

# MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement ("Agreement") is made between

\_\_\_\_\_ and \_\_\_\_\_

## 1. Definitions

- (a) "Activity" means discussions and exchange of information related to \_\_\_\_\_ and its products and services.
- (b) "Affiliate" of a party means any corporation or other entity that a party directly or indirectly controls, or is controlled by. In this context, a party "controls" a corporation or other entity if it owns fifty percent (50%) or more of the voting rights for the board of directors or other mechanism of control for the corporation or other entity.
- (c) "Confidential Information" means any business, marketing, technical, scientific or other information disclosed by either party (including its Affiliates) which, at the time of disclosure is designated as confidential (or like designation), is disclosed in circumstances of confidence, or would be understood by the parties (or its Affiliates), exercising reasonable business judgment, to be confidential.

## 2. Disclosure, Use Restrictions and Proprietary Rights

- (a) **Disclosure and Use.** Any Confidential Information received by a party shall be retained in confidence, disclosed only to personnel of that party with a need to know, and used only in connection with the Activity and in accordance with this Agreement. The receiving party shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, to prevent the unauthorized use or disclosure of the other party's Confidential Information. Confidential Information received by a party under this Agreement shall not be copied without the prior written consent of the disclosing party. Upon request from the disclosing party, the receiving party shall immediately return to the disclosing party all Confidential Information and copies thereof, or if directed by the disclosing party, shall immediately destroy such Confidential Information and all copies thereof, and shall furnish proof of their destruction to the disclosing party. The obligations of confidence set forth in this Agreement shall extend to any Affiliates which has received Confidential Information.
- (b) **Exemptions.** Neither party shall be bound by the obligations restricting disclosure and use set forth in this Agreement with respect to Confidential Information, or any part thereof, which: (i) was known by the receiving party prior to disclosure; (ii) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of this Agreement; (iii) was disclosed to the receiving party by a third party, provided such third party is not in breach of any confidentiality obligation in respect of such information; (iv) is independently developed by the receiving party; or (v) is disclosed when such disclosure is compelled pursuant to legal, judicial or administrative proceedings, or otherwise required by law, subject to the receiving party giving all reasonable prior notice to the disclosing party to allow the disclosing party to seek protective or other court orders. The foregoing exemptions shall extend to any Affiliates which has received Confidential Information.
- (c) **Proprietary Rights.** A party (including its Affiliates) does not acquire any rights, express or implied, in the Confidential Information of the other party (including its Affiliates), except for the limited use specified in this Agreement. The Confidential Information of a party (and its Affiliates), including all right, title and interest therein, remain the sole and exclusive property of that party (and its Affiliates).

## 3. Additional Terms

- (a) **Warranty.** THE DISCLOSING PARTY WARRANTS THAT IT HAS THE RIGHT TO MAKE THE DISCLOSURES UNDER THIS AGREEMENT. THE CONFIDENTIAL INFORMATION PROVIDED BY EACH PARTY (INCLUDING ITS AFFILIATES) UNDER THIS AGREEMENT IS PROVIDED ON AN "AS-IS" BASIS. EACH PARTY MAKES NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS, EITHER EXPRESS OR IMPLIED, REGARDING THE ACCURACY OR COMPLETENESS OF THE CONFIDENTIAL

INFORMATION DISCLOSED BY IT (OR ITS AFFILIATES) OR THAT THE CONFIDENTIAL INFORMATION DISCLOSED IS FREE OF THIRD PARTY INTELLECTUAL PROPERTY CLAIMS.

**(b) Remedies.** Each party agrees that any violation or threatened violation of this Agreement will cause irreparable harm to the other party, entitling the other party to seek injunctive relief in addition to all other legal remedies.

#### **4. Term and Termination**

**(a) Term.** This Agreement shall commence on the Effective Date and shall continue for a period of one (1) year. The period of confidentiality and restricted use for each disclosure of Confidential Information shall be five (5) years from the date of disclosure. Each party reserves the right to terminate any discussions regarding the Activity.

**(b) Effects of Termination.** In the event of termination or expiration of this Agreement, the receiving party shall immediately destroy or return, at the disclosing party's option, the disclosing party's Confidential Information and all copies thereof.

#### **5. General**

**(a) Waiver.** The failure of a party to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term.

**(b) Assignment.** Neither party shall assign this Agreement, any interest herein or any rights hereunder without the prior written consent of the other party.

**(c) Severability.** In the event that any provision of this Agreement is found to be invalid, void or unenforceable, the parties agree that unless such provision materially affects the intent and purpose of this Agreement, such invalidity, voidability or unenforceability shall not affect the validity of this Agreement nor the remaining provisions herein.

**(d) Governing Law.** This Agreement shall be governed by the laws of the State of California without regard to its conflict of law principles.

**(e) Entire Agreement.** This Agreement does not create any partnership or agency relationship. This Agreement constitute the entire agreement between the parties on the subject matter hereof and supersede all prior agreements, communications and understandings of any nature whatsoever, oral or written. This Agreement may not be modified or waived orally and may be modified only in a writing signed by a duly authorized representative of both parties.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the Effective Date.

\_\_\_\_\_  
Executed by: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

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

\_\_\_\_\_  
Executed by: \_\_\_\_\_

Printed name: \_\_\_\_\_

Title: \_\_\_\_\_

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