

**PROPRIETARY INFORMATION AGREEMENT
(Mutual Disclosure of Information)**

This Proprietary Information Agreement ("Agreement") is entered into effective as of this _____ day of _____, _____ (the "Effective Date"), by and between _____, a corporation organized and existing under the laws of the State of California and having a place of business at _____ and _____, (identify name of individual or entity) and having a place of business at _____.

WHEREAS, the parties are discussing _____

_____ (the "Proposed Transaction") and said discussions necessitate an exchange of information considered confidential and proprietary by each of them.

NOW, THEREFORE, the parties hereby agree as follows:

1. "Proprietary Information" means all information, including, but not limited to, proprietary, technical, developmental, operating, financial, performance, cost, know-how, process and prospect information, and all samples, models and prototypes containing or disclosing such information. The term "Proprietary Information" shall also include: (i) the fact that Proprietary Information was made available, all discussions regarding the Proposed Transaction and any of the terms, conditions or other facts related to the Proposed Transaction and (ii) all notes, analysis, compilations, studies and other documents which contain, reflect or are based upon Proprietary Information.

2. The recipient of Proprietary Information disclosed under this Agreement (the "Receiving Party") shall: (i) treat such information with the same degree of care (provided that such is at least a reasonable degree of care) to avoid disclosure to third parties as it normally uses to protect its own confidential or proprietary information and (ii) use the Proprietary Information only for the purposes of evaluating the Proposed Transaction unless otherwise agreed to in writing by the party disclosing the Proprietary Information (the "Disclosing Party").

Without limiting the generality of the foregoing:

- (a) The Receiving Party shall disclose Proprietary Information only to those of the Receiving Party's employees, directors, representatives, advisors and agents who need access to such Proprietary Information for the purpose of evaluating the Proposed Transaction and to no one else;
- (b) The Receiving Party shall assure that all persons who receive any of the Proprietary Information from it will abide by the terms and conditions of this Agreement as if such persons were parties hereto; and,
- (c) The Receiving Party acknowledges that any unauthorized disclosure or use of any Proprietary Information shall be considered a material breach of this Agreement and may result in irreparable harm to the Disclosing Party. In addition to the right to recover monetary damages for such a breach, the Disclosing Party shall have the right to seek injunctive relief from a court of competent jurisdiction.

3. There shall be no liability for breach of the restrictions contained in Section 2 on use and disclosure of Proprietary Information:

- (a) If such information was already in the public domain or became publicly available through no breach of this Agreement by the Receiving Party;
- (b) If the information was rightfully in the Receiving Party's possession without obligation of confidence prior to receipt from the Disclosing Party or if the Receiving Party lawfully obtained said information from a third party who was under no obligation of confidence;
- (c) If such information was independently developed by employees of the Receiving Party without use of the Disclosing Party's Proprietary Information;
- (d) If such information is required to be disclosed by the Receiving Party to comply with a judicial order or decree, or to comply with applicable law; provided, however, that the Receiving Party agrees to give prior written notice of such disclosure to the Disclosing Party and to take any reasonable and lawful actions available to it to avoid and/or minimize the extent of such disclosure; or,
- (e) If such information is disclosed with the prior written consent of the Disclosing Party.

4. The Receiving Party shall not, directly or indirectly, at any time commencing on the date of this Agreement and continuing for a period of twelve (12) months after termination of this Agreement:

- (a) solicit, induce or influence or attempt to solicit, induce or influence any employee, agent, contractor, or referral source of Disclosing Party to terminate, reduce the extent of, discourage the development of or otherwise harm its employment or other relationship with Disclosing Party or assist any other party in such solicitation; or
- (b) solicit or attempt to solicit business from any client of the Disclosing Party on behalf of the Receiving Party or any other person or entity or in any fashion direct business or opportunities with a client away from the Disclosing Party.

For purposes of this Paragraph 4, an employee, agent, contractor or referral source shall be deemed to include any such employee, agent, contractor, or referral source as of the date of the termination of this Agreement or any person who was an employee, agent, contractor, lender or mortgage broker at any time within six (6) months prior to termination of this Agreement.

5. This Agreement shall be effective as of the Effective Date and may be terminated by either party upon thirty (30) days' prior written notice to the other party. The confidentiality and use restrictions with respect to the Proprietary Information disclosed prior to termination shall survive for a period of two (2) years after the termination.

6. Upon any termination of this Agreement in accordance with its terms, each party will, within a reasonable period of time after receipt of written request from the other party hereto, return all Proprietary Information and copies thereof received from the other party under this Agreement and destroy all other Proprietary Information based thereon, except a single archival copy of all Proprietary Information may be retained by the Receiving Party's legal counsel for dispute resolution purposes only.

7. The Receiving Party acknowledges and understands that no warranties of any kind are given by the Disclosing Party with respect to the accuracy or completeness of the Proprietary Information.

8. Proprietary Information shall remain the sole and exclusive property of the Disclosing Party. Nothing in this Agreement shall be construed as granting to the Receiving Party any right, title or interest in or to any patent, trademark, license, copyright or other right of the Disclosing Party.

9. No waiver of any provision of this Agreement, in any one or more instances, shall be deemed to be, or shall constitute, a waiver of any other provision hereof, nor shall such waiver constitute a waiver in any other instance. No waiver shall be binding unless executed in writing by the party making the waiver.

