**Mutual Non-Disclosure Agreement**

# In order to induce the parties hereto to disclose certain Confidential Information (as described below) and to protect such Confidential Information, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, herein referred to as Originator and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, herein referred to as “Company”, hereby agrees as follows:

1. **Disclosing Party:** Originator and Company are sometimes referred to herein separately as a “Party” and together as the “Parties.” The Party disclosing Confidential Information is sometimes referred to herein as “Discloser” and the Party in receipt of such Confidential Information is sometimes referred to herein as “Recipient.”

2. **Primary Representative:** Each Party’s representative for coordinating disclosure or receipt of Confidential Information is: (i) **Originator** with offices located \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and (ii) Company with offices located at **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.**

3. **Purpose**: The Parties agree to disclose certain Confidential Information for the sole and exclusive purpose of working towards an amicable solution. Any use of Confidential Information by either Party for any other purpose or in contravention of this Agreement shall cause immediate and irreparable damage to the other Party. For purposes of this Agreement the term Party shall include all officers, directors, employees, advisors, agents or any other Company or entity that acting on behalf of either Party shall receive any Confidential Information.

4. **Description of Confidential Information:** For purposes of this Agreement, (all descriptions shall be not affected by type of medium, mode or mechanism such information may take or be conveyed). ***Generally*** Confidential Information shall be defined the same for both Parties and shall include but not be limited to: (i) any nonpublic information either Party designates as being confidential, or (ii) information which derives any of its value from not being generally known, or (iii) which, under the circumstances surrounding disclosure, ought to be treated as confidential, or (iv) if conveyed in written or other tangible form, designated as confidential or proprietary by Discloser by prominently marking it with a “confidential,” “proprietary” or similar legend. ***Specifically*** "Confidential Information" shall include but not be limited to (i) *Technical Information*: including but not limited to; all patents, copyrights, trademarks, or trade secret information, any and all software or other documentation containing written or electronic research, developments, technical information, trade secrets, know-how, inventions, techniques or processes (whether patented or not), algorithms, tools, source code, programs or designs and technical work derived from source code or other intellectual property, all agreements and information relating to released or unreleased products or technology content, product designs, and

(ii) *Marketing and Sales Information*: Including but not limited to; marketing, designs, layouts, or sales data, customer lists,

acquisition processes, customer acquisition costs, customer conversion test results, registration rates, and other marketing or other unpublished information user or vendor lists, and

(iii) *Strategic Business and Operation Information*: Including but not limited to; information pertaining to investment plans, future strategies, business operations, prospects and condition (financial, technical or otherwise), budgets, schedules, policies or practices, tactics, financial information, expansion plans, employee lists and

(iv) *Other Information*: Including but not limited to; information received from others that either party is obligated to treat as confidential. Notwithstanding the foregoing the failure to ‘mark’ or specifically identify any specifically listed Confidential Information shall not cause such information to be outside the scope of this Agreement and not protected.

5. **Use and Non-Use of Confidential Information:** Recipient shall make use of all Confidential Information solely for the purpose set forth in Section 3 of this Agreement. Recipient agrees not to use Confidential Information of the Discloser for its own use or for any purpose other than the stated purpose. During the term of this Agreement, unless in the context of an acquisition and then only to the extent of the existence of this Agreement, neither Party shall disclose the existence or nature of this Agreement, nor the Purpose, to any third party without the other Party's prior written consent. The Recipient agrees to notify the Discloser in writing of any misuse or misappropriation of the Confidential Information of the Discloser, which may come to its attention.

6. **Confidentiality Period:** This Agreement and Recipient’s duty to hold Confidential Information in confidence shall expire five (5) years after the end of the Disclosure Period (as defined below).

7. **Disclosure Period:** This Agreement pertains to Confidential Information disclosed during the period commencing with the Effective Date and ending on the earliest of (i) termination of dealings between the Parties and delivery of written notice thereof by either Party specifically referencing this Agreement, (ii) a definitive agreement is entered into between the Parties hereto which then governs the treatment of information disclosed thereafter, or (iii) six (6) months after the Effective Date (the “Disclosure Period”).

8. **Standard of Care:** Recipient shall protect all Confidential Information received hereunder from disclosure to any person, firm, corporation or other third party (except to Recipient’s employees, consultants, corporate affiliates and representatives who have a need to know) by using the same degree of care that it uses to prevent the unauthorized disclosure of its own confidential information of a like nature, but in no event less than a reasonable degree of care.

9.  **Breach and Damages.** The Parties agree that in the case of disclosure of Confidential Information in contravention of this Agreement that a monetary remedy for any damages will be inadequate, impracticable and extremely difficult to prove. It is agreed that such a breach would cause irrevocable harm, and that the injured Party shall be entitled to temporary and permanent injunctive relief, in addition to all other remedies it may have hereunder or by law, without the necessity of proving actual damages or without the placement or filing of a bond. The ability to seek injunctive relief shall not prohibit the injured Party from seeking a remedy for actual monetary damages.

10. **Exclusions:** This Agreement imposes no obligation upon Recipient with respect to information that: (i) was rightfully in Recipient’s possession before receipt from Discloser; (ii) is or becomes a matter of public knowledge through no fault of Recipient; (iii) is rightfully received by Recipient from a third party without a duty of confidentiality who has the lawful right to disclose the information; (vi) is independently developed by Recipient without use of or reference to the Confidential Information of the disclosing party; (vii) is disclosed under operation of law, except that Recipient will disclose only such information as is legally required and will use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed; or (viii) is disclosed by Recipient with Discloser’s prior written approval.

11. **Warranty:** Each Discloser warrants that it has the right to make disclosures under this Agreement. **NO OTHER WARRANTIES ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED “AS IS.”**

12. **Other Business Activities:** (a) Discloser agrees that Recipient may currently or in the future acquire information, either independently developed or legally received from third parties, which may be similar to the Confidential Information. Nothing in this Agreement will be construed as a representation that Recipient does not or will not have such independently developed or legally received information; (b) The Parties acknowledge that either Party is/or may be currently discussing transactions or opportunities similar to the Purpose of this Agreement with other parties, including with the others’ competitors. This Agreement imposes no obligation on either Party to purchase, sell, license, transfer, or otherwise dispose of any technology, services, or products with any party. This Agreement does not create any agency or partnership relationship. This Agreement does not require Discloser to make any payment of any kind to Recipient, nor does it bind Discloser to enter into any further agreement or arrangement with Recipient; (c) Nothing in this Agreement will be construed as a representation or agreement that Recipient will not develop or have developed for it products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, provided that Recipient does not violate any of its obligations under this Agreement in connection with such development; (d) Nothing contained in the Agreement shall be construed as implying any commitment or agreement by either Party to make any investment in the other Party or in any business of the other Party or to enter into any other business arrangement of any nature whatsoever with the other Party.

13. **Ownership and Other Rights**: (a) Neither Party acquires any intellectual property rights under this Agreement except the limited rights necessary to carry out the intended use set forth herein (b) This Agreement does not impair Recipient’s right to contest the validity or defend against infringement of any patent, trademark or copyright that may have been or may hereafter be obtained based on the Confidential Information.

14. **Return of Confidential Information**: Recipient will return or destroy all tangible material embodying Confidential Information (in any form or medium) at any such time as Discloser may so request; provided however, that a single archival copy of all Confidential Information may be retained by Recipient’s legal department for dispute resolution purposes only.

15. **Nonwaiver**: Any failure by either Party to enforce the other Party’s strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

16. **Miscellaneous:** (a) Any notice, approval, request, authorization, direction or other communication under this Agreement shall be given in writing and shall be deemed to have been delivered and given for all purposes (i) on the delivery date if delivered personally to the party to whom the same is directed; (ii) one (1) business day after deposit with a commercial overnight carrier, with written verification of receipt; (iii) five (5) business days after the mailing date, whether or not actually received, if sent by U.S. mail, return receipt requested, postage and charges prepaid, or any other means of rapid mail delivery for which a receipt is available; (iv) if by facsimile transmission, upon issuance by the transmitting machine of a confirmation slip confirming the number of pages constituting such notice have been transmitted without error and the Party giving such notice calls to confirm the receipt; or (v) if by electronic mail, the Party giving such notice calls to confirm the receipt; (b) All additions or modifications to this Agreement must be made in writing and signed by an authorized signing agent of each Party; (c) This Agreement is made under, and shall be construed according to, the laws of the State of California, U.S.A. except for its conflicts of laws principles. Each Party irrevocably consents to the jurisdiction of the federal and/or local courts located in California, in connection with any action violating this Agreement; (d) In the event of a dispute the substantially prevailing party shall be entitled to attorneys’ fees and costs including those for in-house counsel, collection, and those arising as a result of an appeal; (e) This Agreement may be executed in counterparts and delivered by facsimile transmission, each of which shall be deemed an original and both of which together shall constitute one and the same document; (f) Neither Party shall assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party, except that either Party shall have the right to assign its rights and obligations hereunder without written consent of the other Party to a wholly-owned subsidiary, parent Company, or in connection with the merger, consolidation, sale or acquisition of all or substantially all of that Party’s assets. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the Parties, their successors and assigns; (g) If any provision of this Agreement shall be held by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect.

**ORIGINATOR**

Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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

**Company:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Signature:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

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