

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the "Agreement"), is made and entered into as of the ____ day of _____, 200_, between HeloWerks, a Virginia business, with offices located at 690 Bell Street, Hampton, Virginia 23663, and _____, a _____, with offices located at _____ ("Party").

RECITALS:

A. To further the business relationship between HeloWerks and Party and to allow them to hold business discussions, it may be necessary that the undersigned parties disclose and allow each other access to confidential and/or proprietary information concerning their respective businesses ("Confidential Information").

B. Each party hereto acknowledges that it may have access to Confidential Information of the other party concerning or relating to such other party's business, which Confidential Information consists in whole or in part (as appropriate) of the confidential and valuable, special and unique proprietary rights and assets of such other party (as further described in Section 2 below).

NOW, THEREFORE, in consideration of the mutual covenants and premises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned parties agree as follows:

1. INCORPORATION OF RECITALS. The above Recitals are true and correct and are hereby incorporated into this Agreement.
2. RECIPIENT DEFINED. The term "Recipient" as used hereinafter, shall mean the non-owner party to whom or which all or any portion of such Confidential Information regarding one of the parties hereto is disclosed or otherwise made available, irrespective of the timing or source of the same. It is expressly understood and agreed by the parties hereto that the term "Recipient" shall mean Party, its directors, officers, agents, employees and affiliates, with respect to the Confidential Information of HeloWerks, and shall mean HeloWerks, its directors, officers, agents, employees and affiliates, with respect to the Confidential Information of Party.
3. CONFIDENTIAL INFORMATION - DEFINITION. For purposes of this Agreement, the phrase "Confidential Information" shall include any and all confidential and/or proprietary information of the undersigned parties, including but not limited to, any information regarding business operations or business contacts, financial statements, business plans, financing arrangements (existing or proposed), customer lists, maintenance costs, programs, manuals, schedules, forms technical data, payments, receipts, commissions, advertising, marketing and scientific data, trade secrets, proprietary rights, and information, research, designs and projections concerning or relating to the existing or planned business of any of the undersigned parties or its affiliates, whether in written, electronic, oral or any other form. The parties expressly acknowledge and agree that it shall not be necessary for the owner of any Confidential Information to mark the same "Confidential" in order to cloak the same with the protections granted under this Agreement.

4. NO DISCLOSURE OF CONFIDENTIAL INFORMATION. Each of the undersigned parties agrees that, during the term set forth in Section 12 of this Agreement, except as otherwise permitted hereunder, when characterized as a Recipient hereunder, it, its directors, officers, employees, agents and affiliates will refrain from disclosing or communicating to any person or making use of any Confidential Information except as otherwise expressly authorized in writing by the owner thereof. Confidential Information obtained by a Recipient from any other party hereto or from any other source will be used solely for the purpose of the current business discussion, and each party shall limit the dissemination of any Confidential Information of any other party to those directors, officers, agents, employees and/or affiliates of the Recipient who have a “need to know” because such directors, officers, agents, employees or affiliates shall be involved in the discussions, evaluation or actual completion of the subject business relationship (it being understood that such directors, officers, agents, employees and/or affiliates will be informed by the Recipient, prior to disclosure, of the confidential nature of such information and will agree to treat such information confidentially).

5. COMPELLED DISCLOSURE. In the event a Recipient is required by judicial or administrative rule or order to disclose any Confidential Information, the Recipient shall promptly notify the owner(s) of such Confidential Information, allow such party(ies) reasonable time to oppose such disclosure(s), reasonably cooperate in such opposition, and take reasonable steps to assist the owner of such Confidential Information in obtaining a protective order if the Confidential Information must ultimately be disclosed. Anything contained in this Agreement to the contrary notwithstanding, a Recipient cannot be considered or adjudged to be in violation of this Agreement when the violation of this Agreement is involuntarily made due to circumstances beyond its reasonable control after the exercise of reasonable diligence.

6. RETURN OF CONFIDENTIAL INFORMATION. Upon completion of the current discussions and/or business relationship, and at any time upon request by the owner thereof, the Recipient of any Confidential Information shall promptly deliver to the owner thereof such Confidential Information and all physical embodiments thereof. Upon request by the owner thereof, the Recipient of any Confidential Information shall destroy the Confidential Information, and shall certify said destruction in writing within five (5) days of said request. Without limiting the generality of the foregoing, the obligation of the Recipient to return the Confidential Information to its owner shall include the obligation to erase from computer storage, including all related or peripheral storage devices, any and all images, compilations, copies, memoranda, notes and other writings whatsoever based upon the Confidential Information and, at the owner’s request, any physical embodiments thereof shall be likewise destroyed.

7. REMEDIES. In the event any party hereto breaches this Agreement, the non-breaching party(ies) shall be entitled to bring suit to recover any and all damages, both direct and consequential, that may be sustained and, in addition, shall be entitled to specific performance or a temporary or permanent injunction prohibiting and enjoining the breaching party(ies), its/their affiliates, or any of its/their current or former officers, directors, agents, contractors, representatives and/or employees from violating this Agreement. The enumeration of any remedy or remedies herein shall not preclude the non-breaching party(ies) from seeking other damages or remedies allowable or available to it at law or in equity.

8. RELATIONSHIP OF PARTIES. No right or license, express or implied, is granted to any Recipient with respect to any Confidential Information, and nothing contained in this Agreement shall be deemed to obligate any party hereto to disclose any Confidential Information to the other or to create an agency or partnership relationship between the parties hereto.

9. ATTORNEYS' FEES. If any litigation, proceeding or arbitration is commenced to enforce any portion of this Agreement or to seek a declaration of the rights of the parties hereunder, or as a result of any breach or threatened breach of any provision of this Agreement, the prevailing party shall be entitled to recover all of its costs and expenses incurred in connection with such litigation, arbitration or other proceedings (including without limitation, reasonable attorney's fees, expenses and costs of court) from the non-prevailing party.

10. CONSENT TO JURISDICTION AND VENUE. The parties hereby submit to the jurisdiction of the courts of the Commonwealth of Virginia for the purpose of any suit, action, or proceeding arising out of or related to this Agreement, and hereby agree not to assert by way of defense or otherwise that such suit, action or other proceeding is brought in an inconvenient forum or that the venue of such suit, action or other proceeding is improper.

11. WAIVER OF JURY TRIAL. The parties hereby agree and acknowledge that any controversy which may arise under this Agreement would involve complicated and difficult factual and legal issues, and therefore, any suit, action or other proceeding arising out of or relating to this Agreement shall be determined before a judge sitting without a jury, unless otherwise agreed in a separate writing signed by the parties hereto. Accordingly, EACH OF THE UNDERSIGNED PARTIES HEREBY INTENTIONALLY WAIVES AND RELINQUISHES ITS RIGHT, IF ANY, TO A TRIAL BEFORE A JURY.

12. TERM. This Agreement shall remain in force for a period of five (5) years from the date hereof and is to be applied to any and all transactions entertained by the signatories, including subsequent follow-ups, extensions, repeat or renegotiated transactions, as well as to the initial transaction. The signatories hereby confirm that the identities of proposed or utilized financial institutions, corporations, individuals, trusts, lenders, borrowers, buyers, sellers, investors and/or investors are currently, and will at all times, remain the confidential and proprietary information of the signatories.

13. MISCELLANEOUS.

A. No waiver (other than in writing) delay, omission or forbearance, in exercising any right, option, duty or power under this Agreement shall affect or impair the rights of either of the undersigned parties in respect to any default or breach of any of the provisions of this Agreement or any subsequent default or breach of the same or a different kind.

B. Each of the parties hereto agrees to take such actions and execute such documents as may hereafter become necessary to give full effect to the terms hereof.

C. This Agreement is binding on the parties and their respective executors, administrators, legal representatives and successors.

D. Each party irrevocably and unconditionally: (i) agrees that if the other party commences any form of legal action in the jurisdiction referenced in Section 10 hereof relating to this Agreement, no immunity from such legal proceedings will be claimed by or on behalf of itself or with respect to its assets; (ii) waives any such right of immunity which it or its assets now has or may in the future acquire; and (iii) consents generally in respect of any such proceedings to the giving of any relief or the issue of any process in connection with such proceedings including, without limitation, the making, enforcement or execution against any property of any order of judgment which may be made or given in such proceedings.

E. This Agreement and the respective duties and responsibilities of the parties are not assignable, in whole or in part, without the prior written consent of the non-assigning Party.

F. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without application of conflicts of law provisions thereto.

G. If any provision of this Agreement is declared invalid or otherwise determined to be unenforceable for any reason, such provision shall be modified to the minimum extent necessary to render the same enforceable, or if no such modification shall be possible, deleted, and the remaining terms of this Agreement shall otherwise remain in full force and effect.

H. This Agreement constitutes the complete and final agreement of the subject matter hereof and hereby supersedes any and all prior or contemporaneous agreements or undertakings between the parties, whether written or oral. This Agreement may be modified or rescinded only by a writing signed by the parties, specifically stating that it is an amendment, modification or rescission hereof.

I. The terms and conditions of this Agreement shall survive the termination of the discussions between the parties and shall survive the termination of any resulting relationship between the parties, as contemplated herein.

IN WITNESS WHEREOF, the parties have caused this Agreement to be fully executed by their respective, duly authorized officers as of the date first written above.

HeloWerks

PARTY:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____