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10 **UNITED STATES BANKRUPTCY COURT**  
11 **NORTHERN DISTRICT OF CALIFORNIA**  
12 **OAKLAND DIVISION**

13 In re  
14 **PREDI WAVE CORPORATION**, a  
15 California corporation,  
16  
17 Debtor.

Case No. 06-40547 (RJN)

Chapter 11

**STIPULATED CONFIDENTIALITY  
AGREEMENT**

[No Hearing Required]

18  
19 Fed. Tax I.D. No. 77-0494328  
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1           Upon stipulation of the parties to this action, on this 24th day of August, 2006  
2 ("Stipulation") that the following rules and procedures shall govern the disclosure of  
3 confidential information between the parties hereto in the chapter 11 case of PrediWave  
4 Corporation, a California corporation, Case No. 06-40547 ("Chapter 11 Case"):

5           1.     Any information disclosed in the Chapter 11 Case by a signatory to this  
6 agreement (the "Producing Party") may be designated as "Confidential Information" by the  
7 Producing Party pursuant to the terms herein. Confidential Information is defined as  
8 "information that has not been made public and that the Producing Party believes in good  
9 faith constitutes a trade secret or other confidential research, development or commercial  
10 information." Confidential Information disclosed to a party (the "Receiving Party") may be  
11 used by the Receiving Party solely in connection with the Chapter 11 Case, provided that the  
12 Producing Party and the Receiving Party reserve their respective rights to seek to use or  
13 introduce in the Santa Clara Litigation (as defined below) information designated as  
14 Confidential Information, provided further, however, that nothing in this Stipulation shall  
15 constitute a modification or waiver of any discovery cut off, confidentiality undertaking or  
16 limitation on the use or introduction of any evidence in the Santa Clara Litigation (including  
17 information designated as Confidential Information under this Stipulation), and the parties  
18 reserve all of their respective rights in connection therewith.

19           2.     The designation of information or material as Confidential Information for  
20 purposes of this Stipulation shall be made in the following manner by the Producing Party:

21           a.     in the case of documents, exhibits, briefs, memoranda, interrogatory  
22 responses, responses to requests for admission, or other materials (apart from  
23 depositions or other pretrial or trial testimony): by affixing the legend  
24 "CONFIDENTIAL" as appropriate, to any document containing any confidential  
25 information or material at the time such documents are produced or such information  
26 is disclosed, or as soon thereafter as the Producing Party seeking protection becomes  
27 aware of the confidential nature of the information or material disclosed and sought to  
28 be protected hereunder; and

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b. in the case of depositions or other pretrial or trial testimony: (i) by a statement on the record, by counsel, during such deposition or other pretrial or trial proceeding that the entire transcript or a portion thereof shall be designated as Confidential Information, as appropriate, hereunder; or (ii) by written notice of such designation sent by counsel for Producing Party to counsel for all other parties within twenty (20) days after the transmission by the court reporter to counsel of the transcript of the deposition by overnight or electronic mail ("First Transmission"). During a deposition, the deponent or his counsel, or any other counsel of record present at the deposition, may invoke the provisions of this Stipulation in a timely manner, giving adequate warning to counsel for the Producing Party that testimony about to be given is deemed Confidential Information. The parties shall treat all deposition and other pretrial and trial testimony as Confidential Information until the expiration of twenty (20) days after the First Transmission to counsel of the transcript of the deposition. Unless designated as Confidential Information, any confidentiality is waived after the expiration of the 20-day period. The parties may modify this procedure for any particular deposition or proceeding through agreement on the record at such deposition or proceeding or otherwise by written stipulation, without further order of the Court. If any document or information designated as Confidential Information is used during the course of a deposition, that portion of the deposition record reflecting such confidential information shall be sealed and stamped with the designated degree of confidentiality, and access thereto shall be limited pursuant to the other terms of this Stipulation.

3. Subject to the terms of this Stipulation, information or material designated Confidential Information may be disclosed, summarized, described, characterized, or otherwise communicated or made available in whole or in part to the following persons:

a. outside attorneys of record herein for the Receiving Party and other members or employees of their firm(s) who are working on this matter ("Counsel of Record");

1           b. parties and employees of the parties whose assistance is needed by  
2 Counsel of Record for the purposes of this litigation;

3           c. persons who have been retained by the Receiving Party specifically to  
4 provide expert assistance or advice in this matter (collectively referred to as  
5 "Independent Advisors"), and persons regularly employed by them, to the extent  
6 necessary when working under the supervision of such an Independent Advisor in  
7 connection with this matter;

8           d. the Court and its employees;

9           e. court reporters, stenographers, or videographers or other persons  
10 preparing transcripts of testimony under the supervision of a court reporter,  
11 stenographer, or videographer;

12           f. persons who have been retained by the Receiving Party or its Counsel of  
13 Record specifically to prepare demonstrative or other exhibits for deposition, trial or  
14 other court proceedings in this matter (collectively referred to as "Graphic  
15 Designers"), and persons regularly employed by them, to the extent necessary when  
16 working under the supervision of such a Graphic Designer in connection with this  
17 matter; and

18           g. any other person upon such terms and conditions as the parties may  
19 agree or as the Court hereafter by order direct.

20           4. All persons listed in Paragraphs 3(b), 3(c), 3(e), 3(f), and 3(g) above may be  
21 given access to information or material designated as "Confidential Information," provided  
22 that they first confirm their understanding and agreement to abide by the terms of this  
23 Stipulation by completing and signing a copy of the form attached hereto as Exhibit A.

24           5. If Confidential Material, including any portion of a deposition transcript  
25 designated as Confidential, is included in any papers to be filed in the Court, such papers  
26 shall be labeled "Confidential -- Subject to Court Order" and filed under seal until further  
27 order of this Court. All such filings shall also conform to the requirements Federal Rules of  
28 Civil Procedure and the Local Rules for filing documents under seal. Envelopes used to seal

1 such material shall carry the following notation: "CONFIDENTIAL Subject to Stipulation  
2 and Order (entered [date]). The documents or other matter contained herein are subject to a  
3 stipulated Stipulation and Order entered by the COURT and may not be examined or copied  
4 except in compliance with that Order."

5 6. All documents and pleadings of any nature containing Confidential  
6 Information and all copies thereof, shall be maintained in secure facilities and in a manner  
7 intended to minimize any risk of the inadvertent disclosure thereof.

8 7. All counsel for the parties who have access to information or material  
9 designated as Confidential Information under this Stipulation acknowledge they are bound  
10 by it and submit to the jurisdiction of this Court for purposes of enforcing the terms of this  
11 Stipulation.

12 8. Entering into, agreeing to, and/or producing or receiving information or  
13 material designated as Confidential Information, or otherwise complying with the terms of  
14 this Stipulation shall not:

15 a. operate as an admission by any party that any particular information or  
16 material designated as Confidential Information contains or reflects trade secrets,  
17 proprietary or commercially sensitive information, or any other type of confidential  
18 information;

19 b. operate as an admission by any party that the restrictions and procedures  
20 set forth herein constitute or do not constitute adequate protection for any particular  
21 information deemed by any party to be Confidential Information;

22 c. prejudice in any way the rights of any party to object to the production  
23 of documents it considers not subject to discovery;

24 d. prejudice in any way the rights of any party to object to the authenticity  
25 or admissibility into evidence of any document, testimony or other evidence subject to  
26 this Stipulation;

27 e. prejudice in any way the rights of any party to seek a determination by  
28 the Court whether any information or material should be subject to the terms of this

1 Stipulation;

2 f. prejudice in any way the rights of any party to petition the Court for a  
3 further Stipulation relating to any purportedly confidential information;

4 g. prevent any party to this Stipulation from agreeing in writing to alter or  
5 waive the provisions or protections provided for herein with respect to any particular  
6 information or material; and

7 9. This Stipulation has no effect upon, and shall not apply to, a party's use or  
8 disclosure of its own Confidential Information for any purpose. Nothing contained herein  
9 shall impose any restrictions above the applicable law on the use or disclosure by a party of  
10 documents, information or material designated as Confidential Information obtained lawfully  
11 by such party independently of any proceedings in this action or which:

12 a. was already known to such party by lawful means prior to acquisition  
13 from, or disclosure by, the other party in this action;

14 b. is or becomes publicly known through no fault or act of such party; or

15 c. is rightfully received by such party from a third party that has authority  
16 to provide such information or material and without restriction as to disclosure.

17 10. In the event that information in the possession or control of a party involves the  
18 confidentiality rights of a non-party or its disclosure would violate a stipulation and/or order  
19 issued in another action, the party with possession or control of the information will attempt  
20 to obtain the consent of the non-party to disclose the information under this Stipulation. If  
21 the consent of the non-party cannot be obtained, the party will notify the party seeking  
22 discovery of: (a) the existence of the information without producing such information; and  
23 (b) the identity of the non-party (provided, however, that such disclosure of the identity of  
24 the non-party does not violate any confidentiality obligations). The party seeking discovery  
25 may then make further application to the non-party or seek other means to obtain such  
26 information.

27 11. If a party inadvertently produces Confidential Information without marking it  
28 as such, it may be disclosed to others until the Receiving Party becomes aware of the error,

1 unless it appears from the face of the document that it contains non-public, confidential,  
2 proprietary, commercially sensitive, or trade secret information of the Producing Party. As  
3 soon as the Receiving Party becomes aware of the inadvertent production, the information  
4 must be treated as if it had been timely designated under this Stipulation, and the Receiving  
5 Party must endeavor in good faith to obtain all copies of the document which it distributed or  
6 disclosed to persons not authorized to access such information by Paragraphs 3 and 4 above,  
7 as well as any copies made by such persons.

8 12. If a party inadvertently produces a document that it later discovers or in good  
9 faith asserts to be a privileged document, the production of that document shall not be  
10 deemed to constitute the waiver of any applicable privileges. In such circumstances, the  
11 Producing Party must immediately notify the Receiving Party of the inadvertent production  
12 and request the return of the privileged materials. Within five (5) days of receiving such  
13 notification, the Receiving Party shall return all such materials, including any summaries  
14 thereof. Such return shall not preclude the Receiving Party from seeking to compel  
15 production of the materials for reasons other than its inadvertent production and shall not  
16 constitute an admission by the Receiving Party that the materials were, in fact, privileged in  
17 any way.

18 13. If any party is (a) subpoenaed in an action other than the Chapter 11 Case,  
19 (b) served with a demand in another action to which it is a party, or (c) served with any other  
20 legal process by one not a party to this action, seeking information or material which was  
21 produced or designated as Confidential Information by someone other than that party, such  
22 party shall give prompt written notice, by hand or facsimile transmission, within ten (10)  
23 days of receipt of such subpoena, demand or legal process, to those who produced or  
24 designated the information or material Confidential Information and shall object to its  
25 production to the extent permitted by law based on an existence of this Stipulation. The  
26 Producing Party shall then bear the obligation of bringing the motion to quash the subpoena  
27 or take any other legal action it deems necessary to protect the confidentiality of the  
28 information. Nothing herein shall be construed as requiring the party or anyone else covered

1 by this Stipulation, or to subject itself to any penalties for non-compliance with any legal  
2 process or order, or to seek any relief from this Court.

3 14. A party may designate as Confidential Information documents or discovery  
4 materials produced by a non-party by providing written notice to all parties of the relevant  
5 document numbers or other identification within thirty (30) days after receiving such  
6 documents or discovery materials. Any party or non-party may voluntarily disclose to others  
7 without restriction any information designated by that party or non-party as Confidential  
8 Information, although a document may lose its confidential status if it is made public.

9 15. By agreeing to be bound by the terms of this Stipulation, a non-party shall have  
10 the benefits, rights and protection of a Producing Party under this Stipulation and have  
11 standing hereunder to bring a claim for violations of its terms against the parties and against  
12 any person who signed an undertaking as provided by this Stipulation. Such non-party must  
13 comply with all terms of this Stipulation.

14 16. Notwithstanding any challenge to the designation of material as Confidential  
15 Information, all documents shall be treated as such and shall be subject to the provisions  
16 hereof unless and until one of the following occurs:

- 17 a. the party or non-party who claims that the material is Confidential  
18 Information withdraws such designation in writing; or  
19 b. the party or non-party who claims that the material is Confidential  
20 Information fails to apply to the Court for an order designating the material as such  
21 within the time period specified above after a written challenge to designation; or  
22 c. the Court rules the material is not Confidential Information.

23 17. It is the present intention of the parties that this Stipulation shall govern the  
24 furnishing of Confidential Information in connection with the Chapter 11 Case. Nonetheless,  
25 each of the parties hereto shall be entitled to seek modification of this Stipulation by  
26 application to the Court on notice to the other parties hereto for good cause.

27 18. A proposed order of the Court approving this Stipulation shall be lodged with  
28 the Court. The parties agree to be bound by the terms of this Stipulation pending entry by

1 the Court of an order approving this Stipulation, or pending the entry of an alternative thereto  
2 which is satisfactory to all parties, and any violation of its terms shall be subject to the same  
3 sanctions and penalties as if the Court had entered an order approving this Stipulation.

4 19. The production or designation of any information or material is not an  
5 admission of the relevance or admissibility of such information or material in the Chapter 11  
6 Case.

7 20. At the conclusions of all proceedings in the Chapter 11 Case whether by  
8 settlement or final judgment, and including but not limited to final adjudication of any  
9 appeals, petitions for hearing or extraordinary writs, judgment, or settlement, each Producing  
10 Party may request that its Confidential Information and all copies thereof and all documents  
11 reflecting the content of its Confidential Information, that are in the custody of other parties  
12 (or their transferees) be returned to counsel for the Producing Party or destroyed within sixty  
13 (60) days after receipt of such request. Counsel for the respective parties shall confirm in  
14 writing to the requesting Producing Party that they have given notice of the request to any  
15 transferees of the Confidential Documents, and have themselves complied with the  
16 requirements of this paragraph. Nothing contained herein shall limit the right of counsel to  
17 keep copies of this work product that contains Confidential Information, provided that such  
18 work product is appropriately marked as Confidential Information.

19 21. This Stipulation shall not modify the rights of the parties hereto to any  
20 confidentiality agreement or undertaking in connection with those certain actions entitled  
21 *New World TMT Limited v. PrediWave Corp., et al.*, Santa Clara Superior Court Case No.  
22 104 CV 020369 ("Santa Clara Litigation").

23 [signatures on next page]  
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DATED: August 24, 2006

KLEE, TUCHIN, BOGDANOFF & STERN LLP

By: /s/ Jonathan S. Shenson

Reorganization Counsel for Debtor and Debtor in Possession

DATED: August 24, 2006

PAUL, HASTINGS, JANOFSKY & WALKER LLP

By: /s/ Karol K. Denniston

Counsel for New World TMT Limited

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**EXHIBIT A**  
**CERTIFICATION**

I hereby certify my understanding that Confidential Information is being provided to me pursuant to the terms and restrictions of the accompanying Stipulated Confidentiality Agreement (the "Stipulation"). I have been given a copy of that Stipulation and am familiar with its contents.

I agree to be bound by the Stipulation. I will not reveal Confidential Information to anyone, except as allowed by the Stipulation. I will maintain all such Confidential Information, including copies, notes, or other transcriptions made therefrom, in a secure manner to prevent unauthorized access to it. No later than thirty (30) days after the conclusion of this action, I will return the Confidential Information, including copies, notes or other transcriptions made therefrom, to the counsel who provided me with it, unless I am required to otherwise maintain the Confidential Information by law. I hereby consent to the jurisdiction of the United States Bankruptcy Court for the Northern District of California for purposes of enforcing the Stipulation.

I declare under penalty of perjury that the foregoing is true and correct and that this certificate is executed this \_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_.

By: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_