

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made on the ____ day of _____ 2008.

BETWEEN

- (1) _____ (“Company”) of _____ and
- (2) The TMT Observatory Corporation (“TMT”) of 1200 E. California Boulevard; Mail Code 102-8; Pasadena, California 91125.
- (3) The parties to this Agreement may be referred to individually as “Party” and jointly as “Parties.”

RECITALS

- A. The Parties possess Proprietary Information relating to their respective organizations that they do not want disclosed without proper authorization;
- B. A Party that is disclosing such Proprietary Information (the “Discloser”) is willing to disclose to the receiving Party (the “Recipient”) its Proprietary Information for the purpose of facilitating discussions between the Parties in connection with the Adaptive Optics (“AO”) System Real Time Controller (“RTC”) Supplier Conference on January 29, 2008, on the condition that the Recipient does not disclose the same to any third party nor make use of the information in any manner except as set out below.

AGREEMENT

The Parties agree as follows:

- 1. “Proprietary Information” means confidential proprietary information (including business, financial or technical data, machine-readable or interpreted information, information contained in physical components, mask works or artworks in written or other permanent form) that is delivered to the Recipient, bears the date of disclosure, and is visibly identified by clear and conspicuous markings as the Discloser’s Proprietary Information. A non-written disclosure shall be considered Proprietary Information to the extent that such disclosure is orally identified as Proprietary Information at the time of disclosure and is confirmed in writing by the Discloser. Such written confirmation shall: (i) sufficiently describe the information disclosed in detail, its scope, and the date and manner of disclosure; (ii) identify disclosers and recipients; (iii) be supplied within 30 days after oral disclosure; and (iv) refer to this Agreement.
- 2. The Recipient agrees not to disclose to any third party any Proprietary Information without the Discloser’s prior written authorization except to the Recipient’s employees, project members, agents and consultants with a need to know and who agree to abide by nondisclosure terms at least as comprehensive as those in this Agreement. The Recipient will maintain the confidentiality of the Proprietary Information with at least the same degree of care that it uses to protect its own confidential information, but no less than a reasonable degree of care under the circumstances. The Recipient may not use the Discloser’s Proprietary Information for any purpose other than in connection with the procurement initiative for TMT’s AO System RTC.
- 3. The Recipient will not be liable for the disclosure of any Proprietary Information that is: (a) rightfully in the public domain other than by a breach of a duty to the Discloser; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to the Recipient without any limitation on use or disclosure prior to its receipt from the Discloser; (d) independently developed by the employees of the Recipient; or (e) generally made available to third parties by the Discloser without restriction on disclosure. Should the Recipient be faced with legal action or a requirement under U.S. Government regulations to disclose Proprietary Information received under this Agreement, the Recipient shall, as soon as possible, notify the Discloser, and upon request of the Discloser shall reasonably cooperate in contesting such disclosure. Except in association with a failure to discharge the

responsibilities set forth in this paragraph, neither Party shall be liable for any disclosures made pursuant to judicial action or U.S. Government regulations.

4. The Parties agree that after five (5) years from the date of this Agreement the Recipient shall be relieved of all obligations under this Agreement.

5. The Recipient will, upon receipt of a written request from the Discloser, promptly destroy or return all of the Discloser's Proprietary Information and copies (save for one copy for archival purposes) and immediately cease using the same.

6. In this Agreement, references to the Recipient and the Discloser shall be deemed to include respectively any Affiliate. For this purpose, Affiliate shall mean any company controlling, controlled by or under common control with the relevant Party where control means direct or indirect ownership of at least 50% of the voting stock or interest in a company or control of the composition of the board of directors.

7. This Agreement does not create a joint venture, partnership or other form of business association between the Parties and does not obligate the Parties to enter into any such relationship. Both Parties understand and acknowledge that no license under any patents, trademarks, copyrights or mask works is granted to or conferred upon either Party in this Agreement or by the disclosure of any Proprietary Information.

8. Neither Party has any obligation to disclose Proprietary Information to the other. Either Party may terminate this Agreement at any time without cause upon written notice to the other Party, provided that each Party's obligations with respect to Proprietary Information disclosed during the term of this Agreement will survive any termination. The failure of a Party to enforce a right under this Agreement will not be deemed a waiver of any subsequent right.

9. This Agreement shall be governed by and construed in accordance with the law of the State of California and the Parties hereby submit to the jurisdiction of the State of California.

Signed for and on behalf of
COMPANY

Signed for and on behalf of
TMT

Signature _____

Signature _____

Name _____

Name _____

Position _____

Position _____

Date _____

Date _____