

## MUTUAL NONDISCLOSURE AGREEMENT

**THIS AGREEMENT** is made effective as of the date of last signature below by and between [ **YOUR COMPANY NAME** ] a [ **YOUR COMPANY STATE OF INCORPORATION** ] Corporation, having its principal place of business at [ **CUSTOMER'S COMPLETE ADDRESS** ] (collectively known as the "**Company**") and \_\_\_\_\_, a \_\_\_\_\_ corporation ("**Third Party**") having its principal place of business at \_\_\_\_\_.

1. **Purpose.** The Company and Third Party wish to explore a business possibility under which each may disclose its Confidential Information to the other.

2. **Definition.** "Confidential Information" means any information, technical data or know-how, including, but not limited to, that which relates to research, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, marketing or finances, disclosed orally or in written or electronic form, and which is marked or identified by the disclosing party as "proprietary" or "confidential". Confidential Information does not include information, technical data or know-how which (i) is in the possession of the receiving party at the time of disclosure as shown by the receiving party's files and records immediately prior to the time of disclosure; or (ii) prior or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the receiving party, (iii) is approved for release by the disclosing party, or (iv) is independently developed by the receiving party without the use of any Confidential Information of the other party.

3. **Non-Disclosure of Confidential Information.** The Company and Third Party each agree not to use the Confidential Information disclosed to it by the other party for its own use or for any purpose except to carry out discussions concerning and the undertaking of any business relationship between the two. Neither will disclose the Confidential Information of the other to third parties or to the first party's employees except employees who are required to have the information in order to carry out the contemplated business. Each has had or will have employees to whom Confidential Information of the other is disclosed sign a Non-Disclosure Agreement in content substantially similar to this Agreement and will notify the other in writing of the names of the persons who have had access to Confidential Information of the other party. Each agrees that it will take all reasonable steps to protect the secrecy of and avoid disclosure or use of Confidential Information of the other in order to prevent it from falling into the public domain or the possession of unauthorized persons. Each agrees to notify the other in writing of any misuse or misappropriation of Confidential Information of the other that may come to its attention.

4. **Return of Materials.** Any materials or documents which have been furnished by one party to the other will be promptly returned, accompanied by all copies of such documentation, after the business possibility has been rejected or concluded.

5. **Intellectual Property Rights.** Nothing in this Agreement is intended to grant any rights under any patent or copyright of either party, nor shall this Agreement grant either party any rights in or to the other party's Confidential Information, except the limited right to review such Confidential Information solely for the purposes of determining whether to enter into the proposed business relationship between the parties and carrying out such relationship. The disclosing party warrants that it has the right to disclose its Confidential Information to the receiving party. Otherwise, all information is provided "as is" and without any warranty, express, implied or otherwise, regarding its accuracy or performance.

6. **Export Controls.** Each recipient of Confidential Information agrees that it will not export outside the United States, if a United States company or citizen, or re-export, if a foreign company or citizen, any Confidential Information or direct product thereof, except as permitted by the laws and regulations of the United States and by the disclosing party in writing.

7. **Independent Development.** Each disclosing party understands that the receiving party may currently or in the future be developing information internally, or receiving information from other parties that may be similar to the disclosing party's Confidential Information. Accordingly, nothing in this Agreement shall be construed as a

representation or inference that the receiving party will not develop products, or have products developed for it, that compete with the products or systems contemplated by the disclosing party's confidential information.

**8. Term.** This Agreement may be terminated at all times with a 30 days prior written notice, *provided however*, that the confidentiality obligations herein shall terminate five (5) years following the date of disclosure.

**9. Miscellaneous.** This Agreement shall be binding upon and for the benefit of the undersigned parties, their successors and assigns, provided that Confidential Information may not be assigned without consent of the disclosing party. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California as they apply to contracts entered into and wholly to be performed in the State of California. The federal and state courts within the State of California shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement.

**10. Remedies.** Each party agrees that its obligations hereunder are necessary and reasonable in order to protect the other party and the other party's business, and expressly agrees that monetary damages would be inadequate to compensate the other party for any breach of any covenant or agreement set forth herein. Accordingly, each party agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to the other party and that, in addition to any other remedies that may be available, in law, at equity or otherwise, the other party shall be entitled to obtain injunction relief against the threatened breach of the Agreement or the continuation of any such breach, without the necessity of proving actual damages.

**11. Notices.** All notices hereunder shall be sent to either party at the address and to the contact person specified below, or such other address or contact as the respective party may specify from time to time in accordance with the provisions hereof.

**“COMPANY”**

**YOUR COMPANY NAME**

Signature \_\_\_\_\_

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

Name: \_\_\_\_\_

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

**“THIRD PARTY” OUR COMPANY NAME**

Signature \_\_\_\_\_

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

Name: \_\_\_\_\_

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