

## Mutual Non-Disclosure Agreement

Each undersigned party (the "Receiving Party") understands that (the "Disclosing Party") has disclosed or may disclose information relating to business information to be disclosed] in conjunction or (ii) the Disclosing Party (including, without limitation, computer programs, names and expertise of consultants, know-how, formulas, processes, ideas, inventions (whether patentable), schematics and other technical, business, financial, customer and product development forecasts, strategies and information), which to the extent previously, presently disclosed to the Receiving Party is hereinafter referred to as "Proprietary Information" of the Disclosing Party.

Notwithstanding the foregoing, nothing will be considered "Proprietary Information" of the Disclosing Party unless either (1) it is first disclosed in tangible form and conspicuously marked "Confidential," "Proprietary" or the like or (2) it is first disclosed in tangible form and orally identified as confidential at the time of disclosure and subsequently in tangible form conspicuously marked "Confidential" within 30 days of the original disclosure.

In consideration of the parties' discussions and any access to the Receiving Party may have to Proprietary Information of the Disclosing Party, the Receiving Party agrees as follows:

1. Use of Proprietary Information. The Receiving Party agrees to:
  - a. hold the Disclosing Party's Proprietary Information in confidence and to take reasonable precautions to protect such Proprietary Information (including, without limitation, the same precautions the Receiving Party employs with respect to other confidential materials),
  - b. to not divulge any such Proprietary Information or information derived there from to any third person (except as may be necessary to the conditions stated below),
  - c. not to make any use whatsoever at any time of any such Proprietary Information except to evaluate internally whether to enter into a currently contemplated agreement with the Disclosing Party,
  - d. not to copy or reverse engineer any such Proprietary Information.

Any employee or consultant given access to any such Proprietary Information must have a legitimate "need to know" and shall be similarly bound in writing. In the absence of any right or license, the Disclosing Party agrees that the foregoing clauses (a) through (d) shall not apply to any information that the Receiving Party can document (1) was developed through improper action or inaction by the Receiving Party or any affiliate, agent or employee) generally available to the public, or (2) was in its possession or knowledge prior to the date of disclosure.

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receipt from the Disclosing Party, or (3) was rightfully disclosed to the Receiving Party without restriction, provided the Receiving Party complies with any restrictions imposed by the Disclosing Party, or (4) was independently developed without use of any Proprietary Information of the Disclosing Party by employees of the Receiving Party who have had no access to such Proprietary Information. The Receiving Party may make disclosures required by court order. The Receiving Party uses reasonable efforts to limit disclosure and to obtain confidentially where appropriate. The Receiving Party has obtained a protective order and has allowed the Disclosing Party to participate in the proceedings.

2. Return of Proprietary Information. Immediately upon (a) the termination of this Agreement by either party not to enter into the agreement contemplated by paragraph 1, or (b) the termination of the Disclosing Party at any time (which will be effective if actually received or if the Disclosing Party has mailed first class postage prepaid to the Receiving Party), the Receiving Party shall return to the Disclosing Party all Proprietary Information of the Disclosing Party and all media containing any such Proprietary Information and any and all copies or reproductions of the same.

3. Disclosure. Except to the extent required by law, the Receiving Party shall not disclose the existence or subject matter of the negotiations or business relationship between the parties.

4. Miscellaneous. The Receiving Party acknowledges and agrees that the unique nature of the Disclosing Party's Proprietary Information, there can be no adequate remedy at law for any breach of its obligations hereunder, that any such breach by the Receiving Party or third parties to unfairly compete with the Disclosing Party would cause irreparable harm to the Disclosing Party, and therefore, that upon any such breach of the Agreement, the Disclosing Party shall be entitled to appropriate equitable relief, including, without limitation, whatever remedies it might have at law and to be indemnified by the Receiving Party for all loss or harm, including, without limitation, attorneys' fees, in connection with the enforcement of the Receiving Party's obligations hereunder or the unauthorized disclosure of any such Proprietary Information. The Receiving Party will notify the Disclosing Party in writing immediately upon the occurrence of any such unauthorized release of Proprietary Information of which it is aware. In the event that any of the provisions of this Agreement are held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that the remaining provisions shall otherwise remain in full force and effect. This Agreement shall be governed by the laws of the State of \_\_\_\_\_ (state name) without regard to the conflicts of law provisions thereof. This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the parties with respect to the subject matter hereof. The Receiving Party's failure to sign any action to enforce this Agreement shall be entitled to costs and attorneys' fees. Any modification of this Agreement will be binding upon either party unless made in writing and signed by a duly authorized representative of such party and no failure or delay in signing shall be deemed a waiver. This Agreement shall be construed as to its fair and equitable construction strictly for or against either party.

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In witness whereof, the parties have executed  
\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

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