



NON-DISCLOSURE AGREEMENT

This Agreement ("Agreement") is made and entered into as of _____, 20____, by and between Ziba, Inc, a California corporation ("Ziba") and _____, an individual, collectively referred to as the "Parties".

RECITALS

The following provisions form the basis for, and are thus made a part of, this Agreement:

The Parties have entered into an Agreement relating to a mutual business opportunity ("Project").

1. In the course of this project, Ziba, its subsidiaries or affiliates, from or through its employees, officers, directors, independent contractors, agents or representatives, will provide information, both orally and in writing, concerning the business of the Ziba and/or current or potential customers of the Ziba, including, without limitation, services provided by the Ziba to specific customers, sales volumes and customer pricing, information regarding locations and use, information regarding the Ziba's current or prospective plans regarding the types of services contracted for and the cost of such services to the Ziba, marketing information, and information generally related to the development of Ziba. Such information, in whole or in part, together with analyses, compilations, programs, reports, proposals, studies, or any other documentation prepared by you or the Ziba, as the case may be, which contain or otherwise reflect or make reference to such information, is referred to as "Confidential Information."
2. All of such Confidential Information, whether or not specifically marked as such by the Ziba, is deemed proprietary to the Ziba. Thus, as a condition precedent to entering into Agreement, both Parties agree, as set forth below, to hold such information, whether furnished before, on, or after the date of this Agreement, in the strictest confidence and not to disclose such information to anyone except as otherwise provided for in the Agreement.

Therefore, to induce and further the Agreement by and between the Parties, the Parties agree as follows:

NONEXHAUSTIVE DEFINITION OF CONFIDENTIAL INFORMATION; NONMARKING

The Parties agree that "Confidential Information" shall include information that is not specifically encompassed in the definition above, but that should reasonably be expected to be considered confidential by the non-disclosing Party, including, but without limitation, materials of any type or nature, tangible or intangible, disclosed by a party during the Project or which the other Party may obtain knowledge of, access to or discover as a result of the relationship of the Parties or the Project themselves relating to the business, products and technology or potential business, products and technology, business plans, financial information, technical specifications, design concepts, technical information, customer lists, pricing information, marketing plans and information pertaining to such disclosing Parties. Any issue as to the confidentiality expectations of the non-disclosing Party regarding particular information shall be submitted to the non-disclosing Party for determination.

USE OF CONFIDENTIAL INFORMATION

The Parties agree that the Confidential Information will be used solely for the purpose of the Project between the Parties and in connection with that business relationship, and not for any other purpose.



OWNERSHIP OF CONFIDENTIAL INFORMATION

The Parties agree that all Confidential Information shall at all times remain the property of the disclosing Party, and that the other Party shall not have any right, title or interest in or to such Confidential Information except as expressly provided in this Agreement.

DISCLOSURE OF CONFIDENTIAL INFORMATION

The Parties agree to hold in the strictest confidence and not to directly or indirectly reveal, report, publish, disclose or transfer to any other person or entity any Confidential Information, except as expressly provided in this Agreement provided, however, that:

A. Confidential Information pertaining to or provided by a Party may be disclosed by the other Party upon the prior written consent of the non-disclosing Party.

RETURN OF CONFIDENTIAL INFORMATION

The Parties agree that any document or thing on which the Confidential Information is copied, reproduced, recorded or fixed, whether in machine readable or human readable form, will be returned to the disclosing Party immediately upon request without the retention of any copies thereof by the other Party. All written materials prepared by each Party relating to the Project will be held by such Party and kept confidential and subject to the terms of this Agreement, or promptly destroyed at the request of the disclosing Party (in which case, such destruction will be certified to the requesting Party in writing).

LIMITATION ON CONFIDENTIAL INFORMATION

The term "Confidential Information" does not include any information which:

- (A) is or becomes generally available to or known by the public (other than as a result of a disclosure directly or indirectly by the disclosing Party);
- (B) is independently developed by the disclosing Party without breach of this Agreement and without use or reference to the Confidential Information;
- (C) is lawfully received without restriction from a third party who did not obtain the information as a result of that or another party's breach of confidentiality obligation; or
- (D) is disclosed by the disclosing Party pursuant to judicial action or governmental regulations, provided that the disclosing Party notifies the non-disclosing Party prior to such disclosure and the disclosing Party cooperates with the non-disclosing Party in the event that the non-disclosing Party elects to legally contest and avoid such disclosure.

TERMS

The terms and conditions of this Agreement shall continue for a period of FIVE YEARS (5 years) from the date of this Agreement; provided, however, that the Parties agree that the obligations of noncompete and confidentiality under this Agreement shall survive such term.



SPECIFIC PERFORMANCE

The Parties acknowledge and agree that the rights being protected by the terms of this Agreement are of a special, unique, unusual, and extraordinary character, which gives them a particular value, and that the breach of any provisions of the Agreement shall cause irreparable injury and damage to the non-breaching Party. In such event, the non-breaching Party shall be entitled to require specific performance of all of the acts and the undertakings required of the breaching Party under this Agreement, and to obtain injunctive and other equitable relief in any court of competent jurisdiction to prevent the violation or threatened violation of any of the provisions of the Agreement. Neither this provision nor any exercise by the non-breaching Party of its right to equitable relief or specific performance herein granted should constitute a waiver by the non-breaching Party of any other rights, which it may have to damages or other relief, including without limitation, injunctive relief, reasonable attorneys' fees and court costs.

SEVERABILITY

If any of the provisions contained in this Agreement is held to be unenforceable, in whole or in part, by a court of competent jurisdiction, the Parties agree to be bound by all other provisions of this Agreement.

SUCCESSORS

The Parties agree that the rights of either Party under this Agreement may not be assigned. The Parties agree that this Agreement shall be binding upon the successors of each Party and shall insure to the benefit of, and be enforceable by, such successors, and any officers or directors thereof.

APPLICABLE LAW

The Parties agree that this Agreement shall be governed by, and construed in accordance with, the laws of the state of California. This Agreement is for the benefit of and may be enforced directly by either Party.

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

The Parties have read understood and agreed to this Agreement in its entirety as of

_____, 20____ and have executed this Agreement as set forth below.

ACKNOWLEDGMENT

Employee Last Name	Employee First Name
Employee Signature	Date