

EX-10 3 advancedidsb2am1ex10.txt TRACE AUSTRALA AGREEMENT Appendix B Non-Disclosure Agreement THIS MUTUAL NON-DISCLOSURE AGREEMENT (The "Agreement") is made as of _____, 2003 (the "Effective Date") by and between Distributor, a corporation organized under the laws of the State of Victoria in the Country of Australia, (the "Company"), and Advanced ID Corporation, with principal offices at Calgary, Alberta in the Country of Canada (the "Benefactor").

STATEMENT OF PURPOSE. This Agreement is being executed in connection with discussions and other exchanges of information that representatives of the Company and the Participant have had or will have for the purpose of evaluating the possibility of entering into a business relationship and/or certain business transactions, for the protection of any and all of the Benefactor's proprietary and/or Confidential Information (as defined) and for such other purposes as the parties may collectively agree upon in writing (the "Purpose"). This Agreement is intended to allow both the Company and the Participant to have open discussions while affording protection against disclosure or unauthorized use of their Confidential Information or any and all of the Benefactor's proprietary and/or Confidential Information (as defined).

CONFIDENTIAL INFORMATION. The Company and the Participant understand and agree that during the term of this Agreement they may be furnished with or otherwise have access to non-public information that the other party or the Benefactor consider to be of a confidential, proprietary, or trade secret nature, including but not limited to the Benefactor's RFID-related technologies, systems, and processes, as well as other financial, business, and technical information, equipment specifications, locations and use, network configurations, marketing, engineering and other plans, financial statements and projections, customer, vendor and supplier information, research, designs, plans, specifications, drawings, blueprints, tracings, diagrams, models, samples, flow charts, data, computer programs, source code, software, disks, diskettes, tapes, compilations, methods, techniques, processes, procedures, discoveries, ideas, concepts and know-how of the Benefactor, the Company or the Participant, whether in tangible or intangible form, and whether stored or not stored, compiled or memorized physically, electronically, graphically, photographically, or in writing (collectively, the "Confidential Information"). Both the company and the Participant agree to secure and protect the Confidential Information of the Benefactor and the other party in strictest confidence in a manner consistent with the maintenance of the Benefactor's and/or the other party's rights therein, using as great a degree of care, if not more as it uses to maintain the confidentiality of its own confidential information of a similar nature or importance, but in no event using less than diligent care. Neither the Company, nor the Participant shall sell, transfer, publish, disclose, or otherwise use or make available any portion of the Confidential Information of the Benefactor or of the other party to third parties, except to those of its directors, officers, employees, or attorneys who clearly have a need-to-know the same, in furtherance of the specific purposes of this Agreement and as expressly authorized in this Agreement. All such disclosures shall be subject to all of the terms and conditions of this Agreement, and the party making such disclosure to such directors, officers, employees and/or attorneys shall be fully responsible for ensuring the compliance of all such parties with the terms and conditions of this Agreement. No license under any patent, trademark, copyright or any other worldwide intellectual property or proprietary rights laws is either granted or implied by the disclosure or provision of any Confidential Information covered hereby, including any and all of the information covered hereby, including any and all of the Benefactor's proprietary and/or Confidential Information. Nothing in this Agreement shall be deemed to obligate the Company or the Participant to disclose any Confidential Information to the other, or to accept any Confidential Information from the other, be it the Benefactor's or theirs. In addition, nothing in this Agreement shall be deemed to commit or bind the Benefactor, the Company or the Participant to enter into any other contractual or other relationship, or to purchase any goods or services of any of the aforementioned parties.

NON-CONFIDENTIAL INFORMATION. Notwithstanding Section 2, Confidential Information of any of the concerned parties shall not include information which: (a) is, as of the time of its disclosure or thereafter becomes part of the public domain through a source other than the receiving party, without violation of this Agreement; (b) can be demonstrated to be (x) rightfully known to the receiving party as of the time of its disclosure, or (y) independently developed by the receiving party; (c) is lawfully learned by the receiving party without restriction from a third party who obtained the Confidential Information other than as a result of a breach of any confidentiality obligation; or (d) is required to be disclosed pursuant to a duly authorized subpoena, court order, or government authority, in which event the party subject to same shall provide prompt written notice to the other party prior to such disclosure, so that such party may seek a protective order or other appropriate remedy.

OWNERSHIP. The receiving party agrees that all Confidential Information of the Benefactor and the disclosing party which comes to the receiving party's custody or possession, is and at all times shall be the exclusive property of the Benefactor in the case of its Confidential Information, and the disclosing party in the case of its Confidential Information, to be used by the receiving party only for the specific purposes expressly authorized by this Agreement. Upon the termination or expiration of this Agreement, or at the request of the Benefactor or the disclosing party at any time, the receiving party shall promptly destroy all of its copies of such Confidential Information or return the same to the Benefactor or the disclosing party (in accordance with the Benefactor's or the disclosing party's instructions, whichever one may ask), and shall, within thirty (30) days of such termination, expiration or receiving such a request, certify in writing its compliance with the terms of this provision. After such destruction or delivery, the receiving party shall not retain any copies thereof, except as may be allowed under separate agreement or as lawfully retained. No disclosure of Confidential Information shall constitute any representation or warranty regarding the Confidential Information; all Confidential Information is provided "AS IS" with all faults and the Benefactor shall have any liability for the other party's reliance thereon.

MISCELLANEOUS. This Agreement constitutes the entire agreement between the Company and the Participant concerning the subject matter hereof and supersedes any prior or contemporaneous agreements concerning the subject matter hereof. The term of this Agreement shall be for a period of two (2) years unless terminated upon written notice by the affected party to another. The confidentiality obligations for Confidential Information of trade secret nature shall survive the termination or expiration of this Agreement for as long as such Confidential Information remains a trade secret, including as it pertains to the trade secrets and proprietary information of Benefactor. The confidentiality obligations for all non trade secret Confidential Information shall continue for a period of five (5) years following termination or expiration of this Agreement. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and any invalid or unenforceable provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under applicable law while retaining to the maximum extent possible the intent and economic benefit of the original provision consistent with applicable law. No delay or omission by a party in exercising any right under this Agreement will operate as a waiver of that or any other right. This Agreement is governed by and will be construed in accordance with the laws of the State of South Dakota in the United States of America without regard to conflicts of its principles. The Company and the Participant hereby expressly submit to the jurisdiction and venue of the appropriate federal or state courts in the State of South Dakota in the United States of America, however, the Company and the Participant agree that any controversy or claim arising out of or relating to this Agreement may be brought before a court or tribunal of competent jurisdiction in any Nation, Country, State, Commonwealth or other locality as be required to enforce their rights or as may be required to enforce the rights of the Benefactor, and that the Benefactor shall have the standing in such court or tribunal to enforce any and all of its rights with concern to any and all of the its proprietary and/or Confidential Information, including the pursuit of injunctive contractors and shall not be deemed to be an agent, partner, joint venture, or franchisor-franchisee with the other or with the Benefactor for any purpose. The Company and the Participant acknowledge that their breach of this Agreement may cause irreparable injury to the Benefactor or to the other party and that the Benefactor and/or the other party may seek and obtain injunctive and other equitable relief in a court or tribunal of competent jurisdiction against such breach. No amendment or modification of this Agreement shall be valid or binding on the Company or the Participant unless made in a mutually executed writing, and no amendment or modification of this Agreement shall be valid or binding on the Benefactor unless executed thereby. All affected parties shall not disclose, publicize or advertise in any manner the discussions or negotiations contemplated by this Agreement without the prior written consent of the affected, except as may be required by law. All notices under this Agreement shall be in writing and sent to the address listed herein (or to such different address as may be designated by a party by written notice to the other party), and shall be deemed to have been delivered (a) on the date personally delivered, (b) on the date mailed, postage prepaid by certified mail with return receipt requested or by an internationally- recognized express courier, or (c) when sent via facsimile and confirmed to the parties' addresses set forth herein. Any notice to Benefactor shall be sent to the attention of the President. This Agreement may be executed in multiple counterparts, all of which taken

together shall constitute a single instrument. This Agreement may be delivered by facsimile. IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date and agree to be legally bound by all terms and conditions herein, including all those benefiting the Benefactor. TRACE AUSTRALIA PTY LTD. ADVANCED ID CORPORATION X /s/Anthony Hurley /s/Barry Bennett By: Anthony Hurley By: Barry Bennett Title: Director Title: President & CEO Address: Albert Park, Address: Calgary Victoria, Australia Alberta, Canada Date: 01/09/2004 Date: Jan. 19, 2004