

MUTUAL NONDISCLOSURE AGREEMENT

This is an agreement, effective _____ between _____ and _____ in which each undersigned party (as "Discloser") agrees to disclose, and each undersigned party (as "Recipient") agrees to receive, certain trade secrets of Discloser on the following terms and conditions:

1. Trade Secrets: Recipient understands and acknowledges that Discloser's trade secrets consist of information and materials that are valuable, not generally known by Discloser's competitors, and to the extent previously, presently or subsequently disclosed to the Recipient. Discloser's trade secrets include:
 - (a) Any and all information concerning Discloser's current, future, or proposed products or services, including, but not limited to, unpublished computer code (both source code and object code), computer printouts, algorithms, drawings, schematics, specifications, notebook entries, technical notes and graphs;
 - (b) Any and all information concerning Discloser's current, future, or proposed products or services, including, but not limited to, know-how, formulas, processes, ideas, inventions, agreements, financial analyses, product development plans, business plans, and customer information;
 - (c) Information and materials relating to Discloser's purchasing, accounting and marketing, including, but not limited to marketing plans, sales data, unpublished promotional material, cost and pricing information, customer lists.
 - (d) Information of the type described above which Discloser obtained from another party and which Discloser treats as confidential, whether or not owned or developed by Discloser.
2. Purpose of Disclosure: Recipient shall make use of Discloser's trade secrets only for the purpose of evaluating Discloser's products and business plans for furthering the parties' business relationship.
3. Nondisclosure: In consideration of the parties' discussions and any access of the Recipient to trade secrets of the Discloser, Recipient agrees that it will hold the trade secrets in confidence. Recipient will treat Discloser's trade secrets with the same degree of care and safeguards that it takes with its own trade secrets, but in no event less than a reasonable degree of care. Recipient agrees that, without Discloser's prior written consent, Recipient:
 - (a) will not disclose Discloser's trade secrets to any third party;
 - (b) will not make or permit to be made copies or other reproductions of Discloser's trade secrets;
 - (c) will not make any use whatsoever at any time of such trade secrets, except to evaluate internally its relationship with the Discloser;
 - (d) will not copy or reverse engineer any such trade secrets, and
 - (e) will not export or re-export, within the meaning of U.S. or other export control laws or regulations, any such trade secrets or product thereof.

Recipient will not disclose Discloser's trade secrets to Recipient's employees, agents and consultants unless:

- (1) they have a need to know the information in connection with their employment or consultant duties; and
 - (2) they personally agree in writing to be bound by the terms of this Agreement.
4. Return of Materials: Upon Discloser's request, Recipient shall promptly (within 30 days) return all original materials provided by Discloser and any copies, notes or other documents in Recipient's possession pertaining to Discloser's trade secrets.
 5. Exclusions: This agreement does not apply to any information which:
 - (a) was in Recipient's possession or was known to Recipient, without an obligation to keep it confidential, before such information was disclosed to Recipient by Discloser;
 - (b) is or becomes public knowledge through a source other than Recipient and through no fault of Recipient;
 - (c) is independently developed by or for Recipient;
 - (d) is or becomes lawfully available to Recipient from a source other than Discloser, or
 - (e) is disclosed by Recipient with Discloser's prior written approval.
 6. Term: This agreement applies only to disclosures made before the first anniversary of this Agreement. This Agreement and Recipient's duty to hold Discloser's trade secrets in confidence shall remain in effect until the above-described trade secrets are no longer trade secrets or until Discloser sends Recipient written notice releasing Recipient from this Agreement, whichever occurs first.
 7. No Rights Granted: Recipient understands and agrees that this Agreement:
 - (a) does not constitute a grant or an intention or commitment to grant any right, title or interest in Discloser's trade secrets to Recipient,
 - (b) does not constitute a requirement to disclose any trade secrets of the Discloser, and
 - (c) does not constitute any commitment for the parties to do business together.
 8. Warranty: Discloser warrants that it has the right to make the disclosures under this Agreement. No other warranties are made by Discloser under this Agreement. Any information disclosed under this Agreement is provided "as is."
 9. Injunctive Relief: Recipient recognizes and acknowledges that any breach or threatened breach of this Agreement by Recipient may cause Discloser irreparable harm for which monetary damages may be inadequate. Recipient agrees, therefore, that Discloser shall be entitled to an injunction to restrain Recipient from such breach or threatened breach. Nothing in this Agreement shall be construed as preventing

Discloser from pursuing any remedy at law or in equity for any breach or threatened breach of this Agreement.

10. Severance: In the event that any of the provisions of this Agreement shall be held to be illegal, invalid, or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.
11. Attorney Fees: If any legal action arises relating to this Agreement, the prevailing party shall be entitled to recover all court costs, expenses and reasonable attorney fees.
12. Modifications: All additions, modifications, or waivers to this Agreement must be made in writing and must be signed by both parties to be effective.
13. Completeness: This Agreement supersedes all prior discussions and writings, and constitutes the entire agreement between the parties with respect to the subject matter hereof.
14. No Agency: This Agreement does not create any agency or partnership relationship between the parties.
15. Applicable Law: This Agreement is made under, and shall be construed to, the laws of the State of California.

Discloser and Recipient:

(typed or printed name)	(signature)	Date
_____	_____	_____

Recipient and Discloser:

(typed or printed name)	(signature)	Date
_____	_____	_____