

## **CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**

THIS CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (“Agreement”) is entered into as of \_\_\_\_\_ (“Effective Date”) by and between \_\_\_\_\_ (“Disclosing Party”), as an individual and \_\_\_\_\_ (“Recipient”).

1. Purpose. This Agreement is intended to prevent Recipient from disclosing or using certain confidential information that Disclosing Party may disclose to Recipient in connection with exploring a business opportunity of mutual interest relating to \_\_\_\_\_, for any purpose other than engaging in discussion related to, and evaluating such business opportunity.

2. “Confidential Information” means any tangible or intangible information and/or materials disclosed to Recipient by Disclosing Party, or by others under the direction of Disclosing Party, either directly or indirectly, in writing, orally, visually, electronically, by inspection of tangible objects, or in any other manner. Confidential Information includes, without limitation, Disclosing Party’s non-published patent applications, the terms and conditions of this Agreement (and the existence and nature of any discussions related thereto), as well as information, data, know-how, ideas, concepts, trade secrets, technical knowledge, procedures, techniques, methods, designs, and any other information that Disclosing Party treats as confidential. Confidential Information may also include information disclosed to Disclosing Party by third parties. Tangible Confidential Information shall be marked “confidential” or the like at the time of disclosure. Confidential Information shall not include any information which Recipient can establish (i) was publicly known and made generally available in the public domain prior to the time of disclosure to Recipient by Disclosing Party or those acting under its direction; (ii) becomes publicly known and made generally available after disclosure to Recipient by Disclosing Party or those acting under its direction through no action, inaction, or disclosure by Recipient; or (iii) was in the possession of Recipient without confidentiality restrictions at a time immediately prior to the disclosure by Disclosing Party or those acting under its direction, as evidenced by Recipient’s written files and written records at a time prior to the time of disclosure; (iv) is received by Recipient at any time from a third party without breach of a non-disclosure or confidentiality obligation to Disclosing Party; (v) is developed independently by Recipient as shown by contemporaneous written documentation; (vi) is required by law to disclose, provided that Recipient gives Disclosing Party reasonable advance notice of its intent to disclose such information so that Disclosing Party may contest the disclosure and/or seek a protective order.

3. Non-use and Non-disclosure. Recipient agrees not to use any Confidential Information for any purpose except to evaluate and engage in discussions concerning a potential business opportunity between Recipient and Disclosing Party. Recipient further agrees not to disclose any Confidential Information to third parties or to employees of Recipient, except to those employees who are required to have the information in order to evaluate or engage in discussions concerning the contemplated business opportunity and who are subject to confidentiality agreements and have been apprised of the confidential nature of the Confidential Information.

4. Maintenance of Confidentiality. Recipient agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of Confidential Information. Without limiting the foregoing, Recipient shall take at least those measures that Recipient takes to protect its own most highly confidential information and shall have its employees, if any, who have access to Confidential Information sign a non-use and non-disclosure agreement in content substantially similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Recipient shall reproduce Disclosing Party proprietary rights notices on any copies, in the same manner in which such notices were set forth in or on the original. Recipient shall immediately notify Disclosing Party in writing the event of any unauthorized use or disclosure of the Confidential Information.

5. No Obligation. Nothing herein shall obligate Disclosing Party or Recipient to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.

6. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". Disclosing Party MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS, PERFORMANCE, OR FITNESS FOR A PARTICULAR PURPOSE. RECIPIENT ACKNOWLEDGES THAT Disclosing Party SHALL NOT BE LIABLE FOR ERRORS, OMISSIONS, OR INACCURACIES OF ANY KIND IN THE CONFIDENTIAL INFORMATION AND RECIPIENT SHALL BE RESPONSIBLE FOR VERIFYING THE ACCURACY AND CORRECTNESS OF THE CONFIDENTIAL INFORMATION. RECIPIENT ACKNOWLEDGES THAT NO WARRANTY OF ANY KIND IS GIVEN REGARDING THE CONFIDENTIAL INFORMATION. THE FOREGOING IN NO WAY MODIFIES THE RETENTION BY Disclosing Party OF ALL RIGHT, TITLE AND INTEREST IN THE CONFIDENTIAL INFORMATION.

7. Return of Materials. All documents and other tangible objects containing or representing Confidential Information and all originals and copies thereof in the possession of Recipient shall be and remain the property of Disclosing Party and shall be promptly returned to Disclosing Party upon written request.

8. No Other Obligations. This Agreement imposes no obligation on either party to disclose Confidential Information or to purchase, sell, license, transfer or otherwise make use of any technology, service, or products, or to enter into any other agreements. Nothing in this Agreement is intended to grant any intellectual property rights to Recipient, nor shall this Agreement grant Recipient any rights in or to Confidential Information except as expressly set forth herein.

9. Continuing Nondisclosure and Confidentiality. Whether or not Recipient Disclosing Party enter into or continue a business relationship, the covenants pertaining to confidentiality, nondisclosure and non-use in this Agreement shall nevertheless remain in full force for a period of five (5) years following the date of disclosure.

10. Remedies. Recipient agrees that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party, and expressly agrees that monetary damages would be inadequate to compensate Disclosing Party for any breach of any covenant or agreement set forth herein. Accordingly, Recipient agrees and acknowledges that any such violation or threatened violation will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party shall be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages or posting any bond. Should Disclosing Party prevail in an action to enforce the provisions of this Agreement by obtaining substantially the relief sought, Disclosing Party shall be entitled to attorney's fees and court costs.

11. Recipient Information. Disclosing Party assumes no obligation, either express or implied, with respect to any information disclosed by Recipient.

12. Miscellaneous. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. This Agreement shall be governed by the laws of the State of California, without reference to conflict of laws principles. This document contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and or contemporaneous communications, understandings and agreements. Any failure to enforce any provision of this Agreement

shall not constitute a waiver thereof or of any other provision hereof. This Agreement may not be amended, nor any obligation waived, other than in a writing signed by both parties hereto.

13. Severability. In the event any term of this Agreement is found by any court to be void or otherwise unenforceable, the remainder of this agreement shall remain valid and enforceable as though such term were absent upon the date of its execution.

14. Term. This Agreement shall expire one (1) year from the Effective Date.

**DISCLOSING PARY**

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

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

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

**RECIPIENT**

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

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

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