

## NON-DISCLOSURE AGREEMENT

WHEREAS, the Parties are interested in sharing certain confidential and proprietary information;

WHEREAS, conditional to the release of Confidential Information, the receiving Party agrees to treat all confidential and proprietary information as confidential so as to protect and preserve the disclosing Party's rights in such information, and not to use such Confidential Information except as necessary for the Business Purpose.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties further agree to the terms below.

1. **Purpose of Agreement.** The Parties desire to disclose certain Confidential Information (as defined below) to each other, subject to the receiving Party's acceptance of a confidentiality obligation, to assess a possible business relationship ("Business Purpose").
2. **Confidential Information.** "Confidential Information" means any information or data which is disclosed in any tangible or oral form, including, but not limited to: the source and object code of computer programs and associated documentation, manuals and other printed or visually or electronically perceptible materials describing the use or design of software as well as development and/or financial plans, ideas, concepts, drawings, designs, inventions, discoveries, improvements, patents, and patent applications, specifications, trade secrets, prototypes, processes, notes, memoranda and reports, or three-dimensional forms concerning either Party's past, present or future research, technology, know-how, computer programs, products, customers and prospective customers, markets, sales and marketing plans, financial statements and business plans, product plans and/or costs, business plans and/or technology plans, prices, and/or loan information, and any other information, oral or written, which shall be so noted on its face, or confirmed in writing, as being confidential or proprietary to either Party. Confidential Information shall also include any information that a reasonable person would have understood to be Confidential Information.
3. **Use and Handling of Confidential Information.** The receiving Party, and the receiving Party's officers, directors, partners, employees and agents, if any, shall:
  - a. keep Confidential Information confidential;
  - b. not use Confidential Information except as necessary for the Business Purpose;
  - c. not "reverse engineer," make derivatives or adaptations, duplicate or copy in any fashion any Confidential Information, in whole or in part, without the prior written consent of the disclosing Party; and
  - d. not disclose to third parties any Confidential Information.

The receiving Party shall make the Confidential Information available only to its officers, directors, partners, employees and/or agents who have a need for such access solely for the Business Purpose, provided that the receiving Party has informed all such persons of their obligations under this Agreement and such persons have agreed in writing to be bound by this Agreement, either by means of an agreement directly with the disclosing Party or pursuant to an agreement with the receiving Party. The receiving Party agrees to maintain adequate procedures to prevent loss of any of Confidential Information, and, in the event of any loss, shall notify the disclosing Party immediately.

4. **Exception.** The receiving Party shall not be obligated to maintain any information in confidence or refrain from use, if the information is, at the time of disclosure, or thereafter becomes public knowledge without the fault of the receiving Party (provided, however, that the act of copyrighting by the disclosing Party shall not cause or be construed as causing the copyrighted materials to be in the public domain). Before relying on the exception in this Section 4 and disclosing or using the Confidential Information on the basis of such exception, the receiving Party shall notify the disclosing Party in writing of its intent to do so, providing a written basis for the reliance on the exception to the disclosing Party and giving the disclosing Party a period of fifteen (15) days to object or take other action to protect its rights in the information. The receiving Party shall bear the burden of proof as to the validity of disclosure based on the exception.
5. **Ownership.** The receiving Party agrees that the disclosing Party is and shall remain the exclusive

owner of Confidential Information disclosed to the receiving Party and all patent, copyright, trade secret, trademark and other intellectual property rights therein. No license or conveyance or such rights to the receiving Party is granted or implied under this Agreement. The disclosing Party does not make any representation or warrant as to the accuracy or completeness, or with respect to the non-infringement of any of the information provided by it, except to the extent any such representation or warranty is set forth in writing in a legally binding license, purchase, or other agreement executed and delivered by the Parties in connection with the Business Purpose.

6. **Termination.** Either Party may terminate this Agreement at any time upon written notice provided to the other Party. Upon termination of this Agreement by either Party, the provisions of this Agreement shall remain in effect with respect to all Confidential Information retained and not returned or certified as destroyed.
7. **Return of Materials.** Upon termination of this Agreement, or the earlier written request of the disclosing Party, the receiving Party shall return to the disclosing Party all documents and other tangible manifestations in whatever form of Confidential Information received by the receiving Party pursuant to this Agreement (and all copies and reproductions thereof); provided, however, that if the disclosing Party so requests, the receiving Party shall immediately destroy all Confidential Information and certify such return and/or destruction to the disclosing Party. Notwithstanding the foregoing, the receiving Party may retain one copy, subject to a continuing obligation of confidentiality, in a secure location solely for the purpose of determining compliance with this Agreement and applicable law.
8. **Intellectual Property Rights.** No rights or obligations other than those expressly recited herein are to be implied from this Agreement. No license is hereby granted, directly or indirectly, under any patent, trade secret, copyright, mask work right or other intellectual property right now held by, or which may be obtained by, or which are or may be licensable by the disclosing Party.
9. **Miscellaneous.**
  - a. **Amendment.** This Agreement may be amended only by a mutually agreed to writing, signed by both Parties.
  - b. **Parties in Interest.** This Agreement shall be binding upon, and the benefits and obligations provided for herein shall inure to, the Parties hereto and their respective heirs, legal representatives, successors and assigns.
  - c. **Assignment.** This Agreement may not be assigned without prior written consent.
  - d. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.
  - e. **Enforceability.** If any provision contained herein is declared unenforceable or invalid, said declaration shall not impair any of the Agreement's other provisions, which shall be enforced according to their respective terms.
  - f. **Remedies.** The receiving Party acknowledges that any violation of this Agreement would result in immediate and irreparable injury to the disclosing Party for which an award of money damages would be an inadequate remedy. The receiving Party agrees, therefore, that the disclosing Party shall have the right to obtain equitable relief including an injunction to specifically enforce the terms of this Agreement and to obtain any other legal or equitable remedies that may be available to it. In the event of any violation by the receiving Party of this Agreement, the receiving Party agrees to pay reasonable costs and legal fees incurred by the disclosing Party in pursuit of any of its rights with respect to this Agreement, in addition to any damages sustained by the disclosing Party by reason of such breach.
  - g. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Florida without application of its choice-of-law principles.
  - h. **Entire Agreement.** The Parties intend that this Agreement is the final and binding expression of their agreement as to the subject matter hereof.
  - i. **Survival of Obligation.** The obligations of the receiving Party to refrain from disclosure and use of any of the Confidential Information received under this Agreement shall survive the termination of this Agreement and/or any other agreement, into which the Parties may enter for any Confidential Information retained or not destroyed upon termination of this Agreement.