

## CONFIDENTIALITY, NON-DISCLOSURE & NON-CIRCUMVENT AGREEMENT

This Confidentiality, non-disclosure and non-circumvent agreement (the "Agreement") is entered into and is effective as of \_\_\_\_\_ by and between \_\_\_\_\_  
\_\_\_\_\_ (recipient parties), and \_\_\_\_\_  
(disclosing parties).

The agreement binds the parties, their employees, their agents, representatives, officers, directors, and successors.

### 1. Nondisclosure and Nonuse of Confidential Information handling:

Recipient parties shall not disclose, publish, or otherwise disseminate Confidential Information (as defined in Section 2, below) to anyone other than those of its directors, officers, and employees with a need-to-know basis, and each party shall take reasonable precautions, no less stringent than it takes for its own confidential information, to prevent any unauthorized use, disclosure, publication, or any other dissemination of Confidential Information in violation of this Agreement.

The parties agree to only use the Confidential Information for the sole purpose of: evaluating the business [ ], the product [ ], the program [ ], and \ or the contemplated business transaction that consists in \_\_\_\_\_ and shall not use the Confidential Information for any other purpose whatsoever, including but not limited to any pending or potential claim or other adverse action against the disclosing party.

Receiving Parties shall return, or certify the destruction of, all embodiments of Confidential Information, including all copies thereof, to the disclosing party at the end of the parties' discussions concerning the proposed business transaction.

Receiving parties promise that it will not use the other party's Confidential Information for its own or any third party's benefit without the prior written approval of an authorized representative of the disclosing party in each instance.

Both parties recognize that nothing in this Agreement is intended to limit any remedy of the disclosing party under the California Uniform Trade Secrets Act or other statute or common law principle.

If a party is ordered by any court or other government agency to disclose any Confidential Information, such party shall provide the other party with prompt written notice of the order / request so that the other party may seek an appropriate protective order or waive compliance with the provisions hereof. Upon the request from and at the expense of the disclosing party, Receiving Parties will cooperate with the disclosing party to obtain an appropriate protective order or other reliable assurance that Confidential Information shall be treated in confidence. If, nevertheless, the Confidential Information is ordered to be disclosed, the Receiving Parties, upon written opinion of its counsel, shall furnish only that portion of the Confidential Information that it is required legally to disclose.

## 2. Definition of Confidential Information:

The parties agree that all information and materials disclosed to the other in connection with the contemplated business transaction (*as defined in Section 1*), and designated as the disclosing party's Confidential Information, shall be governed by this Agreement, and all such information and materials are referred to collectively herein as "Confidential Information."

The terms and conditions of this Agreement, and the existence, nature, or substance of the discussions between the parties regarding their proposed business transaction shall be deemed Confidential Information and governed by this Agreement, whether specifically so designated by either party.

Confidential Information disclosed in written form shall be prominently marked on each page thereof with the words "**Confidential Information of [disclosing party]**".

Confidential Information that is disclosed orally or visually shall be specifically identified at the time of disclosure as being confidential, and such designation shall be confirmed by the disclosing party in writing to the receiving party, along with a summary of the Confidential Information within three business days following its disclosure to the other party.

Confidential information conveyed electronically shall be labelled **CONFIDENTIAL** and transmitted or delivered via secured / encrypted communication systems.

Confidential Information may include, without limitation:

- (a) Current and future information, ideas, research and development plans, and any other information related to products, services, and/or markets.
- (b) Trade secrets, know-how.
- (c) Intellectual property at any stage of development including all patent, trademark, and copyright applications or disputes.
- (d) Technical data, schematics, techniques, employee suggestions, development tools and processes, computer printouts, computer programs, design drawings and manuals, and improvements.
- (e) Distributor lists, client's data, customer lists and supplier lists.
- (f) Historic, current, or future personnel, market, and financial information.
- (g) Historic, current, or future business, marketing, distribution and/or strategic plans and/or agreements.
- (h) All documents, books, papers, drawings, models, sketches, and other data of any kind and description, including electronic data recorded or retrieved by any means, that have been or will be given to Receiving Parties by disclosing party (or any affiliate of it), as well as written or verbal instructions or comments;
- (i) Marketing concepts, plans and strategies that may from time to time embody existing concepts.
- (j) Non-medical treatment plans, medical treatment plans.
- (k) Protected Health Information ("PHI") as defined by The Health Insurance Portability and Accountability Act of 1996, or Personally Identifiable Information ("PII"), as defined by applicable state law,
- (l) Any information pertaining in any manner to the business of the disclosing party or to the disclosing party's affiliates, consultants, or business associates, and
- (m) Any derivative from (a) to (l)

Notwithstanding anything in this Agreement, Confidential Information does not include information that: (x) is now or subsequently becomes generally known or available to the public through no fault or breach on the part of either party; (y) the Receiving Parties can demonstrate to have had rightfully in its possession prior to disclosure to it; or (z) with the exception of marketing concepts, plans and strategies that may from time to time embody existing concepts, the Receiving Parties rightfully obtains from a third party who has the right to transfer or disclose it. If only a portion of the information falls under (x) - (z), above, then only that portion shall not be considered Confidential Information.

Each party agrees that any Confidential Information indicated to be a trade secret by the disclosing party at the time of disclosure shall be referred to in this Agreement as a "Trade Secret."

### **3. Term:**

Whether or not the contemplate business transaction that is the subject matter of this agreement is consummated, this Agreement shall continue in full force and effect for a period of two years from date of execution extended to the date of the last delivery of confidential information.

At any time, either party may, upon 30 days written notice to the other party, terminate this Agreement.

A party's confidentiality obligation under this Agreement shall survive the termination or expiration of this Agreement and shall remain in force for a period of two (2) years after the latter of the date of disclosure of the relevant Confidential Information or the termination or expiration of this Agreement (including any amendments or extensions hereto), except for such party's obligation to maintain the confidentiality of Trade Secrets, which shall remain in force in perpetuity.

### **4. No Warranty; Remedies:**

All Confidential Information remains the property of the disclosing party and no license or other rights to Confidential Information is granted or implied hereby.

All Confidential Information is provided "AS IS," and without any warranty, whether express or implied, as to its accuracy or completeness.

### **5. Specific performance and remedies:**

Each party hereby acknowledges that unauthorized disclosure or use of Confidential Information could cause irreparable harm and significant injury to the disclosing party, the degree of which would be difficult to ascertain. Accordingly, each party agrees that the disclosing party will have the right to seek and obtain immediate injunctive relief to enforce the obligations under this Agreement, in addition to any other rights and remedies each party may have.

**6. Non-circumvention:**

For a period of three years from the date of this agreement, The Parties agree not to, in any manner, directly or indirectly enter in a relationship with any businesses, or capital sources, clients and others introduced by either party without express written consent of the introducing Party.

**7. Miscellaneous:**

This Agreement constitutes the entire agreement of the parties with respect to the Confidential Information disclosed in connection with the contemplated transaction subject matter of this Agreement and supersedes all prior or contemporaneous oral or written agreements concerning such Confidential Information.

Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.

This Agreement may not be amended except by the written agreement signed by authorized representatives of both parties.

This Agreement will be governed by and construed in accordance with the laws of the State of California, excluding that body of California law concerning conflicts of law.

Any legal actions related to this Agreement shall be brought only in state or federal courts located in the County of Los Angeles, California, for all issues or disputes arising out of the obligations contained herein, and the parties hereby submit to those courts' personal jurisdiction over them for purposes of any such legal action.

In case of litigation arising out of the contemplated transaction and \ or this non-disclosure agreement, the prevailing party shall be entitled to recover reasonable attorney fees, expert fees, and costs.

This Agreement cannot be assigned by Receiving Parties without Disclosing Parties' prior written consent.

This Agreement may be executed in multiple counterparts.

This Agreement does not constitute a partnership of any commercial /industrial /marketing resources sharing /exploitation agreement.

**8. Parties:**

**Disclosing Parties:**

**Receiving Parties:**

\_\_\_\_\_  
Authorized Signatory

Date:

\_\_\_\_\_  
Authorized Signatory

Date: