

# Non Disclosure Agreement

**Purpose:** This agreement bind both parties unto each other in a covenant to share confidential information and to further refrain from disclosure of that information to non-parties. The recipient of the information is obligated to keep it confidential and not use it for any purpose other than the evaluation of a related proposed transaction.

Each undersigned party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose information relating to

- i. [specific business information to be disclosed] in conjunction or
- ii. the Disclosing Party's business (including, without limitation, computer programs, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not) schematics and other technical, business, financial, customer and product development plans, forecasts, strategies and information), which to the extent previously, presently, or subsequently disclosed to the Receiving Party is hereinafter referred to as "Proprietary Information" of the Disclosing Party.

Notwithstanding the foregoing, nothing will be considered "Proprietary Information" of the Disclosing Party unless either

1. it is first disclosed in tangible form and is conspicuously marked "Confidential," "Proprietary" or the like or
2. it is first disclosed in nontangible form and orally identified as confidential at the time of disclosure and is summarized in tangible form conspicuously marked "Confidential" within 30 days of the original disclosure. In consideration of the parties' discussions and any access the Receiving Party may have to Proprietary Information of the Disclosing Party, the Receiving Party hereby agrees as follows:

## 1. Use of Proprietary Information. The Receiving Party agrees:

- a. to hold the Disclosing Party's Proprietary Information in confidence and to take reasonable precautions to protect such Proprietary Information (including, without limitation, all precautions the Receiving Party employs with respect to its confidential materials),
- b. to not divulge any such Proprietary Information or any information derived there from to any third person (except consultants, subject to the conditions stated below,
- c. not to make any use whatsoever at any time of such Proprietary Information except to evaluate internally whether to enter into the currently contemplated agreement with the Disclosing Party; and
- d. not to copy or reverse engineer any such Proprietary Information.

Any employee or consultant given access to any such Proprietary Information must have a legitimate "need to know" and shall be similarly bound in writing. Without granting any right or license, the Disclosing Party agrees that the foregoing clauses (i), (ii), (iii) and (iv) shall not apply to any information that the Receiving Party can document

- i. is (or through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee) generally available to the public, or
- ii. was in its possession or known by it prior to receipt from the Disclosing Party, or
- iii. was rightfully disclosed to it by a third party without restriction, provided the Receiving Party complies with any restrictions imposed by the third party, or
- iv. was independently developed without use of any Proprietary Information of the Disclosing Party by employees of the Receiving Party who have had no access to such information. The Receiving Party may make disclosures required by court order, provided the Receiving Party uses reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and has allowed the Disclosing Party to participate in the proceeding.

## 2. Return of Proprietary Information:

Immediately upon (i) the decision by either party not to enter into the agreement contemplated by paragraph 1, or (ii) a request by the Disclosing Party at any time (which will be effective if actually received or three days after mailed first class postage prepaid to the Receiving Party), the Receiving Party will turn over to the Disclosing Party all

Proprietary Information of the Disclosing Party and all documents or media containing any such Proprietary Information and any and all copies or extracts thereof.

**3. Disclosure:**

Except to the extent required by law, neither party shall disclose the existence or subject matter of the negotiations or business relationship contemplated between the parties.

**4. Miscellaneous:**

The Receiving Party acknowledges and agrees that due to the unique nature of the Disclosing Party's Proprietary Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach may allow the Receiving Party or third parties to unfairly compete with the Disclosing Party resulting in irreparable harm to the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever remedies it might have at law and to be indemnified by the Receiving Party from any loss or harm, including, without limitation, attorneys' fees, in connection with any breach or enforcement of the Receiving Party's obligations hereunder or the unauthorized use or release of any such Proprietary Information. The Receiving Party will notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorized release or other breach of which it is aware. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

This Agreement shall be governed by the law of the State of [Enter your State name here; i.e. 'California'] without regard to the conflicts of law provisions thereof. This Agreement supersedes all prior discussions and writing and constitutes the entire agreement between the parties with respect to the subject matter hereof. The prevailing party in any action to enforce this Agreement shall be entitled to costs and attorneys' fees. No waiver or modification of this Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of such party and no failure or delay in enforcing any right will be deemed a waiver. This Agreement shall be construed as to its fair meaning and not strictly for or against either party.

In witness whereof, the parties have executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

**Disclosing Party**

**Receiving Party**

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_