



February 3, 2023

Stephen Mencik
1002 Red Harvest Rd.
Gambrills, MD 21054
Steve@mencik.com

Sent via E-mail
And via FedEx (February 4, 2023)

Re: Notice of Breach of Mutual Non-Disclosure and Confidentiality Agreement and Demand to Cease and Desist
Disclosure of Confidential Information

Dear Mr. Mencik,

You are hereby put on notice that you have breached the Mutual Non-Disclosure and Confidentiality Agreement (the “**Non-Disclosure Agreement**”), dated as of January 24, 2023, by and between yourself and International Information System Security Certification Consortium, Inc. (“**ISC2,**” **we,**” or “**our**”).

As you may recall, during the ISC2 2022 Annual Meeting that you attended virtually, our Board Chair committed to working with stakeholders. The next steps on Bylaws, based on member feedback, are being planned. As part of that process, we agreed in good faith to meet with you to listen to your feedback even though you fell short of the total number of votes required for your petition. The intent of the meeting was to provide an opportunity for frank discussion with ISC2 and reestablish trust. To ensure this open line of communication, and to speak candidly and share meaningful feedback in a secure and private manner, we entered into the Non-Disclosure Agreement setting forth each of our rights and responsibilities.

Upon conclusion of the January 31, 2023 meeting, we agreed that you could publicly announce three outcomes:

- Acceptance of your petition outside of the 500 signature requirement.
- Your proposal would undergo a legal and risk review.
- You were invited to participate on the Bylaws Committee.

Your posts dated February 2, 2023, on Reddit and LinkedIn disclose information well beyond the three mutual outcomes and violate your commitments in the Non-Disclosure Agreement. In addition, numerous statements you made are not accurate.

Therefore, we hereby notify you that you are in material breach of and have failed to perform your obligations under Sections C(1) and C(3) of the Non-Disclosure Agreement.

Your Commitments Under the Non-Disclosure Agreement

The Non-Disclosure Agreement you signed defined Confidential Information as “all information provided by the Disclosing Party to the Recipient in connection with this Agreement ...,” which includes all oral and written information disclosed by ISC2.

Pursuant to the Non-Disclosure Agreement, you agreed that all:

... Confidential Information will be kept strictly confidential, and that the Recipient **shall not disclose any Confidential Information in any manner whatsoever, directly or indirectly, to any third party** except as expressly permitted in this Agreement.

In addition, we agreed not to “... make, publish or otherwise disseminate **in any manner any public statement or description of the Transactions, the existence of the Confidential Information or the negotiations** which are the subject of this Agreement.”

Below is a list of material inaccuracies and disclosed confidential information in your posts.

Inaccuracies:

1. “The Board lawyer said that since there are no defined procedures for just submissions, there is no reason why the 500 could not come from multiple submissions, and because of the nature of the petition, there is no time limit for gathering the signatures, the petition drive is deemed successful.”

During the meeting, we generally recapped that your petition is something new we’ve had to address for the first time. We identified 498 valid signatures and noted at least 2 of the invalid ones were members in good standing. Despite this failing, we agreed to accept the petition. We did not say the 500 signatures could come from multiple submissions, nor did we say there was no time limit for gathering signatures.

2. “Estimated time for the review is no more than a month. At the end of that review, we will get together again to discuss the results and how to proceed. If there are minor tweaks to be made or if the proposals move on as is.”

We informed you that we did not have a timeline for review yet. Further, we discussed working together after the legal and risk review. We did not agree that we would allow you to make changes to your proposal. You also stated that you were not concerned with whether the 90 day timeline was met.

3. “I said that if [Jill] really feels that way then she is not fit to serve on the Board of Directors and should resign.”

This statement was never made.

4. “I did have a conversation in private with the attorney in which I discussed the makeup of the Ethics Committee and what is required by the By-Laws. She agreed that the plain English reading calls for 1 Director and 2 or more non-Directors as members of the Committee. I said that the current Committee was not validly constituted, and hasn’t been for some time, since there are multiple Directors on the Committee... She agreed to look into this.”

The discussion was that we could see your interpretation, but that we interpret it differently. We also explained that our practice has been the same since Board Counsel started advising the Board, which was also when Wim Remes was chair.

Disclosed Confidential Information:

You widely disseminated the following information in at least two social media posts, including but not limited to:

1. The attendees at the meeting on Tuesday, 1/31/2023.
2. Information on documents reviewed, including meeting minutes and redacted election results.
3. Summaries on our nominations scoring process and our down select process.

Demands and Next Steps

Based on the Non-Disclosure Agreement, we hereby demand that you:

1. Immediately take all necessary action to prevent further unauthorized disclosure/misuse of our Confidential Information including, but not limited to ceasing to post, publish, or disseminate any information related to your meeting and discussions with ISC2.
2. Correct and edit your posts noting the inaccuracies and misstatements as outlined above.
3. Turn over any copies made, including photographs, of any Confidential Information taken during our meetings.
4. Turn over any correspondence sent to third parties referencing the meeting or negotiations sent on or after January 24, 2023.
5. Identify and produce every communication you have had with a third party relating to the Confidential Information since January 24, 2023, including the person or persons involved, date and time, type of communication, and information discussed.
6. Respond to this letter, in writing, confirming your adherence to the Non-Disclosure Agreement provisions and confirming the above actions have been taken.

If you fail to comply with the demands set forth above on or before February 8, 2023, then we will be forced to consider all available options including seeking legal and other equitable remedies. We also put you on notice that your actions may be in violation of Canons 1 and 2 of the ISC2 Code of Ethics. We further put you on notice that we are reviewing whether your breach of the Non-Disclosure Agreement obligates ISC2 to notify your employer.

Please direct any questions to me, Graham Jackson, General Counsel and Corporate Secretary, at gjackson@isc2.org.

This notice is made without prejudice to any of our rights, powers, privileges, remedies, and defenses, now existing or hereafter arising, all of which are hereby expressly reserved.

Very truly yours,

ISC2



Graham Jackson

General Counsel and Corporate Secretary

cc: Tammy Berkhoudt



Steve Mencik



My visit to ISC2 HQ in Alexandria, VA

...

**Steve Mencik**

Sr. Principal ISSE at CyberCore Technologies

Published Feb 2, 2023

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I was at ISC2 HQ in Alexandria, VA on 1/31/2023 and met with

- Clar Rosso, CEO
- Yiannis Pavlosoglou, Board Chairperson
- Tammy Georgelas, Board of Directors Counsel

1. We each gave brief introductions of ourselves and backgrounds. Yiannis seemed generally surprised at the amount of experience I have in the field and the many things I have worked on over the years, I explained that having been affiliated with NSA all these years, I generally kept a low profile, but since I am nearing retirement now, that doesn't matter as much. I gave him some specific things he could look up if he was not familiar with what I have accomplished, including being the technical lead for the CARNIVORE evaluation, the NSA evaluator of the original RADIANT MERCURY guard, and having implemented an NSA proprietary PKI algorithm in the early 1980's before the techniques were even widely known. I think that put him in a different frame of mind, as I think he thought I was just some troublemaker.



2. The petition submission to call for a special meeting to vote on the alternative proposals for the By-Laws has been accepted.

The initial submission of 530+ had 498 valid signatures. I was given a list of those that were not accepted, and a list of general reasons why they wouldn't be accepted. I submitted another 35 that came in while the original submissions was being validated. There were at least 2 of that group that were valid, putting the total number over the 500 threshold. The Board lawyer said that since there are no defined procedures for just submissions, there is no reason why the 500 could not come from multiple submissions, and because of the nature of the petition, there is no time limit for gathering the signatures, the petition drive is deemed successful. Details on next steps below.

3. The BoD is forming a By-Laws Committee.

I was asked to serve on this Committee. I said that I would do so, but not until after the vote on the proposals submitted. I suggested that the work of that Committee should wait to see the results of that vote, so they know the baseline from which to start. Yiannis tried to convince me that I should just work with the Committee. I explained that the proposals are not just mine. I coordinated them with dozens of people that made suggestions for improvement, many of which were accepted. Therefore, while I am representing this effort, I am hardly the sole author and therefore cannot simply set aside the work of others just to work with the new Committee instead. I also noted that over 500 members have ask to have a vote on these proposals. It is not up to me to simply set aside the wishes of over 500 of our members.



review the proposal to ensure that the proposals do not create conflict with Massachusetts Corporate Law or create undue risk for the corporation. He does not know of any based on his reading, but it is a necessary step. Estimated time for the review is no more than a month. At the end of that review, we will get together again to discuss the results and how to proceed. If there are minor tweaks to be made or if the proposals move on as is. Yiannis will set the special meeting date after this has been completed.

I noted that I should not be part of that review, and they agreed. However, I offered that if there was any question of intent of the by-laws changes that was not already adequately explained in the rationale, I'd be happy to participate from that respect.

Bottom line is that progress is being made.

4. I was given a number of documents to review, including the minutes of all the 2022 Board meetings. The minutes are written at such a high level that there really isn't much to be gained by reading them. There were one or two interesting tidbits, which because of my NDA, I cannot disclose. Nothing too exciting.

5. We then turned to free flow discussion.

First topic was the election. I expressed that I thought the open call for nominations was a great change because in the past, there was nothing to explain how people got nominated in the first place. However, submitting oneself was pretty much a "fire and



not have the time to interview all 87 candidates. There had to be a down-selection to narrow that focus. I asked if they developed and used some kind of Rubric to score the initial applications (they did, but not discussed), how they reconciled scoring differences between evaluators. Supposedly they got together to review the individual scores, and those kinds of discrepancies. Once they got to 17 candidates, 1 dropped out, and 1 they could never agree on a time for interviews, so only 15 people were actually interviewed. They claim that each candidate was asked the same set of questions. It was also noted that they were careful to recuse themselves for any members with which they had prior knowledge or affiliation. Yiannis noted that all this explanation was coming from Clar, as he recused himself from the whole process due to being a candidate.

Then we got to the contentious part of only 5 candidates being selected for 5 open positions. I said that while I was disappointed not to have been chosen for the ballot, with as many people that submitted, I was sure there were plenty of qualified people. What really upset me was that the membership was having their voice taken away by not having a choice. The perception is that the Board and the Nominating Committee think they know what is best for the organization and the membership is not qualified to make that judgement. It created the perception that they knew in advance who the candidates would be, and simply got them to self-submit and what do you know, they popped out the back end of the process as the candidates. Whether or not that is the way it happened, that is the perception, and perception is often reality.

I then moved on to the request that we made for a one-time email announcing that we would be trying to petition our way onto the ballot. It was rejected because we were told the rules had changed. I noted that I just finished reading the 2022 minutes of the Board meetings, and there was no mention of this. Yiannis said it was true that they did change that rule. I pointed out that it was never announced to the membership and the Election FAQ still said that such an email would be sent. The FAQ was changed the day after our



professionally they should have honored the request. The best I got from Yiannis and Clar was an admission that yes they screwed up and should have granted the request.

I noted that one of the emails about the election or the results stated that the Committee interviewed more 80 candidates. Clar interrupted and said, “reviewed and evaluated submissions from over 80 candidates”. I said that if it had said that, I wouldn’t be complaining, but it specifically said “interviewed”, which is a lie. If the organization is going to issue what is essentially a press release, the organization needs to ensure that facts are correct,.

There was then more discussion about “slate” vs. “ballot”. I said I didn’t want to debate the semantics of either word. The issue is that the selection choice was taken away from the membership. I was certain there were plenty of qualified people to present 10 people for 5 open positions. Clar stated there were dozens of qualified people. I then asked why the Nominations Chair, Jill Slay (now vice-chair of the BoD) was quoted as saying, “We were never in the situation where we had to exclude really good people as far as I am concerned.” I noted that I personally took that as an insult and so did many of the other candidates that were not selected. I said that if she really feels that way then she is not fit to serve on the Board of Directors and should resign. I offered to get them to the exact minute and second of the BrightTalk session in which she said that. They declined, but insisted she must not have meant exactly what came out, but I noted that it was her justification for only 5 names.

Conversation moved onto the by-laws proposal. It has been stated by Zach Tudor that the Board did engage with membership before submission. I have yet to find anyone that knew the contents of the proposal until the day it was released, which was right as the vote opened. Yiannis asked how the Board should have engaged. I said there were multiple ways. First, there is a members-only section of the Community Boards on the



Community Board. I noted the Board has always been invited to the cisspforum@groups.io discussion group. There are groups on LinkedIn, Reddit, and other places that are more public, but would still reach the membership. Even an email blast that explained that this has been proposed, we want you to review and provide feedback would have been helpful. I noted that the proposals submitted with the petition were coordinated using several of those methods. Yiannis agreed there needs to be much better interaction between the Board and the Members, but did not state any particular initiative to make that happen.

That pretty much wrapped things up. I did have a conversation in private with the attorney in which I discussed the makeup of the Ethics Committee and what is required by the By-Laws. She agreed that the plain English reading calls for 1 Director and 2 or more non-Directors as members of the Committee. I said that the current Committee was not validly constituted, and hasn't been for some time, since there are multiple Directors on the Committee. I noted that the Committee was designed to hear ethics complaints against members and thus it was to be a committee of their peers, not discipline by the BoD. Thus it was set up to have a Board member run the Committee, but all the other members to be non-Directors. She agreed to look into this.

I think this meeting had much useful discussion, but the proof of whether it really was useful will be seen in what happens going forward.

Steve Mencik

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One item that I am particularly interested in is an audit of the last board election. I want to know the number of votes for each successful board member, how many write-in votes they got and who were the top ~five vote getters.

Even puppet dictatorships publish election results even if they are fake. The fact that a member organization does not publish the results, does not speak well to the culture of transparency at ISC2.

Like Reply

Steve Mencik

17h

I asked about the votes. I saw the report from the 3rd party with the numbers redacted. They refuse to release those numbers, even though they do not have a written policy saying they will not. I even asked for the delta between the 5th place candidate and our write-in candidate. They would not even give that, as there "is no legitimate business reason for knowing". I admit that I wanted to know how close our efforts were to electing Wim Remes.

That being said, I agree with you. The results should be posted for all. It appears they are relying on "Security through Obscurity".

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Crossposted by u/smencik CISP 15 hours ago



ISC2 Update, By-Laws, Election, and more

Other/Misc

r/cybersecurity · Posted by u/smencik 15 hours ago



News - General ISC2 Update, By-Laws, Election, and more

If you have been reading my posts last summer and fall regarding the ISC2 Board of Directors Elections and the vote on the proposed By-Laws, then this update is for you.

The designated 5 people put on the ballot by the Nominating Committee won the election for the Board as expected. The write in candidacy of Wim Remes failed. The vote on the By-Laws proposal resulted in those proposals being defeated by about a 2 to 1 margin. Thanks to all of you that cared enough to vote on those By-Laws. There were about twice as many votes in the By-Laws vote than in the BoD Election.

In December I submitted more than 530 petitions to call for a vote on an alternative set of By-Laws (see <https://jsweb.net/isc2>). Thanks to the many of you that signed that petition.

On Tuesday, 1/31/2023, I was at ISC2 HQ in Alexandria, VA and met with

- Clar Rosso, CEO

- Yiannis Pavlosoglou, Board Chairperson

- Tammy Georgelas, Board of Directors Counsel

1. We each gave brief introductions of ourselves and backgrounds. Yiannis seemed generally surprised at the amount of experience I have in the field and the many things I have worked on over the years, I explained that having been affiliated with NSA all these years, I generally kept a low profile, but since I am nearing retirement now, that doesn't matter as much. I gave him some specific things he could look up if he was not familiar with what I have accomplished, including being the technical lead for the CARNIVORE evaluation, the NSA evaluator of the original RADIANT MERCURY guard, and having

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Yiannis said that in accordance with the by-laws, he would within 90 days set a date for the meeting and vote. First steps though are to have the lawyer and the Committee to review the proposal to ensure that the proposals do not create conflict with Massachusetts Corporate Law or create undue risk for the corporation. He does not know of any based on his reading, but it is a necessary step. Estimated time for the review is no more than a month. At the end of that review, we will get together again to discuss the results and how to proceed. If there are minor tweaks to be made or if the proposals move on as is. Yiannis will set the special meeting date after this has been completed.



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Bottom line is that progress is being made.

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5. We then turned to free flow discussion.

First topic was the election. I expressed that I thought the open call for nominations was a great change because in the past, there was nothing to explain how people got nominated in the first place. However, submitting oneself was pretty much a "fire and forget" exercise. There was no information provided to anyone on what the process would be from the point of submission and forward. Clearly I understood that they did not have the time to interview all 87 candidates. There had to be a down-selection to narrow that focus. I asked if they developed and used some kind of Rubric to score the initial applications (they did, but not discussed), how they reconciled scoring differences between evaluators. Supposedly they got together to review the individual scores, and those kinds of discrepancies. Once they got to 17 candidates, 1 dropped out, and 1 they could never agree on a time for interviews, so only 15 people were actually interviewed. They claim that each candidate was asked the same set of questions. It was also noted that they were careful to recuse themselves for any members with which they had prior knowledge or affiliation. Yiannis noted that all this explanation was coming from Clar, as he recused himself from the whole process due to being a candidate.

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I then moved on to the request that we made for a one-time email announcing that we would be trying to petition our way onto the ballot. It was rejected because we were told the rules had changed. I noted that I just finished reading the 2022 minutes of the Board meetings, and there was no mention of this. Yiannis said it was true that they did change that rule. I pointed out that it was never announced to the membership and the Election FAQ still said that such an email would be sent. The FAQ was changed the day after our request without even noting the update. I called that practice unethical. If the Board screwed up by not announcing the change and not updating the FAQ, then ethically and professionally they should have honored the request. The best I got from Yiannis and Clar was an admission that yes they screwed up and should have granted the request.

I noted that one of the emails about the election or the results stated that the Committee interviewed more 80 candidates. Clar interrupted and said, "reviewed and evaluated submissions from over 80 candidates". I said that if it had said that, I wouldn't be complaining, but it specifically said "interviewed", which is a lie. If the organization is going to issue what is essentially a press release, the organization needs to ensure that facts are correct,.

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membership before submission. I have yet to find anyone that knew the contents of the proposal until the day it was released, which was right as the vote opened. Yiannis asked how the Board should have engaged. I said there were multiple ways. First, there is a members-only section of the Community Boards on the ISC2 website. A perfect place for such collaboration. However, except for a few "Hi, I'm running for the Board, ask me anything" posts, the Board has never used the Community Board. I noted the Board has always been invited to the cisspforum@groups.io discussion group. There are groups on LinkedIn, Reddit, and other places that are more public, but would still reach the membership. Even an email blast that explained that this has been proposed, we want you to review and provide feedback would have been helpful. I noted that the proposals submitted with the petition were coordinated using several of those methods. Yiannis agreed there needs to be much better interaction between the Board and the Members, but did not state any particular initiative to make that happen.

Other than the above, I did have a conversation in private with the attorney in which I discussed the makeup of the Ethics Committee and what is required by the By-Laws. She agreed that the plain English reading calls for 1 Director and 2 or more non-Directors as members of the Committee. I said that the current Committee was not validly constituted, and hasn't been for some time, since there are multiple Directors on the Committee. I noted that the Committee was designed to hear ethics complaints against members and thus it was to be a committee of their peers, not discipline by the BoD. Thus it was set up to have a Board member run the Committee, but all the other members to be non-Directors. She agreed to look into this.

That pretty much sums up what I think was a useful discussion, but the proof of whether it really was useful will be seen in what happens going forward.

Steve Mencik
CISSP-ISSAP, ISSEP

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Good info, thanks for the update!

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This is excellent! Thank you for the write-up. I read it quickly, but will likely read it again and comment/potentially ask some questions. This said, thank you for holding ISC2 leadership accountable. It sounds like the discussion, though perhaps tenuous at times, was more fruitful than not. Appreciate your diplomatic yet firm approach on these important matters.

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INSPIRING A SAFE AND SECURE CYBER WORLD.

MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Mutual Non-disclosure and Confidentiality Agreement ("Agreement") is entered into as of the latter of the two signature dates below.

NAME: *International Information System Security Certification Consortium, Inc. ("ISC)2")*

ADDRESS:
1650 King Street
Suite 200
Alexandria, VA 22314 USA

Sign:  75B1A9E01E46427...

Name: Debra Taylor

Title: Chief Financial Officer

Signature Date: 1/24/2023

NAME: ("Company") Stephen Mencik

ADDRESS: 1002 Red Harvest Road
Gambrills, MD 21054

DocuSigned by:
 2A225F7D9B064DE...

Name: Stephen Mencik

Title: Mr.

Signature Date: 1/23/2023

This Agreement is solely between the two parties and will not confer any rights or remedies upon any third party, including any third party beneficiaries. The parties are acting on their own behalf and not as an agent or broker.

A. DEFINITIONS

As used in this Agreement:

1. "Affiliate"--A business entity, person, or other form of enterprise, domestic or foreign, controlling, controlled by, or under common control with a party to this Agreement. Control exists when an entity owns or controls more than 50% of any entity.
2. "Confidential Information"--All information provided by the Disclosing Party to the Recipient in connection with this Agreement, including without limitation: any Request for Proposals issued in connection with this Agreement; all technical and non-technical data; formulae; patterns; compilations; programs; software; devices; methods; techniques; designs; drawings; processes; business practices; plans or proposals; financial information; information relating to actual or potential customers or suppliers; sales and marketing information; training and operations materials; unreleased certifications; membership lists; information received from others that the Disclosing Party is obligated to treat as confidential; and pricing and other financial information relating to the business or affairs of the Disclosing Party. All Nonpublic Personal Information and Highly Sensitive Information shall be Confidential Information of (ISC)2. Confidential Information shall not include any disclosure relating to information that: (a) is in or enters the public domain through no fault of the Recipient; (b) is known by the Recipient at the time it is disclosed, as shown by Recipient's records, provided the source of such information was not known or reasonably suspected by the Recipient to be bound by a confidentiality agreement or other contractual, legal or fiduciary obligation with respect to such information; (c) is independently developed by the Recipient at any time, as shown by Recipient's records or other competent evidence; or (d) is rightfully obtained by the Recipient from a source other than the Disclosing Party who does not have a contractual, legal or fiduciary obligation of confidentiality to the Disclosing Party; or (e) the Disclosing Party agrees in advance in writing does not constitute Confidential Information.





INSPIRING A SAFE AND SECURE CYBER WORLD.

3. "Disclosing Party"--The party furnishing the Confidential Information to the Recipient from time to time pursuant to this Agreement.
4. "Highly Sensitive Information"--(ISC)² Confidential Information of the highest sensitivity, including but not limited to: Nonpublic Personal Information; computer security information, PINs and passwords, encryption keys, software source code, and security logs; and all strategic analysis and work product generated from or prepared for the Chairman, Corporate Officers, Legal, or Human Resources.
5. "Marks"--the name, logo, signs, symbols, trademarks, service marks or slogans of either party to this Agreement and their respective Representatives.
6. "Nonpublic Personal Information"--Nonpublic information relating to customers, members, employees and prospective customers, members or employees of (ISC)², including without limitation names, addresses, telephone numbers, E-mail addresses, social security numbers, tax identification numbers, credit information, account numbers, account balances or other account information, personnel records, and lists derived from the foregoing, regardless of whether (ISC)²'s relationship with the customer or employee ceases.
7. "Recipient"--The party receiving the Confidential Information from the Disclosing Party from time to time pursuant to this Agreement.
8. "Representatives"--Directors, officers, employees, subcontractors, agents, advisors or other representatives (including, without limitation, attorneys, accountants, consultants, bankers, investment bankers, other potential financing sources and financial advisors) of a party to this Agreement or an Affiliate of a party to this Agreement.
9. "Transactions"--Potential business transactions between or under evaluation by or negotiation between the parties or ongoing business transactions between the parties.

B. COVERED PARTIES

For purposes of this Agreement and except as otherwise specified in Section C.2 of this Agreement, the definitions of the "Disclosing Party" and the "Recipient" shall be deemed to include any Representative of such party. Each party shall be solely responsible for all actions and obligations of its Representatives as if they were the actions and obligations of that party.

C. NON-DISCLOSURE AND LIMITATIONS OF USE OF THE CONFIDENTIAL INFORMATION

1. The Recipient agrees that it shall use all the Confidential Information solely for the purposes of evaluating the Transactions, that all the Confidential Information will be kept strictly confidential and that the Recipient shall not disclose any Confidential Information in any manner whatsoever, directly or indirectly, to any third party except as expressly permitted in this Agreement. The Recipient shall not copy or otherwise reproduce, in whole or in part, any Confidential Information without the prior written consent of the Disclosing Party.
2. The Recipient may disclose any Confidential Information to its Representatives provided such Representatives have a need to know such Confidential Information for the purposes of this Agreement and such Representatives agree in writing for the benefit of the Disclosing Party to keep all such Confidential Information strictly confidential and to abide by the terms of this Agreement. Both the Recipient and its Representatives shall exercise the same degree of care in safeguarding the Confidential Information against any and all loss or other inadvertent disclosure as the Recipient uses for its own confidential information of like importance, which in all cases shall be at least reasonable care. The Recipient shall take all steps



necessary to keep confidential any Highly Sensitive Information and shall take all steps necessary to assure observation of this Agreement by its Representatives.

3. Neither party shall make, publish or otherwise disseminate in any manner any public statement or description of the Transactions, the existence of the Confidential Information or the negotiations which are the subject of this Agreement. Neither party shall use or display, or permit the use or display of the other party's Marks except as authorized by the other party in writing.

4. In the event that Recipient or any of its Representatives is requested or required (by oral question, interrogatories, requests for information or documents, subpoenas, civil investigation or similar process) to disclose any of the Confidential Information, Recipient will provide, unless prohibited by applicable law, Disclosing Party with prompt notice of such requests so that Disclosing Party may seek an appropriate protective order, or if appropriate, waive compliance with the obligations of this provision. Recipient will use reasonable efforts to obtain or assist Disclosing Party in obtaining such a protective order. In the event that such protective order or other remedy is not obtained, the Recipient shall furnish only that portion of the Confidential Information which is legally required to provide.

D. OWNERSHIP OF THE CONFIDENTIAL INFORMATION

1. The Disclosing Party shall retain all right, title and interest to the Confidential Information it delivers to the Recipient and all copies thereof in whatever form. The Recipient shall hold all the Confidential Information in trust for the benefit of the Disclosing Party subject to the terms of this Agreement. No rights or licenses are granted to the Recipient by the Disclosing Party under any proprietary, copyright, patent, trade secret or any other intellectual property rights. No rights or licenses are granted to any party to use the other party's Marks or to otherwise benefit therefrom.

2. The Recipient shall not remove any proprietary, copyright, trade secret or other legend from any Confidential Information. The Recipient will add to any Confidential Information any proprietary, copyright, trade secret or other legend reasonably requested in writing by the Disclosing Party to protect its intellectual property rights in the Confidential Information.

3. The Recipient or the Disclosing Party may terminate this Agreement and the Recipient's review of the Confidential Information at any time upon written notice to the other party. At the time of such termination or the conclusion of the discussions between the parties relating to the Transactions, the Recipient shall immediately cease the further use of any Confidential Information and return it to the Disclosing Party at Recipient's expense or, at Disclosing Party's option, destroy all the Confidential Information and provide the Disclosing Party with an affidavit or certification affirming that all the Confidential Information has been completely and permanently destroyed. The foregoing notwithstanding, the Recipient may retain one copy of the Confidential Information other than Highly Sensitive Information to be used solely for archival records or as may be required by applicable law or regulation. No termination or return or destruction of the Confidential Information will affect any of Recipient's obligations under this Agreement.

E. INFORMATION SECURITY

1. The Recipient shall implement and maintain commercially reasonable security measures to protect against unauthorized access to or use of the Disclosing Party's Confidential Information. Without limiting the generality of the preceding subsection, if Company receives, transmits or stores Highly Sensitive Information Company shall implement and maintain administrative, technical and physical safeguards designed to ensure the security of Highly Sensitive Information. Company shall promptly notify (ISC)² of any breach of security resulting in unauthorized access to Disclosing Party's Confidential Information.



2. The parties agree to comply with all applicable international and national laws that apply to any Confidential Information, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

F. REMEDIES

The Recipient shall be responsible for any breach of this Agreement by the Recipient and its Representatives. The Recipient acknowledges and agrees that any disclosure of the Confidential Information except as provided in this Agreement may cause serious and irreparable damage to the Disclosing Party for which there may be no adequate remedy at law. Without limiting the Disclosing Party's rights and remedies which are otherwise available, the Disclosing Party shall be entitled to seek equitable relief including, without limitation, an injunction, restraining order or specific performance for any breach of this Agreement by the Recipient. The Recipient waives any securing or posting of any bond in connection with such remedy. In addition, each party shall indemnify, defend and hold the other party harmless from and against any and all claims, losses, defenses, actions, causes of action, damages, costs or expenses (including reasonable attorney fees and any other costs) both direct and indirect, asserted, claimed or caused if and to the extent the same arises in whole or in part, directly or indirectly, from any breach of this Agreement by that party.

G. NO OBLIGATION OR PARTNERSHIP

1. Each party agrees that neither the holding of discussions between the parties nor the exchange of Confidential Information under this Agreement shall be construed as an obligation of either party to enter into any other business arrangement or agreement, or impose any obligation on either party to purchase, transfer or otherwise dispose of any technology, services or products, until such time that a separate definitive written agreement has been executed by duly authorized representatives of the parties. This Agreement does not create any agency, partnership or joint venture relationship between the parties. No party shall incur any debts or make any commitments for the other under this Agreement.

H. WARRANTY

1. The Disclosing Party warrants that it has the right to make the disclosures under this Agreement. No other warranties are made by either party under this Agreement, including warranties of merchantability, fitness for a particular purpose or non-infringement. Any information exchanged under this agreement is provided "AS IS."

I. ADDITIONAL AGREEMENTS

1. This Agreement will be governed by and construed in accordance with the laws of the State of Florida without regard to conflict of law principles. Both parties agree to comply with all laws and regulations pertaining to the subject matter of this Agreement.

2. If any part of this Agreement is held invalid, void or unenforceable under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision and the remainder of this Agreement will remain in full force and shall not be affected.

3. Recipient's obligations hereunder with respect to Highly Sensitive Information and its obligation to maintain the confidentiality of any copy of Confidential Information retained for archival purposes under Section D (3) shall survive the termination of this Agreement. All other terms and conditions of this Agreement shall continue during the period of negotiations regarding the Transactions and for a period of two (2) years thereafter.



4. Each party shall comply with all United States and foreign export control laws ,including the U.S. Export Administration Regulations, end-user, end-use and destination restrictions issued by the United States and other governments, or regulations applicable to its performance under this Agreement and with respect to the Confidential Information.
5. This Agreement contains the entire agreement between the parties and all prior agreements between the parties pertaining to the subject matter of this Agreement, whether written or oral, are void. This Agreement may be executed in any number of counterparts each of which shall be deemed to be an original and a single document. This Agreement may not be modified by any party without the prior written agreement signed by an authorized representative of the other party.
6. The waiver by a party of a breach of any provision of this Agreement by the party will not operate or be interpreted as a waiver of any other or subsequent breach. All waivers must be in writing and signed by the waiving party.
7. The parties intend to be legally bound by this Agreement and it will be binding upon and inure to the benefit of the parties and their respective successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party, with the exception of an assignment carried out as part of a merger, restructuring, or reorganization, or as a sale or transfer of all or substantially all of a party's assets.
8. The parties have the right to perform the obligations contemplated by this Agreement and all such obligations have been duly authorized.