

SAMPLE MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (**Agreement**) is entered into effective _____, 200_ (the **Effective Date**) between:

[Client Name] (ClientName), a [state] [form of business entity] with its main office at [address], and

[Company name] (Company), a _____ with its main office at _____.

ClientName and Company are referred to each as a **Party** and collectively as the **Parties**.

1. INTRODUCTION

ClientName and Company wish to enter into certain business discussions. These discussions may require the Parties to receive one another's Confidential Information. The Parties enter into this Agreement to protect that Confidential Information.

2. DEFINITIONS

Confidential Documentation means a document or other item that contains Confidential Information.

Confidential Information means any non-public information of or about a Party that (a) is marked "confidential" or "proprietary" when disclosed in written or other visible form, or is identified as confidential or proprietary at the time of oral disclosure, and (b) is received by the other Party.

Discloser means a Party whose Confidential Information is received by the other Party.

Recipient means a Party that receives the other Party's Confidential Information.

3. RECIPIENT'S OBLIGATIONS AND EXCEPTIONS TO OBLIGATIONS

3.1 Recipient will maintain Confidential Information in confidence by taking such measures as it takes to protect its own Confidential Information of like kind, and in any event a reasonable level of care. Recipient will not disclose Confidential Information to any third party without express written authorization from Discloser, except that Recipient may disclose Confidential Information (a) to employees having a need to know the Confidential Information and (b) to contractors that have agreed in writing to the obligations of Recipient under this Agreement.

3.2 Recipient will use Confidential Information solely to further Recipient's business relationship with Discloser.

3.3 Recipient will return Confidential Information and Confidential Documentation, and all copies thereof in Recipient's possession, to Discloser upon demand.

3.4 The obligations set forth in Sections 3.1 through 3.3 will not apply if, but only to the extent that, Confidential Information is (a) already in Recipient's possession without obligation of confidentiality, (b) obtained from a third party without obligation of confidentiality, (c) independently developed by Recipient, or (d) required to be disclosed by applicable law or governmental order, in which case Recipient will, as promptly as possible and before making the disclosure, notify Discloser of its intention to make the disclosure. The obligations set forth in Sections 3.1 through 3.3 will expire with respect to each item of Confidential Information and Confidential Documentation five years after the applicable Confidential Information is disclosed.

3.5 Nothing in this Agreement grants either Party any license or right to the other Party's patents, copyrights, trademarks or other intellectual property.

4. GENERAL

4.1 Discloser warrants that it has the right to disclose its Confidential Information to Recipient. Discloser will indemnify and hold Recipient harmless against all claims, damages and expenses, including reasonable attorneys' fees, resulting from breach of the warranty set forth in the preceding sentence. **OTHERWISE, DISCLOSER PROVIDES ALL CONFIDENTIAL INFORMATION AND CONFIDENTIAL DOCUMENTATION AS IS, WITHOUT ANY WARRANTY OF ANY KIND. DISCLOSER MAKES NO WARRANTIES,**

EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- 4.2 Nothing in this Agreement (a) restricts the right of a Party to develop, procure or market products or services which may be competitive with those offered by the other Party so long as there is no unauthorized use of the Confidential Information of the other Party, (b) obligates a Party to obtain any products or services from the other Party, (c) prevents a Party from entering into similar agreements with other companies or individuals, or (d) obligates either Party to disclose any information to the other Party.
- 4.3 This Agreement does not create any agency or partnership relationship.
- 4.4 This Agreement will be interpreted in accordance with and governed by the laws of the State of California, excluding its conflict of laws provisions. The Parties consent to the exclusive jurisdiction of state and federal courts in the City and County of San Francisco, California and expressly waive any objection or defense based upon lack of personal jurisdiction or venue in connection with any dispute arising out of or relating to this Agreement or its breach.
- 4.5 This Agreement contains the entire understanding between the Parties regarding its subject matter. Any additions or modifications to this Agreement must be made in writing and must be signed by an authorized representative of each Party.
- 4.6 A waiver of any provision of this Agreement must be in writing and must be signed by an authorized representative of the Party waiving that provision. Any waiver of or failure to enforce any provision will not preclude either Party from enforcing that or any other provision of this Agreement thereafter.
- 4.7 The Parties acknowledge that a breach of this Agreement may give rise to irreparable injury for which damages are not adequate compensation. Accordingly, Discloser may seek, without obligation to post any bond, injunctive relief against a breach or threatened breach of this Agreement in addition to any other remedies that Discloser may have.
- 4.8 If a suit, action, or other proceeding is instituted in connection with any controversy arising out of or related to this Agreement, the prevailing party will be entitled to an award of reasonable attorneys' fees and costs.
- 4.9 If a court or other tribunal of competent jurisdiction holds that any of the provisions of this Agreement are illegal, invalid, or unenforceable, those provisions will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.
- 4.10 The Parties may execute this Agreement in one or more original or facsimile counterparts, each of which will be deemed an original, but all of which together will constitute a single agreement.

The Parties have read this Agreement, understand it, and agree to it. By signing below, each individual warrants that he or she has full power and authority to bind his or her Party to this Agreement.

[Client Name] (ClientName)

[Company name] (Company)

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

This is a sample agreement provided by Dana H. Shultz, Attorney at Law (510 547-0545, dana@danashultz.com). It is not intended as, and should not be considered, legal advice. The author does not warrant that it is suitable for any company or transaction. If you need advice regarding a nondisclosure agreement or any other legal matter, please contact an attorney directly.