institute
67 Alexander Drive
Research Triangle Park, NC 27709

LICENSEE: (Chartered Laboratory Name and Address, including Legal Status)

Applicant and Licensee Information:

Name of Organization:

Location of Organization's Main Office:

Location of Testing Laboratory, if different

List other Locations performing certification and testing related to this program:

Organization's web site:

Primary Contact Name, Telephone number and Email:

Secondary Contact Name, Telephone number and Email:

Accreditation Body:

Date of application to Accreditation Body:

Include copy of Application submitted to the Accreditation Body:

Date scheduled for preliminary visit (pre-assessment) by Accreditation Body: (if known)

Date scheduled for assessment by Accreditation Body: (if known)

(Notify ASCI Managing Director when the preliminary visit and assessment are scheduled)

A. SCOPE

The scope of the program is the ISASecure Embedded Device Security Assurance (EDSA) certification program approved by ISCI. The certification program is defined in ISASecure document EDSA-300 (latest version) and the accreditation program is defined in the ISASecure document EDSA-200 (latest version). ISASecure EDSA documents (designated in this agreement by their numbers as “EDSA-*nnn*”) are available at the web site <http://www.ISASecure.org>, hereafter referred to as the ISASecure web site.

B. OBLIGATIONS

- 1) The ISASecure EDSA program includes certain data, information and material and associated trademarks and certificates owned by the LICENSOR.
- 2) The LICENSOR is the sole legal and beneficial owner of the ISASecure EDSA program.
- 3) The LICENSEE wishes to acquire non-exclusive rights to certify embedded devices for security assurance in conformance with the ISASecure EDSA program.
- 4) The LICENSOR has agreed to grant the LICENSEE non-exclusive rights to certify embedded devices under the terms and conditions herein contained.

C. DEFINITIONS

In this agreement the relative definitions given in the ISASecure EDSA program apply, together with the definitions found in ISO/IEC 17000.

D. GRANT of LICENSE

- 1) It is a condition precedent to the grant of the License that the LICENSEE undergo evaluation by a LICENSOR designated IAF/ILAC recognized accreditation body with scope, outcome and timeline per the requirements stated in ISASecure document EDSA-200.
- 2) The LICENSEE must issue the certificate designed by ASCI for the use in the ISASecure EDSA program. The LICENSOR provides the format for the certificate along with the ISASecure symbol, on the ISASecure web site in EDSA-205.
- 3) Subject to satisfaction of the condition in clause D.1 and in consideration for the payment to be made under Clause L of this Agreement, the LICENSOR hereby grants to the LICENSEE and the LICENSEE hereby accepts a non-exclusive, non-transferable license to supply the certification service under the terms and conditions here contained (License.)
- 4) This agreement shall commence on the Commencement Date and upon signature by ASCI, and is automatically renewed annually unless terminated accordance with Section M.
- 5) The annual Renewal Fee is prescribed in the current fee schedule found on the

ISASecure website.

6) The LICENSOR shall communicate all details of any know how, improvement or modification related to or derived from the ISASecure EDSA program (the Intellectual Property) developed during the term of this agreement. The Intellectual Property shall at all times be the property of the LICENSOR and no consideration shall be payable by either the LICENSEE or the LICENSOR for the new or existing Intellectual Property. The Intellectual Property is subject to the License granted to the LICENSEE hereunder, and shall be covered by the provisions of this agreement.

E. LICENSEE'S COVENANTS, REPRESENTATIONS AND WARRANTIES

The LICENSEE shall:

- 1) exercise its best efforts to market and provide the Certification of embedded devices commencing on the commencement Date and to arrange for adequate financing and professional management for the provision of meeting the requirements of the ISASecure EDSA certification program.
- 2) exercise its rights under the License and deliver the ISASecure EDSA program in accordance with EDSA-200.
- 3) use its best efforts to meet the demand for the Certification program.
- 4) use the certification trademark symbol on audit material, promotional materials and only use the symbol in accordance with this agreement and the conditions outlined in the ISASecure symbol usage document EDSA-204.
- 5) authorize all Clients who have been certified to use the Certification symbol as it relates to the ISASecure EDSA program only in accordance with the ISASecure symbol document EDSA-204 published by the Licensor. The LICENSEE shall prohibit its clients to license or sell the symbol to any other party.
- 6) maintain accreditation and perform certification activities as required by the ISASecure EDSA certification program (Document EDSA-200 and related references).
- 7) obtain LICENSOR's prior written approval of all promotional materials and pay for the entire cost of all printing, art work, production of electronically stored information and any other such costs for any material used, sold and distributed by the LICENSEE in relation to the Certification Program.
- 8) not make any statement in any promotional materials or other material or to any person in respect of the ISASecure EDSA certification program which is a misrepresentation or which breaches any applicable law.
- 9) require of all certification applicants that if they achieve certification, in the case that

the LICENSOR later ceases certification operations for any reason, to engage a new certification body within 6 months to hold their certification and thus perform ongoing monitoring as required by EDSA-200.

The LICENSEE acknowledges and agrees that:

- 1) the LICENSEE shall have no right to enter into any agreement on behalf of the LICENSOR;
- 2) notwithstanding anything herein to the contrary, the LICENSOR may at its own discretion amend or vary the ISASecure EDSA requirements at any time and for any reason whatsoever and the amended or varied requirements will form part of this agreement.
- 3) The LICENSOR may appoint third parties to also provide the certification program and the LICENSOR has made no representations to the LICENSEE, and in particular has made no representations and has provided no warranty as to the commercial profitability or success of the LICENSEE in providing the Certification program, other than as set out in this Agreement.
- 4) the LICENSOR may include reference to the LICENSEE and the LICENSEE's Clients who have obtained certification and product lists on a register and make the register publicly available except that the register shall not disclose which businesses are the LICENSEE's clients, and public availability of an entry in the register requires prior approval of the respective Client.

Regarding Intellectual Property, the LICENSEE acknowledges and agrees that:

- 1) nothing in this Agreement confers upon the LICENSEE any Intellectual Property Rights as a result of the provision of the Certification Program by the LICENSEE or otherwise, and;
 - (a) the Intellectual Property and all Intellectual Property Rights are and shall remain the sole property of the LICENSOR and neither the LICENSEE nor any of the related parties, employees, consultants, contractors, agents or auditors shall at any time or in any way whatsoever dispute the validity of any Intellectual Property Rights or the LICENSOR's ownership of the intellectual Property and shall not assist any other party to so dispute them
 - (b) it will not cause or permit anything to be done which may damage or endanger the Intellectual Property or the Intellectual Property Rights
 - (c) it has no claim whatsoever to any rights of ownership in the Intellectual Property or the Intellectual Property Rights and warrants that no such claim will be made in the future unless by agreement with the LICENSOR; and
 - (d) the LICENSEE shall not have the right to authorize or sub-license any person or entity to market or sell the Certification program or the Intellectual Property or the Intellectual Property rights to any other party.

F. LICENSOR'S COVENANTS, REPRESENTATIONS AND WARRANTIES

The LICENSOR undertakes and agrees with the LICENSEE that:

- 1) it will provide to the Licensee via the ISASecure web site, as of the commencement

date, the ISASecure EDSA technical requirements, including but not limited to all relevant documents and other materials necessary to enable the LICENSEE to provide the Certification of the products in accordance with the requirements of the ISASecure EDSA certification program and this agreement. And;

2) it will provide to the LICENSEE, at a charge determined by the LICENSOR, such assistance and support as the LICENSEE may reasonable require to acquire knowledge relating to the delivery of the Certification program.

G. LICENSOR'S MANAGING DIRECTOR

The LICENSOR shall appoint the LICENSOR Managing Director as its authorized representative. The LICENSOR reserves the right at any time during the currency of this agreement to replace the Managing Director, in which case the LICENSOR shall notify the LICENSEE in writing details of the replacement of the Managing Director.

The Managing Director may exercise any of the powers to be exercised by the LICENSOR under this Agreement except that the Managing Director is not authorized to waive the LICENSEE's compliance with any provisions of this Agreement, agree to any modifications or amendments to this agreement except as a written amendment to this agreement or to consent to an assignment by the LICENSEE.

Any direction which the Managing Director gives to the LICENSEE with the authority conferred in this section shall be deemed to have been given to the LICENSEE by the LICENSOR.

H. QUALITY CONTROL (MODIFICATIONS AND IMPROVEMENTS)

1) The LICENSEE shall not modify, amend, revise, enhance or improve any document and other materials developed, created or provided by the LICENSOR and related bodies without prior written approval of the LICENSOR.

2) The LICENSOR or its representative may at any reasonable time during the Term of this Agreement make written request to inspect and audit the LICENSEE's facilities, books and records relating to:

- (a) any audit materials;
- (b) the LICENSEE's procedure and protocols that relate to the delivery of the Certification program requirements and;
- (c) the LICENSEE's delivery of the Certification program requirements including the evaluation, testing and decision on certification;
- (d) to establish the quality of the LICENSEE's delivery of the Certification program and confirm LICENSEE's conformance with this Agreement, and the LICENSEE shall not unreasonably refuse such request and shall provide all reasonable assistance to the LICENSOR in making such assessment or evaluation. The LICENSEE shall pay all costs and expenses incurred by the LICENSOR for the assessment if a breach of contract is identified during the course of the assessment.

3) The LICENSEE shall immediately notify the LICENSOR in writing if any Related Party of the LICENSEE commences delivering the Certification program requirements in locations not specified in the application or this agreement.

4) The LICENSEE shall ensure that it only employs or subcontracts or otherwise engages as Auditors and CRT Testers, persons who satisfy the requirements and qualifications prescribed for these individuals in ISASecure EDSA-200 document.

5) The LICENSEE shall disclose all information and execute all documents and declarations and do such things as may be necessary to vest in the LICENSOR the right to apply for registration for protection of the Intellectual Property.

I. DOCUMENTS AND RECORDS

The License shall, and in accordance with the ISASecure EDSA-200 document immediately give the LICENSOR written notice if the LICENSEE revokes, suspends, withdraws, cancels or in any way changes any client's certification status.

The LICENSEE shall keep full and accurate records and reports relevant to this agreement during the Term, including but not limited to records of all the products certified, client/vendor information, audit reports and a registry of all auditors used by the LICENSEE.

The LICENSEE shall keep all Client records and reports for a period of five (5) years following termination of this agreement and shall make them available to the LICENSOR for inspection and/or copying upon request by the LICENSOR.

The accreditation body report, nonconformances (deficiencies) and LICENSEE's corrective actions must be submitted to the LICENSOR within 30 days following accreditation or accreditation renewal. These reports are to be submitted by the accreditation body to the LICENSOR. The LICENSEE must give to the accreditation body the information necessary to ensure the timely submittal of this information to the LICENSOR.

If LICENSOR so requests, LICENSEE shall promptly return to the LICENSOR all documents and other tangible manifestations of Confidential Information received by the Recipient pursuant to this Agreement (and all copies and reproductions thereof) and shall also destroy all copies of any analyses, compilations, study or other documents prepared by LICENSEE for its use containing or reflecting any Confidential Information.

J. RELIANCE; WARRANTY DISCLAIMER; LIMITATION OF LIABILITY; APPROVALS; COMPLIANCE WITH LAWS (ASSIGNMENT AND LIABILITY) (GOVERNING LAW AND JURISDICTION)

RELIANCE

The LICENSEE acknowledges that it has entered into this agreement in reliance upon its own

examination and evaluation of the ISASecure EDSA requirements and not upon any (or any alleged) statement, warranty, condition or representation made or alleged to have been made by the LICENSOR or its employees or agents other than as contained in this Agreement.

WARRANTY DISCLAIMER

THE INTELLECTUAL PROPERTY AND ALL OTHER PRODUCTS OR MATERIALS PROVIDED BY LICENSOR ARE PROVIDED AS-IS AND WITH ALL FAULTS, AND LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, ACCURACY, OR THE PRESENCE OR ABSENCE OF ERRORS, WHETHER OR NOT DISCOVERABLE.

LIMITATION OF LIABILITY

UNDER NO CIRCUMSTANCES SHALL LICENSOR BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND ON ANY LEGAL THEORY OF LIABILITY, WHETHER FOR CONTRACT, TORT, STRICT LIABILITY, OR A COMBINATION THEREOF (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OF THE INTELLECTUAL PROPERTY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH RISK AND POTENTIAL DAMAGE. WITHOUT LIMITING THE FOREGOING, LICENSEE WAIVES THE RIGHT TO SEEK LEGAL REDRESS AGAINST, AND RELEASES FROM ALL LIABILITY AND COVENANTS NOT TO SUE, LICENSOR.

APPROVALS

The LICENSEE covenants that prior to entering into any contract, agreement or arrangement and delivering the Certification program it will be accredited to do so and it will obtain all legally necessary consents and approval from the relevant government and from all relevant statutory and other bodies (including pursuant to any exchange control regulations) to enable it to carry out its activities and perform its obligations under this Agreement. The LICENSOR undertakes and agrees that whenever and wherever possible it will provide all reasonable assistance to the LICENSEE to obtain these consents and approvals at the LICENSEE's cost.

COMPLIANCE WITH LAWS

The LICENSEE shall at all times during the Term of this agreement comply with all applicable laws.

ASSIGNMENT

The LICENSEE acknowledges that the LICENSOR may, at any time, transfer or assign its rights and obligations under this agreement. The LICENSEE acknowledges that this agreement is personal and that it will not (and will not agree to) assign all or any part of the benefit of or its interest in this agreement, without the prior written consent of the LICENSOR (which the LICENSOR may in its absolute discretion, and with giving reasons, grant or refuse) and in any

event subject to the LICENSOR satisfying itself concerning the financial good standing and provisional and technical competence and reputation of the proposed assignee. Any assignment consented to by the LICENSOR must be subject to the assignee entering into a deed whereby it covenants to be bound by the terms of this agreement in terms acceptable to the LICENSOR. The LICENSEE will remain liable under this Agreement and will indemnify the LICENSOR against any claim the LICENSOR may suffer as a result of any permitted assignment.

GOVERNING LAW AND JURISDICTION

This agreement is governed by, and interpreted in accordance with the substantive laws of the State of North Carolina exclusive of any rules with respect to conflict of laws. With preventing any other mode of service, any document in an action (including with limitation, any writ of summons or other originating process or any third or other party notice) may be served on any Party by being delivered to or left for that Party at its address identified on the title page. The State or Federal courts in or for Wake County, in the State of North Carolina shall be the sole and exclusive forum for the resolution of any controversy or claim between the parties arising out of or relating to this Agreement, or the breach thereof.

K. LICENSEE'S INDEMNITY, INSURANCE, INFRINGEMENT

1) The LICENSEE assumes full responsibility for the use or failure to use or misuse or other purported use of the Intellectual Property in connection with the provision for the Certification or otherwise and shall indemnify the LICENSOR, and shall keep the LICENSOR indemnified, defended and held harmless against and in respect of any and all losses, costs, expenses, legal fee and disbursements, obligations, liabilities, damages, account of profits, recoveries and deficiencies (including interest and penalties) related to suits, claims, or demands by any third party to the extent attributable to the use, failure to use, misuse or other purported use of the Intellectual Property by the LICENSEE howsoever arising.

2) Excluding materials developed and supplied by the LICENSOR (to the extent not enhanced or modified by the LICENSEE, in which event such materials shall be included), the LICENSEE shall immediately give the LICENSOR written notice of and shall indemnify the LICENSOR and shall keep the LICENSOR indemnified, defended and held harmless against and in respect of any and all claims, demands, losses, costs, expenses, legal fees and disbursements obligations, liabilities, damages, account of profits, recoveries and deficiencies, including interest and penalties, that the LICENSOR may incur or suffer in the extent arising or resulting from:

- (a) any breach of this Agreement by the LICENSEE or its auditors, or the LICENSEE's or its auditor's failure to perform any of its obligations under this agreement.
- (b) the negligence or intentional act or willful misconduct of the LICENSEE or its auditors
- (c) any performance, non-performance or purported performance in supplying the Certification program by the LICENSEE or its auditors;
- (d) any real or alleged infringement of a third party's intellectual property or proprietary rights by any information or materials created, produced or supplied by the LICENSEE,

except for audit materials solely created, produced or supplied by the LICENSOR except when such claims, demands, losses, costs, expenses, legal fees and disbursements, obligations, liabilities, damages, account of profits, recoveries and deficiencies, including interest and penalties, arise out of the LICENSOR's sole negligence.

- 3) The indemnities contained in this section are continuous obligations separate and independent from the other obligations of the LICENSEE and survive termination of this agreement for whatever reason. It is not necessary for the LICENSOR to have incurred expense or make payment before enforcing a right of indemnity conferred by this agreement.
- 4) The LICENSEE agrees that the General Liability and professional Indemnity Insurance shall be the responsibility of the LICENSEE. The LICENSEE shall arrange and maintain a minimum coverage of not less than \$2M in respect of any one claim and \$5M in the annual aggregate for each coverage with an insurance company rated by A.M. Best as A- or better. Upon request of the LICENSOR, the LICENSEE shall provide evidence of the existence of all insurance during the Term of this agreement.
- 5) The LICENSEE must ensure that any contracts of insurance entered into shall include the LICENSOR and its respective officers, directors, employees and agents as additional insured.
- 6) Each Party shall give immediate written notice to the other Party of any real infringement or alleged infringement of the Intellectual Property rights and/or any unauthorized dissemination or use of Confidential Information.
- 7) If the LICENSOR identifies, commences or is involved in any proceedings for infringement of the Intellectual Property rights and/or any unauthorized dissemination or use of Confidential Information, or any part thereof, the LICENSEE will upon request by the LICENSOR give to the LICENSOR all information in its possession with respect to the infringement or suspected infringement and will join with the Licensor in bringing the said proceedings, if so requested by the LICENSOR. Should the LICENSEE join pending proceedings and invite the LICENSOR to start proceedings for infringement, then costs, expenses and attorneys' fees incurred in such proceedings shall be borne by the LICENSOR and LICENSEE in proportion to be agreed upon taking into account their respective interest in bringing the proceedings. Where the LICENSEE and the LICENSOR successfully prosecute to judgment any proceedings, the costs thereof and incidental thereto and any damages recovered thereby shall be borne and shared pro rata between them in the proportions that the individual damages for loss as adjudged are to the total damages recovered by the LICENSEE and the LICENSOR and otherwise shall be borne equally between them.

L. PAYMENT AND COSTS

In consideration of the rights hereby granted by the LICENSOR to the LICENSEE, the

LICENSEE shall pay the LICENSOR the license fee as presented in the payment schedule posted on the ISASecure website.

The renewal fee may be adjusted on each December 31 by an amount determined by the LICENSOR and the annual increase shall not exceed 25% of the then current rate. The renewal fee must be paid by March 31 each year.

All sums payable by the LICENSEE to the LICENSOR shall be paid in US Dollars by electronic bank transfer to a bank account specified by the LICENSOR.

All payments are to be received in full by the LICENSOR without deduction for withholding taxes, Value Added Tax (VAT) or any other indirect taxes in the LICENSEE's country. Should the LICENSEE be required by law to withhold tax, VAT or any other indirect taxes on the amounts payable to the Licensor, then such amounts shall be grossed up so that the net amount received by the LICENSOR shall be equal to the payment defined in the fee schedule. The additional amount payable must be paid to the LICENSOR at the same time as the original consideration for the delivery of the Certification Service must be paid or provided.

The LICENSOR must provide the LICENSEE on request with a Tax Invoice to enable the LICENSEE to claim a tax credit for the Tax that is payable on any supply made by the LICENSOR under this Agreement.

Each Party will pay its own legal fees incidentals to the preparation and execution of this Agreement. All stamp duty shall be paid by the LICENSEE.

M. TERMINATION

- 1) This Agreement may be terminated upon mutual written agreement of the Parties or immediately by notice in writing to the other Party.
 - (a) by the LICENSOR in the case of negligence or misconduct by the LICENSEE or any of its auditors, including where the LICENSEE has failed to ensure that any Auditor has complied with this Agreement;
 - (b) by the LICENSOR if the LICENSEE fails to pay any payment pursuant to clause 3 within 60 days from the written notice;
 - (c) by the LICENSOR if the LICENSEE or any Auditor has not complied with the ISASecure EDSA requirements and this agreement, or any auditor has been found to have a conflict to interest as outlined in the ISASecure EDSA requirements.
 - (d) by the LICENSOR if the LICENSEE ceases to hold accreditation;
 - (e) by the LICENSOR if the LICENSEE fails to maintain insurance as required in this Agreement;
 - (f) by the LICENSOR where in its reasonable opinion there has been a change in the composition of the shareholders of the LICENSEE which results in an effective change in control of the LICENSEE (change in control shall mean a change of legal entity controlling over 50% of the voting rights for the LICENSEE);
 - (g) by either party if an administrator, receiver, manager, official manager or provisional

liquidator is appointed for the assets of the other Party, or where an order is made or a resolution is passed for the winding up of the other Party, whether voluntary or involuntary (except for the purpose of reconstruction or amalgamation provided that the control of the resultant company remains the same as the present control of the other Party) or the other Party ceases to carry on business.

(h) by either Party if the other party commits a breach of any term or condition of this Agreement not expressly stated above and fails to remedy the same within 14 day of receipt of a written notice from the first Party requiring it to remedy the breach or in the case of a breach which is not capable of being remedied, if that Party has failed to fully compensate the first Party within 14 days for all loss suffered by the first Party by reason of that breach.

2) In addition, this agreement may be terminated prior to the expiration of any term by LICENSOR upon giving LICENSEE at least three (3) months prior notice of such termination.

3) The termination for this Agreement shall be without prejudice to any rights of either Party against the other accrued up to the date of such termination.

4) If this Agreement is terminated:

(a) the License granted hereunder will terminate and LICENSEE will cease to offer certification services and the rights granted pursuant to this Agreement shall immediately cease

(b) the LICENSEE will cease to declare that their Certification Service is recognized

(c) the LICENSEE within seven (7) days of the date of such termination shall notify the LICENSOR in writing of the total quantity and detail of all units certified or in the process of certification and shall assign all the its rights in any binding contracts or agreements for the delivery of such Units to the LICENSOR or alternate LICENSEE designated by LICENSOR.

(d) the LICENSEE shall immediately, unless otherwise directed by the LICENSOR, return to the vendors all Confidential Information, records and documents, papers, plans, specification, writings and any other form of material expression of the ISASecure EDSA certification program (whether recorded in physical, electronic or other means) in its possession

(e) the LICENSEE will maintain all its records for a period of five (5) years from the date of termination of this Agreement and the LICENSOR giving reasonable notice shall have the right to inspect, audit and copy such books and records during that period

(f) the LICENSEE will notify clients to which it has granted certifications, and reasonably assist them in identifying and engaging with a new organization to hold their certifications going forward, and carry on with their ongoing monitoring responsibilities

(g) the Parties will cooperate and do all acts and things reasonably required to properly conclude matters pursuant to this Agreement.

5) **FORCE MAJEURE:**

(a) No Party shall be liable for any delay or failure to perform its obligations pursuant to this Agreement, except for payment obligations, if such delay or failure is due to a force majeure event, including but not limited to act of God, compliance with law, storm, flood, terrorism, earthquake, war, rebellion, revolution or strike or any other event,

happening or occurrence beyond the reasonable control of any Party. For the purposes of this cause the term “force majeure” shall not include shortage of funds or cash flow difficulties.

(b) On the occurrence of any event of force majeure causing a failure to perform or delay in performance, the Party so affected shall immediately provide written notice to the other Party of such date and the nature of such force majeure and the anticipated period of time during which the force majeure conditions are expected to persist.

(c) The Party so affected shall make all reasonable efforts to reduce the effect of any failure or delay caused by the event of force majeure.

(d) If the force majeure conditions persist for 90 days or more, the Party so affected may terminate this Agreement by giving 30 days prior written notice to the other Party.

N. CONFIDENTIALITY AND NONDISCLOSURE

In consideration of the providing of certain proprietary and confidential information ("Confidential Information") from the Automation Standards Compliance Institute (ASCI) having a place of business at 67 Alexander Drive, Research Triangle Park, NC, and **LICENSEE** having a place of business at _____ (address) agree as follows:

1) Confidential Information means information in oral, written, or electronic form, including but not limited to data, compilations, customer and prospect information, designs, procedures, business strategies, concepts, and ideas, relating to LICENSOR activity ("INFORMATION").

2) The Confidential Information shall not be disclosed to anyone other than persons within the LICENSEE organization who have a need to know the Information set forth above and who have agreed to abide by the terms hereof. Under no circumstances shall Confidential Information be disclosed to any third party.

4) Limitation on Obligations.

Proprietary Information shall not include information that:

(a) is generally known to the public at the time of disclosure or becomes generally known through no wrongful act on the part of the LICENSEE

(b) is currently or hereafter becomes known to LICENSEE through disclosure by sources other than LICENSOR having the legal right to disclose such Propriety Information; or

(c) is independently developed by LICENSEE without any reference to or reliance upon the Confidential Information;

(d) LICENSEE may disclose Confidential Information to the extent necessary to comply with applicable laws or governmental regulations, provided that LICENSEE provides prompt prior written notice of such disclosure to the LICENSOR and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

5) **Ownership of Confidential Information.** The parties acknowledge and agree that the

disclosure of Confidential Information from LICENSOR to LICENSEE does not grant or imply a conveyance of ownership or a license of any Confidential Information or the patent, copyright, trade secret, trademark and other intellectual property rights embedded therein.

6) **NonDisclosure.** LICENSEE shall promptly advise LICENSOR in writing of any unauthorized use or disclosure of Confidential Information of which LICENSEE becomes aware and shall provide reasonable assistance to LICENSOR to terminate such unauthorized use or disclosure.

O. Notices, Dispute Resolution

- 1) A notice, approval, consent or other communication pursuant to the this agreement;
 - (a) must be in writing; and
 - (b) must be left at the address for the addressee or sent by prepaid ordinary post or if by facsimile to the facsimile of the addressee: (Addresses presented on the title page of this agreement)
- 2) Either Party may be entitled to change such address for notices by giving written notice to the effect to the other in accordance with this section.
- 3) Notice will be deemed given:
 - (a) in the case of hand delivery, upon written acknowledgment or receipt by an officer or other duly authorized employee, agent or representative of the receiving party;
 - (b) in the case of posting, five business days after dispatch and
 - (c) in the case of facsimile, upon completion of transmission, confirmed by a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause, provided such transmission is completed during or before normal working hours and if not, on the business day subsequent to completion of transmission.

P. Miscellaneous.

- 1) This Agreement supersedes all prior agreements, written or oral, between the parties relating its the subject matter of this Agreement and may not be modified, changed or discharged, in whole or in part, except by an agreement in writing signed by both parties.
- 2) This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, provided that neither party shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party, provided further, however, either party may without such prior written consent assign or transfer its rights and obligations under this Agreement in connection with a corporate reorganization or to its own subsidiary or an affiliated entity or to an entity to which it has sold all or substantially all of its assets or with which it has merged.
- 3) The provisions of this Agreement are necessary for the protection of the business and

goodwill of the parties. Each party agrees that any breach of this Agreement will cause LICENSOR substantial and irreparable damages and, therefore, in the event of any such breach, in addition to other remedies that may be available, LICENSOR shall have the right to seek specific performance and other injunctive and equitable relief.

4) No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege. If any provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired, and the provision that is held to be invalid, illegal or unenforceable shall remain in effect as far as possible in accordance with the intention of the parties.

6) Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given or made in writing.

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and with respect to the matter contained herein and supersedes all prior agreements or understandings. This Agreement shall not be modified except in writing and signed by both parties hereto.

IN WITNESS WHEREOF, **LICENSEE** has executed this Agreement by its duly authorized representatives with full rights, power and authority to enter into and perform this Agreement.

Agreed and Accepted:

NAME LICENSEE

By:

Title:

Signature: _____ Date: _____

Phone: _____ Fax: _____ Email: _____

Automation Standards Compliance Institute (**LICENSOR**)

67 Alexander Drive RTP, NC 27709

Phone: 919-990-9222 Fax: 919-549-8288 email: aristaino@isa.org

Signature: _____ Date: _____

By: _____ Title: _____