

**MUTUAL AGREEMENT  
ON THE  
NONDISCLOSURE OF PROPRIETARY INFORMATION**

THIS AGREEMENT dated as of \_\_\_\_\_, by and between \_\_\_\_\_ whose address is \_\_\_\_\_, on the one hand, and \_\_\_\_\_, a \_\_\_\_\_ with its main office at \_\_\_\_\_, on the other hand (hereinafter referred to collectively as the "Parties").

WHEREAS, the Parties have determined to establish terms governing the confidentiality of certain in furtherance of discussions about a possible transaction (the "Purpose"); and

WHEREAS, the Parties acknowledge that any proprietary information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party" or "Recipient") is confidential and the success of the Disclosing Party's negotiations and business depend on its ability to preserve the confidentiality and secrecy of its confidential information.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. "Confidential Information" means all information provided by either Party (the "Disclosing Party") to the other Party (the "Receiving Party"), in whatever form transmitted (verbally or tangibly), relating to past, present or future business and, including, without limitation, information describing product or service plans, technology, methods and know-how, business opportunities or merger, acquisition or sales opportunities; business and personal correspondence; client lists, customer lists, vendors or business contacts; financial and sales information and projections; business plans and proposals; or information relating to operations, systems, and corporate and affiliate relations. Confidential Information shall also include any software or hardware provided by a Party and any derivation, whether source code or object code or any underlying operating principles of such software. The term: "Confidential Information" does not include information which the Receiving Party can demonstrate by competent written proof: (a) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available; (b) is known by the Receiving Party at the time of receiving such information, as evidenced by its records; (c) is hereafter furnished to the Receiving Party by a third party, as a matter of right and without restriction on disclosure; or (d) is the subject of a written permission to disclose provided by the Disclosing Party.

2. [For the duration of this Agreement and for 3 years thereafter] each Party, as a Receiving Party agrees to (i) not to use, authorize the use of nor disclose any Confidential Information received from the other Party, as a Disclosing Party, to any person or entity, except to legal or financial advisors specifically and directly necessary

to analyze the dealings between such Parties, subject to such third party executing prior to the disclosure, a confidentiality agreement with the Disclosing Party at least as restrictive as this Agreement, (ii) use at least the same degree of effort to avoid disclosure of such Confidential Information as is used for protection of its own confidential information, but in no case less than reasonable care, (iii) ensure that Confidential Information and all related materials at its premises, or in its control, shall be stored at locations and under such conditions as to reasonably prevent the unauthorized disclosure or duplication of such information and materials and (iv) In no case reverse engineer, decompile or otherwise derive operating principles or processes by measurement of any device, software or operation of the software provided by Disclosing Party.

3. All Confidential Information disclosed by the Disclosing Party to the Receiving Party which is tangible in form (including, without limitation, information incorporated in computer software or held in electronic storage media) is the sole and exclusive property of the Disclosing Party and shall be returned promptly upon Disclosing Party's request, and shall not be retained thereafter in any form by the Receiving Party. Upon termination of this Agreement, Receiving Party shall promptly irrevocably destroy any electronic copies (whether in whole or in part) of Confidential Information in its possession or control, and deliver to Disclosing Party a certification that such destruction has occurred.

4. The Parties agree not to disclose, publicize or advertise in any form or manner the discussions that gave rise to this Confidentiality Agreement.

5. Without any limitation on any covenant to keep confidential herein, each Party as a Receiving Party agrees that for the duration of this Agreement and for one year thereafter, they shall not: (i) solicit any of the other Disclosing Party's officers, directors, partners, associates, employees, representatives or subcontractors to become engaged by the Disclosing Party nor shall the Receiving Party aid or act on behalf of any other third party to do so and (ii) shall not solicit any vendor of, past or current customer of, contracting party to or investor in the Disclosing Party that has been introduced to the Receiving Party or identified to the Receiving Party by the Disclosing Party as having an interest in the field of the Disclosing Party's business. The foregoing covenant shall not apply to any third party whose activities in the field of the Disclosing Party's business can be demonstrated through documentary evidence to either be (i) known to the Receiving Party prior to the date hereof or (ii) publicly known to have such interest prior to any such contact.

6. The Parties agree that as long as both Parties are in full compliance with their obligations under this Agreement, nothing else in the Agreement shall prevent one party from pursuing business opportunities or developing and selling products similar to those of the other.

7. This Agreement shall commence on the date hereof and shall remain in effect for a period of two (2) years. This Agreement may be terminated by either Party hereto upon thirty (30) days written notice to the other Party, which notice shall be deemed effective when received by the other Party. In the event of any such termination,

each of the covenants in this agreement shall survive and be enforceable in accordance with its terms. In addition, Sections 8 through 16 shall survive termination or expiration of this Agreement.

8. The Parties acknowledge that Confidential Information is valuable and that disclosure in breach of this Confidentiality Agreement will result in irreparable injury to the Disclosing Party, entitling the Disclosing Party to injunctive relief without the obligation of posting bond. Any such relief shall be in addition to, and not in lieu of, any appropriate relief in the way of money damages.

9. As between the Parties, each Party is the sole owner of its Confidential Information and nothing herein grants to the Receiving Party any right to or license in the Confidential Information of the Disclosing Party, whether expressly or by implication. This Agreement shall not be construed so as to create an employment, partnership, joint venture, agency or other business relationship, which would authorize any Party hereto to act in regard to the assets, business interests or property of the other Party. The Receiving Party agrees that this Agreement and any disclosure made hereunder does not constitute an offer, acceptance or obligate the Disclosing Party to enter into any contract with the Recipient. The information disclosed to Receiving Party is provided on an "as is" basis, no warranty of any kind shall apply and use of or reliance upon the information is at Receiving Party's sole risk.

10. This Agreement shall be personal and non-delegable and binding upon the Parties hereto. No Party shall have the right to assign this Agreement without the prior written consent of the other Party, provided that either Party may assign the agreement in the context of a sale of all or substantially all of the assets of such party. The obligations hereunder shall be binding on the assignee of this agreement. Any purported assignment in breach of this Agreement is null and void.

11. Both Parties and signatories hereto acknowledge that they have read the foregoing Agreement and have the complete and full power and authority to enter into and execute this Agreement.

12. This Agreement constitutes the entire Agreement between the Parties hereto relative to the subject matter hereof and shall not be changed in any manner except by a writing signed by all of the Parties hereto. This Agreement supersedes any prior or contemporaneous discussions, representations or agreements between the Parties, whether written or oral.

13. This Agreement shall be governed by the laws of the State of New York applicable to contracts wholly to be performed therein. The courts of the State of New York (State and Federal) shall be the exclusive forums for the resolution of any disputes hereunder, and the Parties hereto each submit to the personal jurisdiction of the courts of New York. Each Party is sophisticated and has had this Agreement reviewed by counsel.

14. The inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or the validity of any other provision hereof.

15. Any notices required or permitted to be given hereunder shall be in writing and shall be deemed effective upon the personal delivery thereof by any method that is prepaid and provides for written confirmation of delivery such as overnight courier, certified mail, etc. and addressed to the Party to whom it is directed at the addresses set forth herein.

16. The Agreement may be executed in two counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

**AGREED AND ACCEPTED:**

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

Name:

Title:

Date:

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

Name:

Title:

Date: