

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("Agreement") is made and entered into as of _____ by and between _____ (the "Company" or "Disclosing Party") and having principal offices at _____, and _____ ("Recipient").

For and in consideration of the disclosures to be made hereunder, and for other good and valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, the parties agree as follows:

1. In connection with discussions regarding the Purpose (defined below), the Disclosing Party may disclose Proprietary Information (defined below) to the Recipient. Recipient acknowledges and agrees that the Proprietary Information of Disclosing Party is the sole and exclusive property of Disclosing Party (or a third party providing such information to Disclosing Party) and that Disclosing Party owns all worldwide copyrights, patents, trade secret rights, confidential and proprietary information rights, and all other property rights therein.

2. Recipient shall use the Proprietary Information solely for the Purpose and for no other purpose whatsoever. The disclosure of the Proprietary Information of Disclosing Party to Recipient does not confer upon Recipient any license, interest, rights or residuals of any kind in or to the Proprietary Information.

3. Recipient will hold in confidence and not disclose the Proprietary Information or any portion thereof, except as permitted herein. Recipient may disclose the Proprietary Information only to those directors, officers, and employees (collectively, to the extent Recipient provides Proprietary Information to the foregoing, its "Representatives") to the extent, and only to the extent, Recipient determines such persons have a need to know such information for the Purpose; provided each such Representative shall agree to comply with the terms and conditions of this Agreement concerning confidentiality and limitation on use. Recipient will be responsible for any disclosure or use of Proprietary Information by any of its Representative in breach of the terms and conditions of this Agreement. Recipient may also disclose Proprietary Information as required by law, regulation, or other legal process; provided, however that Recipient will provide as much advance notice to Disclosing Party as reasonably possible prior to such disclosure.

4. Recipient acknowledges that its obligations under this Agreement with regards to the Trade Secrets (defined below) of Disclosing Party shall remain in effect for as long as such information shall remain a trade secret under applicable law or shall be protected by other intellectual property rights. Recipient acknowledges that its obligations under this Agreement with regards to the Proprietary Information (defined below) of Disclosing Party (other than such information which constitutes Trade Secrets) shall remain in effect for four (4) years after the execution of this Agreement. The term "Proprietary Information" does not include information that Recipient can prove with written evidence: (a) was already known to Recipient, without an obligation to the Disclosing Party

(which is known by Recipient) to keep it confidential, at the time of its receipt from Disclosing Party; (b) was received by Recipient from a third party not known by Recipient to have an obligation to Disclosing Party to keep such information confidential; (c) was publicly known at the time of its receipt by Recipient or has become publicly known other than by a breach of this Agreement by Recipient; or (d) was independently developed by Recipient or its Representatives.

5. Recipient agrees to return to Disclosing Party, upon written request by Disclosing Party, the Proprietary Information and all materials relating thereto, disclosed to Recipient by Disclosing Party.

6. Recipient understands and acknowledges that neither Disclosing Party nor any of Disclosing Party's representatives make any representation, warranty or condition, express or implied, as to the accuracy or completeness of the Proprietary Information hereby. Recipient agrees that neither Disclosing Party nor any of Disclosing Party's representatives shall have any liability to Recipient relating to or resulting from the use of the Proprietary Information or any errors therein or omissions therefrom, except as may be provided in a subsequent written agreement.

7. Recipient understands and agrees that no contract or agreement providing for any transaction involving the Disclosing Party shall be deemed to exist between Recipient and Disclosing Party unless and until a final definitive agreement has been executed and delivered.

8. Recipient acknowledges that any breach of the covenants contained in this Agreement may cause Disclosing Party immediate and irreparable harm, and remedies at law for any such breach may be inadequate. Accordingly, Disclosing Party shall be entitled to seek to obtain a restraining order, injunction, or other similar remedy (without any requirement to post bond as a condition of such relief) for any breach of this Agreement by Recipient. Nothing contained herein shall be construed as limiting Disclosing Party's right to any other remedies at law including the recovery of damages for breach of this Agreement. In the event of any litigation regarding or arising from this Agreement, the prevailing party, as determined in a final non-appealable order by a court of competent jurisdiction, shall be entitled to recover its reasonable expenses, attorneys' fees and costs incurred therein or in the enforcement or collection of any judgment or award rendered therein.

9. As used herein, "Confidential Information" means information, other than Trade Secrets, that is provided to Recipient by or on behalf of Disclosing Party, and is information that is of value to its owner and is treated as confidential. As used herein, "Trade Secrets" means information constituting a trade secret under applicable law that is provided to Recipient by or on behalf of Disclosing Party. As used herein, "Proprietary Information" means Trade Secrets and Confidential Information. The term "Proprietary Information" also includes the fact that discussions or negotiations are taking place concerning a potential transaction or any of the terms, conditions or other facts with respect to the potential transaction, including the status thereof. The Disclosing Party will not disclose, directly or indirectly, any of the information described in the preceding sentence, except to its Representatives or as required by law.

10. THE RECEIVING PARTY ACKNOWLEDGES AND AGREES THAT NEITHER THE DISCLOSING PARTY OR THE DISCLOSING PARTY'S OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS OR CONTROLLING PERSONS (1) MAKE ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY PROPRIETARY INFORMATION, OR (2) HAVE ANY OBLIGATION TO FURNISH ANY PROPRIETARY INFORMATION, AND THE RECEIVING PARTY AGREES THAT NONE OF SUCH PERSONS WILL HAVE ANY LIABILITY TO THE RECEIVING PARTY RELATING TO OR ARISING FROM THE RECEIVING PARTY'S USE OF ANY PROPRIETARY INFORMATION.

11. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and heirs. A waiver by either of the parties hereto of any breach by the other party of any of the terms, provisions or conditions of this Agreement or the acquiescence of either party hereto in any act (whether commission or omission) which but for such acquiescence would be a breach as aforesaid, shall not

constitute a general waiver of such term, provision or condition of any subsequent act contrary thereto. This Agreement represents the entire understanding between the parties with respect to the subject matter hereof and supersedes (i) all other written or oral agreements heretofore made by or on behalf of Disclosing Party or Recipient with respect to the subject matter hereof and (ii) any statements in the Proprietary Information concerning confidentiality and limitation on use. This Agreement may be changed only by agreements in writing signed by the authorized representatives of the parties. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect.

12. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute the same instrument. Each party agrees to be bound by its own telecopied or facsimiled signature, and agrees that it accepts the telecopied or facsimiled signature of the other party hereto. No Party may assign this Agreement without the prior written consent of the other Parties, except that Disclosing Party may assign this Agreement to an affiliate. Any assignment in violation of this paragraph shall be void *ab initio* and of no force or effect.

13. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of _____, without giving effect to its conflict of laws. Any action arising out of or related to this Agreement shall be heard exclusively by the federal and state courts sitting in _____ County, _____, and each party irrevocably consents to the personal jurisdiction of such courts for such purpose.

For the purpose of this Agreement, "Purpose" means: design and development of custom software.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the date first above written.

Company: _____
Signature: _____
Title: _____
Name: _____

Recipient: _____
Signature: _____
Title: _____
Name: _____