

## **Mutual Non-Disclosure Agreement**

### **Agreement Not To Disclose Confidential Information**

**This Agreement** made as of the \_\_\_\_\_ day of \_\_\_\_\_, 201\_.

BETWEEN:

\_\_\_\_\_

-and-

\_\_\_\_\_

In consideration of the mutual promises, covenants and obligations contained in this Agreement, the parties agree as follows:

1. For the purposes of this Agreement:

**“Confidential Information”** means any information which either party considers to be of a proprietary and confidential nature and includes, without limitation, pricing quotes, patents, copyrights, trade secrets, commercial information and other proprietary and confidential information of a technical and business nature of any kind relating to the business of either party to this Agreement, or otherwise arising out of the relationship between the parties, regardless of the form or manner of such information or whether it has been delivered or communicated by one party to this Agreement to the other party;

**“Owner”** means the party hereto which possesses the intellectual property rights in and to an item of Confidential Information, as the context requires, and includes, without limitation, an owner, possessor, developer and licensee of such Confidential Information; and

**“Recipient”** means the party hereto who receives or is otherwise privy to an item of Confidential Information of which it is not the Owner.

2. All Confidential Information constitutes the sole and exclusive property and the confidential Information of the Owner, which the Owner is entitled to protect.

The Recipient shall hold and maintain all Confidential Information in trust and

- strict confidence for the Owner and shall have a fiduciary obligation to use its best efforts to protect the Confidential Information from any harm, exploitation, manipulation, modification, interference, misuse, misappropriation, copying or disclosure whatsoever, except as specifically authorized by the Owner in writing.
3. The Recipient shall not disclose the Confidential Information of the Owner to any person without the prior written approval of the Owner. The Recipient shall return all Confidential Information to the Owner immediately upon request.
  4. The confidentiality obligations set out above shall not apply to information which:
    - (a) at the time of disclosure, is within the public domain, or which, after disclosure, becomes readily and lawfully available to the industry or the public, other than by breach of this Agreement;
    - (b) was independently developed by the Recipient, other than by a breach of this Agreement; and
    - (c) the Recipient is by law compelled to disclose, provided that the Recipient has forthwith notified the Owner in writing of any such compelled disclosure.
  5. Neither this Agreement nor the disclosure of any information to the Recipient shall be construed as granting to the Recipient any rights in, to or in respect of the Confidential Information of the Owner.
  6. The provisions hereof are necessary to protect the trade, commercial and financial interests of the parties. The parties acknowledge and agree that any breach whatsoever of the covenants, provisions and restrictions herein contained by either party shall cause, and shall be deemed to be, a breach of that party's fiduciary obligations to the other party which may cause serious damage and injury to the non-breaching party, which cannot be fully or adequately compensated by monetary damages. The parties accordingly agree that, in addition to claiming damages, either party not in breach of this Agreement may seek interim and permanent equitable relief, including without limitation interim, interlocutory and permanent injunctive relief, in the event of any breach of this Agreement. All such rights and remedies shall be cumulative and in addition to any and all other rights and remedies whatsoever to which either party may be entitled.
  8. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and overrides any prior or other agreements, representations, warranties, understanding and explanations between the parties with respect to the subject matter of this Agreement.

9. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.
10. This Agreement shall be governed by the laws of California. The parties agree to attorn to the jurisdiction of the courts of California in the event of a dispute hereunder.
11. The invalidity or unenforceability of any provisions or part thereof of this Agreement shall not affect the validity or enforceability of any other provision and any remaining part which shall continue in full force and effect.
12. In this Agreement, words importing the singular include the plural and vice versa and words importing gender include all genders.

**IN WITNESS WHEREOF** the parties have executed this Agreement as of the date first above written.

\_\_\_\_\_  
Company Name

\_\_\_\_\_  
Company Name

by:\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Authorized Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)