

Mutual Non-Disclosure Agreement

This is a Mutual Non-Disclosure Agreement (“Agreement”), between [Party A] and [Party B]. [Party A] and [Party B] may be referred to individually as a “Party” and collectively as the “Parties.”

Background

[Party A] and [Party B] are discussing a possible transaction (the “Transaction”). In connection with those discussions, the Parties may make available to one another certain proprietary and confidential information. This Agreement describes the basis upon which the Parties will hold and use that information.

1. Confidentiality

1.1 Confidential Information

“Confidential Information” means all information, in any form, relating to one Party (“Disclosing Party”) and furnished to or obtained by the other Party (“Recipient”) during the term of this Agreement, including, without limitation, budget and other financial data, program plans and strategies, client data, technical data and research, and know-how. Confidential Information includes information disclosed both before and after the date the Parties signed this Agreement, and whether or not prepared by Disclosing Party or by a third party. Confidential Information does not include information which: (a) is or becomes generally available to the public other than as a result of a disclosure by the Recipient; (b) was known by the Recipient prior to its being furnished by the Disclosing Party; (c) is or becomes available to the Recipient on a non-confidential basis from a source other than the Disclosing Party; or (d) is independently developed by the Recipient. All Confidential Information furnished under this Agreement is and will remain the property of the Disclosing Party.

1.2 Use and Confidentiality

Except as required by law, each Party will use the other's Confidential Information only for the purpose of considering, evaluating, and negotiating a possible Transaction and will keep it confidential, using at least the same degree of care used to protect its own confidential information.

1.3 Confidentiality of Discussions

Neither [Party A] nor [Party B] will disclose any details or the content of any discussions concerning the Transaction, except as required by law.

1.4 Authorized Persons

The Disclosing Party will disclose the other's Confidential Information only to its officers, directors, employees, agents, consultants, and affiliates, if any, who need access to the information for such specific purpose (each an “Authorized Person”), except as required by law.

2. Relationship

2.1 No Obligation to Pursue Transaction

Unless the Parties enter into a definitive agreement with respect to a Transaction, no agreement providing for a Transaction will be deemed to exist between the Parties. Neither Party will be under any obligation to negotiate or enter into any such agreement or Transaction with the other Party.

2.2 No Representations or Warranties

The Disclosing Party makes no representation or warranty, express or implied, with respect to the accuracy or completeness of, and does not assume any liability for, any Confidential Information provided under this Agreement.

2.3 No Rights Granted

The Disclosing Party retains all rights, title, and interest in and to all Confidential Information, including intellectual property rights. By making Confidential Information or other information available to Recipient, Disclosing Party is not granting any license or other right under or with respect to any patent, trade secret, copyright, trademark or other proprietary or intellectual property right.

2.4 Return of Confidential Information

If a Party determines that it does not wish to proceed with the possible Transaction, that Party will promptly advise the other Party of that decision. Upon Disclosing Party's request, Recipient will, at its own expense, promptly return or destroy all copies of written Confidential Information furnished to the Recipient. Within ten (10) days after the Disclosing Party's request, Recipient will certify in writing that it has so returned or destroyed all Confidential Information. Notwithstanding such return or destruction, Recipient will continue to be bound by its confidentiality and other obligations under this Agreement for a period of three years from the date of notice that either Party does not wish to proceed with the possible Transaction.

3. General Provisions

3.1 Injunctive Relief

Each Party recognizes that a breach of this Agreement may cause irreparable harm to the other Party and that actual damages may be difficult to ascertain and, in any event, may be inadequate. Accordingly, each Party agrees that in the event of such a breach, the injured party may be entitled to injunctive relief in addition to such other legal or equitable remedies as may be available.

3.2 Entire Agreement

This Agreement expresses the final, complete, and exclusive agreement between the Parties and supersedes any and all prior or contemporaneous oral and written agreements, arrangements, negotiations, communications, courses of dealing, or understandings between the Parties relating to its subject matter.

3.3 Amendment

This Agreement may be amended only as stated in and by a writing signed by both Parties which recites that it is an amendment to this Agreement.

3.4 Severability

If any provision in this Agreement is held invalid or unenforceable, the other provisions will remain enforceable, and the invalid or unenforceable provision will be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

3.5 Waiver

Any waiver under this Agreement must be in writing and signed by the party granting the waiver. Waiver of any breach or provision of this Agreement will not be considered a waiver of any later breach or of the right to enforce any provision of this Agreement.

3.6 Assignment

Neither Party may assign its rights or delegate its duties under this Agreement to anyone else without the prior written consent of the other Party.

3.7 Notices

Notices, approvals, and consents under this Agreement must be in writing and delivered by mail, courier, fax, or e-mail to the contact persons identified on the signature page. These contact persons and addresses may be changed by written notice to the other party.

3.8 Governing Law

This Agreement is governed by California law.

3.9 Counterparts

This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will be taken together and deemed to be one instrument. Transmission by fax or PDF of executed counterparts will constitute effective delivery.

* * * * *

This Agreement was signed by the Parties as of the dates below:

[Party A]

[Party B]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address:

[_____]

Email: _____

Fax: _____

Address:

[_____]

Email: _____

Fax: _____