

MUTUAL NON-DISCLOSURE AGREEMENT

THIS NON-DISCLOSURE AGREEMENT ("Agreement") is made this ___ day of _____, 200_ (the "Effective Date"), by and between _____ ("Company"), a _____ having its principal place of business at _____ and [INSERT YOUR ORGANIZATION'S NAME] ("Client"), a _____ having its principal place of business at _____.

RECITALS

WHEREAS, Client and Company mutually desire to engage or continue to engage in discussions concerning a possible business relationship for [describe solicited services, such as - *development and/or licensing or purchase of software products or services*] ("Proposed Services"), in furtherance of those discussions may find or may have found it necessary and advantageous to disclose to each other certain confidential information; and

WHEREAS, Company and Client consider such documents, records and information pertaining to consumers, products, technology, and business confidential and do not want them disclosed to any third parties;

NOW, THEREFORE IN CONSIDERATION of the mutual covenants and conditions herein contained, the parties agree as follows:

1. Both parties agree they shall hold in confidence and shall not disclose any Confidential Information or Consumer Information (as defined in Paragraphs 2 and 3 below and collectively referred to as "Confidential Information") to third parties without the prior written authorization from a corporate officer of the disclosing party nor use such Confidential Information for any purpose other than as contemplated by this Agreement. This obligation, however, shall not extend to any of the following and the party disclosing Confidential Information pursuant to any of the following bears the burden of proof:

- A. Confidential Information which at the time of disclosure was in the public domain;
- B. Confidential Information which after generation or disclosure is published or otherwise becomes part of the public domain through no fault of the receiving party (but only after and to the extent that it is published or otherwise becomes part of the public domain);
- C. Confidential Information which the receiving party can show was in its possession at the time of generation or disclosure and was not acquired, directly or indirectly, from the other party or from a third party under an obligation of confidence;
- D. Confidential Information which the receiving party received after the time of generation or disclosure hereunder, from a third party who did not require that party to hold it in confidence and who did not acquire it, directly or indirectly, from the other party under an obligation of confidence; and
- E. Confidential Information which the receiving party can show was developed independently without benefit of, or based on information generated hereunder or made available by the other party.

2. "Confidential Information" shall be deemed to include "Consumer Information" as defined below, as well as 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 strategic marketing, development and/or financial plans, inventions, 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 the Disclosing Party.

3. A. "Consumer Information" shall include, but shall not be limited to, all information that identifies a consumer and information from which a consumer's identity can be ascertained, either from the information itself or by combining the information with information from other sources. Both parties acknowledge that the privacy and security of Consumer Information may be regulated by various federal and state laws and regulations. Both parties represent and warrant that: (a) they shall comply with any applicable laws and regulations regarding the privacy and security of Consumer Information; (b) they shall maintain the confidentiality of Consumer Information; (c) they shall not use Consumer Information except as necessary to fulfill their obligations under this Agreement; (d) they shall not disclose Consumer Information to third parties except at the specific written direction of the disclosing party; (e) they shall maintain adequate physical, technical and administrative safeguards to protect Consumer Information from unauthorized access; and (f) they shall immediately notify the disclosing party of any actual or suspected breach of the confidentiality of Consumer Information. Both parties agree they shall indemnify, defend, and hold the other harmless from and against any loss, claim, or liability each may suffer as a result of the other's breach of these representations and warranties regarding Consumer Information.

B. In case any proceeding shall be instituted involving any indemnified party in respect of which indemnity may be sought pursuant to this Section, such Indemnified Party shall promptly notify the indemnifying party in writing, who, upon request of the indemnified party, shall retain legal counsel reasonably satisfactory to the indemnified party to represent the indemnified party and shall pay the reasonable fees and disbursements of such counsel related to such proceeding. In any such proceeding, the indemnified party shall have the right to retain their own counsel, but the reasonable fees and expenses of such counsel shall be at the expense of the Indemnified Party unless: (i) indemnified party and the indemnifying party shall have mutually agreed to the retention of such counsel, or (ii) the named parties to any such proceeding (including any impleaded parties) include both the indemnified and indemnifying parties and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them.

4. Each party shall exercise such care in the protection of the Confidential Information of the other as it uses to protect its own Confidential Information, but in any event will use commercially reasonable precautions.

5. The rights and obligations of the Agreement shall be binding upon the heirs, assigns and successors of each party; provided, however, that the parties shall remain bound by the confidentiality provisions hereof with respect to any Confidential Information which is not capable of being returned or destroyed (i.e., knowledge obtained by representatives of Client or the Company). Company and Client shall have a limited right to use the Confidential Information of the other solely for the purposes of furthering the discussion surrounding the Proposed Services. No other rights in the Confidential Information, whether implied or expressed, are conferred by execution of this Agreement.

6. At the termination of this Agreement, both parties shall return, upon request, all of the documents and other information, including any and all copies in whatever form, provided in connection with this examination. Neither party shall be obligated to search for or destroy materials located on backup tapes or other archive media; however, if such materials are ever restored to a format that is readily accessible by either party, that party shall destroy such material.

7. If either party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information supplied to them by the other party ("Disclosing Party") pursuant to this Agreement, that party (the "Receiving Party") shall provide the Disclosing Party (unless prohibited by law) with prompt notice of such request(s) so that the Disclosing Party may seek an appropriate protective order and/or waive compliance with the provisions of this Agreement. Receiving Party agrees to cooperate with Disclosing Party, at Disclosing Party's expense, in obtaining such protective order. If the Disclosing Party does not obtain such protective order or provide a waiver of this obligation within a reasonable time after such notice, the Receiving Party may disclose such Confidential Information pursuant to the request without liability hereunder, provided that the Receiving Party has complied with the notice provisions of this

Agreement, and provided further that the Receiving Party has received an opinion of counsel that concludes that such disclosure is legally required.

8. The parties agree that any breach of this Agreement can and will result in irreparable injury to the non-breaching party and that the non-breaching party shall be entitled to injunctive relief in the nature of a temporary restraining order, preliminary injunction, permanent injunction or whatever relief a court of competent jurisdiction may deem appropriate, prohibiting and otherwise remedying any breach of this Agreement.

9. Each party understands and acknowledges that neither party nor its affiliates, or their respective officers, directors, employees, agents or representatives make any representation or warranty, express or implied, as to the accuracy or completeness of the information disclosed pursuant to this Agreement. Neither party shall have any liability to the other party or any of its directors, officers, employees and representatives resulting from the use of or reliance on Confidential Information disclosed pursuant to this Agreement.

10. The restrictions and obligations set forth herein on the use and disclosure of Confidential Information of the other party shall continue in full force and effect and shall only end, if at all, when the Confidential Information becomes public by one or more of the means identified in Section 1.

11. Both parties agree that neither the holding of discussions between them nor the furnishing of Confidential Information shall be construed as an obligation on the part of either party to refrain from engaging at any time in any business similar or dissimilar to the business matters discussed by the parties providing that neither improperly uses Confidential Information disclosed to them pursuant to this Agreement.

12. The parties agree that this Agreement does not create a franchise, partnership or joint venture.

13. Every provision of this Agreement shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Agreement so construed is held by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, such provision shall be deemed severed from this Agreement, and all other provisions shall remain in full force and effect.

14. This Agreement shall in all respects be governed by and interpreted, construed and enforced in accordance with the laws of the United States of America and of the state of Minnesota. Any action arising out of or relating to this Agreement, its performance, enforcement or breach will be venued in a state or federal court situated within the state of Minnesota, and both parties hereby irrevocably consent and submit themselves to the personal jurisdiction of said courts for that purpose.

15. This Agreement sets forth the entire agreement and understanding of the parties regarding the subject matter hereof and supersedes all prior representations, statements, proposals, negotiations, discussions, understandings and/or agreements regarding the same subject matter. This Agreement may not be modified or amended except by a writing signed by both parties.

16. This Agreement may be executed in two (2) or more counter-parts, each of which shall be deemed to be an original and which together, shall constitute one and the same Agreement. Unless otherwise provided in this Agreement, this Agreement shall become effective on the Effective Date.

IN WITNESS HEREOF, the parties hereto by their duly authorized representatives have executed this Agreement as of the Effective Date written above.

By _____
Signature

Printed Name

Title

By _____
Signature

Printed Name

Title