

## **CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Agreement is entered into on , by and between

\_\_\_\_\_ (hereafter referred to as the Disclosing Party), and  
\_\_\_\_\_ (hereafter referred to as the Receiving Party), who agree that:

The Disclosing Party and Receiving Party wish to discuss and exchange certain items and information related to business programs, products, applications, systems, components, technologies and business topics (the "Invention") which the parties hereto consider highly confidential and proprietary.

NOW THEREFORE, the parties hereto, intending to be legally bound in consideration of the mutual covenants and agreements set forth herein, hereby agree as follows:

### **DEFINITIONS**

"**Disclosing Party**" shall mean the party disclosing information to the other relating to the Invention.

"**Receiving Party**" shall mean the party receiving information from the other relating to the Invention.

"**Invention**" means inventions, discoveries, concepts, and ideas, whether patentable or not, including, but not limited to, processes, methods, formulas, techniques, business programs, products, applications, systems, components, technologies and business topics as well as improvements thereof or know-how related thereto, concerning any present or prospective activities of the Disclosing Party with which the Receiving Party becomes acquainted as a result of this agreement, whether or not disclosed by Disclosing Party.

"**Confidential Information**" as used throughout this Agreement means any and all trade secrets and any and all data or information not generally known outside of the Disclosing Party whether prepared or developed by or for the Disclosing Party or received by the Disclosing Party from any outside source. Without limiting the scope of this definition, Confidential Information includes: any customer files, customer lists, co-developer identities, any business, marketing, financial or sales record or reports, business plans, data, plan, policies and procedures, or survey; and any other record or information relating to the present or future business, product, processes, theory, technology or service of the Disclosing Party whether it is written, oral, audio tapes, video tapes, computer discs, machines, prototypes, designs, specifications, articles of manufacture, drawings, copyrightable works, human or machine readable documents. All Confidential Information and copies thereof are the sole property of the Disclosing Party. Confidential Information shall not include any of the following:

- Such information in the public domain at the time of the disclosure, or subsequently comes within the public domain without fault of the Receiving Party;
- Such information which was in the possession of Receiving Party at the time of disclosure that may be demonstrated by business records of Receiving Party and was not acquired, directly or indirectly, from Disclosing Party; or
- Such information which Receiving Party acquired after the time of disclosure from a third party who did not require Receiving Party to hold the same in confidence and who did not acquire such technical information from Disclosing Party.

### **USE OF CONFIDENTIAL INFORMATION**

- Receive and maintain the Confidential Information in confidence;
- Examine the Confidential Information at its own expense;
- To accept Confidential Information for the sole purpose of evaluation in connection with Receiving Party's business discussions with Disclosing Party;
- Not reproduce the Confidential Information or any part thereof without the express written consent of Disclosing Party;

- Not use or utilize the Confidential Information without the express written consent of Disclosing Party;
- Utilize the best efforts possible to protect and safeguard the Confidential Information from loss, theft, destruction, or the like;
- To comply with any other reasonable security measures requested in writing by Disclosing Party;
- Not use the Confidential Information or any part thereof as a basis for the design or creation of any method, system, apparatus or device similar to any method, system, apparatus or device embodied in the Confidential Information unless expressly authorized in writing by Disclosing Party.

### **NON-DISCLOSURE OBLIGATIONS**

- Not, directly or indirectly, make known, divulge, publish or communicate the Confidential Information to any person, firm or corporation without the express written consent of Disclosing Party;
- Protect and safeguard the Confidential Information against unauthorized use, publication or disclosure;
- Limit the internal dissemination of the Confidential Information and the internal disclosure of the Confidential Information received from the Disclosing Party to those officers and employees, if any, of the Receiving Party who have a need to know and an obligation to protect it;
- Advise each of the persons to whom it provides access to any of the Confidential Information, that such persons are strictly prohibited from making any use, publishing or otherwise disclosing to others, or permitting others to use for their benefit or to the detriment of Disclosing Party, any of the Confidential Information, and, upon request of Disclosing Party, to provide Disclosing Party with a copy of a written agreement to that effect signed by such persons;
- Not to use any Confidential Information to unfairly compete against or obtain unfair advantage of Disclosing Party in any commercial activity which may be comparable to the commercial activity associated with the Invention.

### **RETURN OF CONFIDENTIAL INFORMATION**

All information provided by the Disclosing Party shall remain the property of the Disclosing Party. Receiving Party agrees to return all Confidential Information to Disclosing Party within 20 days of written demand by Disclosing Party. When the Receiving Party has finished reviewing the information provided by the Disclosing Party and has made a decision as to whether or not to work with the Disclosing Party, Receiving Party shall return all information to the Disclosing Party without retaining any copies.

### **NON-ASSIGNABLE**

This agreement shall be non-assignable by the Receiving Party unless prior written consent of the Disclosing Party is received. If this Agreement is assigned or otherwise transferred, it shall be binding on all successors and assigns.

### **SOLICITATION**

Receiving Party agrees that for a period of ( ) year(s) from the date of this Agreement, it will not initiate contact with Disclosing Party's employees in order to solicit, entice or induce any employee of Disclosing Party to terminate an employment relationship with Disclosing Party to accept employment with Receiving Party.

### **GOVERNING LAW**

This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_ (State), notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary, and without the aid of any canon, custom or rule of law requiring construction against the draftsman.

### **NO LICENSE**

Neither party does, by virtue of disclosure of the Confidential Information, grant, either expressly or by implication, estoppels or otherwise, any right or license to any patent, trade secret, invention, trademark, copyright, or other intellectual property right.

Receiving Party hereby agrees and acknowledges that no license, either express or implied, is hereby granted to Receiving Party by Disclosing Party to use any of the Confidential Information.

#### **BINDING ON SUCCESSORS**

Each and every provision hereof shall inure to the benefit of and shall be binding upon the heirs, assigns, personal representatives, executors and administrators of each party, and all successors in the interest of the parties. No person shall have a right or cause of action arising or resulting from this agreement except those who are parties to it and their successors in interest.

#### **NO PUBLICITY**

Receiving Party agrees not to disclose its participation in this undertaking, the existence or terms and conditions of the Agreement, or the fact that discussions are being held with Disclosing Party.

#### **NO EXPORT**

Receiving Party certifies that no Confidential Information, or any portion thereof, will be exported to any country in violation of the United States Export Administration Act and regulations thereunder. Receiving Party hereby further certifies that Receiving Party (or if Receiving Party is not a natural person, Receiving Party hereby certifies that any Receiving Party personnel or other persons to whom disclosure is authorized by Disclosing Party hereunder, if any) is not a resident of any of the following countries: Iraq, Iran, Libya, North Korea, Syria, Laos, Mongolian People's Republic, Cuba, Cambodia, North Korea, Nicaragua, or the People's Republic of China.

#### **TERM AND TERMINATION**

This Agreement shall commence on the date first above written. Receiving Party's right to use the Confidential Information in connection with the Invention shall continue in effect until \_\_\_\_\_, \_\_\_\_\_, or until Disclosing Party provides Receiving Party with written notice of termination of such right, whichever is earlier.

#### **SEVERABILITY**

In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to cause the invalidity or unenforceability of the remainder of this Agreement. All remaining provisions of this Agreement shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

#### **ATTORNEY FEES**

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees.

#### **ENTIRE AGREEMENT**

This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings between the parties and there are no covenants, promises, agreements or conditions, either oral or written, between them other than herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party unless reduced in writing and signed by them.

#### **ARBITRATION**

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by arbitration conducted by the Commercial Division of the American Arbitration Association and in accordance with the rules thereof, or in any other convenient forum agreed to in writing by the parties. Any arbitration award shall be final and binding, and

judgment upon the award rendered pursuant to such arbitration may be entered in any court of proper jurisdiction. Notwithstanding the foregoing, either party may seek and obtain temporary injunctive relief from any court of competent jurisdiction against any improper disclosure of the Confidential Information.

IN WITNESS OF THEIR AGREEMENT, the parties have set their hands to it below effective the day and year first written above.

Disclosing Party By: \_\_\_\_\_ Title: \_\_\_\_\_

Receiving Party By: \_\_\_\_\_ Title: \_\_\_\_\_