

5. For the purposes of this Agreement, Confidential Information shall not include any information which:
 - (a) is already known to the Receiving Party prior to the disclosure hereunder or is publicly available at the time of disclosure;
 - (b) becomes known to the general public after disclosure through no act of the Receiving Party in breach of this Agreement;
 - (c) is disclosed to the Receiving Party by a third party who is not, to the knowledge of the Receiving Party, in breach of an obligation of confidentiality;
 - (d) was or is independently developed by the Receiving Party without use of the Confidential Information disclosed by the Disclosing Party; or
 - (e) is disclosed pursuant to a court order, provided the Receiving Party at the request and expense of the Disclosing Party, uses reasonable efforts to limit such disclosure to the extent requested.
6. The Parties to this Agreement have the right to disclose in confidence trade secrets to US Federal, State, local government officials or to an attorney in the US, for the sole purpose of reporting or investigating a suspected violation of US law. The Parties also have the right to disclose trade secrets in a document filed in a lawsuit or other proceeding but only if the filing is made under seal and protected from public disclosure. Nothing in this Agreement is intended to conflict with 18 U.S.C. § 1833(b) or create liability for disclosures of trade secrets that are expressly allowed by 18 U.S.C. § 1833(b).
7. Upon the written request of the Disclosing Party, the Receiving Party shall either return to the Disclosing Party or destroy, subject to the Disclosing Party's written instructions, all Confidential Information in its possession, including electronic copies which should be irretrievably erased. This obligation shall survive the expiration or termination of this Agreement.
8. The Disclosing Party represents that it has the right to make the disclosures made under this Agreement. The Confidential Information disclosed under this Agreement is delivered "as is" and the Disclosing Party makes no representation of any kind with respect to the accuracy of such Confidential Information or its suitability for any particular use and shall have no liability for Receiving Party's use of the Confidential Information.
9. Nothing in this Agreement shall preclude either party from making, using, marketing, licensing or selling any independently developed technology, product or material, whether similar or related to the Confidential Information disclosed under this Agreement, provided the party has not done so in breach of this Agreement.
10. This Agreement shall remain in effect as long as there is a definitive contract between the parties for the provision of products or services. Upon termination or expiration of the definitive agreement or in the event no definitive agreement is reached by the parties, this Agreement shall remain in effect unless terminated by one of the parties by providing thirty (30) days advance written notice to the other party of its desire to terminate this Agreement. The parties' obligations with respect to each other's Confidential Information shall survive termination of this Agreement and remain in effect for a period of three (3) years from the date of termination or expiration of this Agreement except for the obligation to maintain trade secrets as Confidential Information pursuant to the terms of this Agreement which shall survive until such information enters the public domain.
11. Since unauthorized disclosure or use of Confidential Information will diminish the value of the proprietary interests that are the subject of this Agreement, if the Receiving Party breaches any of its obligations hereunder, the Disclosing Party may be entitled to seek equitable relief without the necessity of proving actual damages or posting a bond in order to protect its interest therein, as well as money damages.