

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (“Agreement”) is made, entered into, and effective as of \_\_\_\_\_, 20\_\_\_, by and between \_\_\_\_\_ (“Disclosing Party”) and \_\_\_\_\_ (“Receiving Party” and, together with Disclosing Party, the “parties”).

For valuable consideration including the establishment of a confidential relationship between the parties, the parties hereto hereby agree as follows:

### AGREEMENT

1. Non-Disclosure by RECEIVING PARTY. RECEIVING PARTY agrees that during and after the discussions with DISCLOSING PARTY, RECEIVING PARTY will not, directly or indirectly, disclose to any third party, or use or authorize any third party to use, any information relating to the business or interests of DISCLOSING PARTY that RECEIVING PARTY knows or has reason to know is regarded as confidential and valuable to DISCLOSING PARTY. RECEIVING PARTY acknowledges that such confidential information constitutes “trade secrets” of DISCLOSING PARTY as set forth in Section 3126 of the California Civil Code which shall include, without limitation, all methods, processes, formulae, compositions, inventions, machines, computer programs, research projects, customer lists, pricing data, sources of supply, marketing, production, merchandising systems or plans associated with DISCLOSING PARTY’S business and all information delivered to DISCLOSING PARTY or RECEIVING PARTY in confidence by DISCLOSING PARTY’S clients and customers. RECEIVING PARTY agrees to use its best efforts and the utmost diligence to guard and protect such trade secrets and confidential information. The parties acknowledge and agree that in determining whether information is confidential information and/or a trade secret (as defined herein), the fact that such information is not marked “confidential” shall not adversely affect the confidentiality or trade secret status of the same. RECEIVING PARTY agrees that if its relationship with DISCLOSING PARTY is terminated for any reason, RECEIVING PARTY will return to DISCLOSING PARTY all records and papers and all matter of whatever nature which bears secret or confidential information of DISCLOSING PARTY.

2. Injunctive Relief by DISCLOSING PARTY. In the event of a breach or threatened breach of Section 1 of this Agreement, DISCLOSING PARTY shall be entitled to an injunction restraining such breach, without the requirement of posting bond; but nothing here shall be construed as prohibiting DISCLOSING PARTY from pursuing any other remedy available to it as a result of such breach or threatened breach.

3. Non-Disclosure by DISCLOSING PARTY. DISCLOSING PARTY agrees that during and after the discussions with RECEIVING PARTY, DISCLOSING PARTY will not, directly or indirectly, disclose to any third party, or use or authorize any third party to use, any information relating to the business or interests of RECEIVING PARTY that DISCLOSING PARTY knows or has reason to know is regarded as confidential and valuable to RECEIVING PARTY. DISCLOSING PARTY acknowledges that such confidential information constitutes “trade secrets”

of RECEIVING PARTY as set forth in Section 3126 of the California Civil Code which shall include, without limitation, all methods, processes, formulae, compositions, inventions, machines, computer programs, research projects, customer lists, pricing data, sources of supply, marketing, production, merchandising systems or plans associated with RECEIVING PARTY'S business and all information delivered to DISCLOSING PARTY or RECEIVING PARTY in confidence by RECEIVING PARTY'S clients and customers. DISCLOSING PARTY agrees to use its best efforts and the utmost diligence to guard and protect such trade secrets and confidential information. The parties acknowledge and agree that in determining whether information is confidential information and/or a trade secret (as defined herein), the fact that such information is not marked "confidential" shall not adversely affect the confidentiality or trade secret status of the same. DISCLOSING PARTY agrees that if its relationship with RECEIVING PARTY is terminated for any reason, DISCLOSING PARTY will return to RECEIVING PARTY all records and papers and all matter of whatever nature which bears secret or confidential information of RECEIVING PARTY.

4. Injunctive Relief by RECEIVING PARTY. In the event of a breach or threatened breach of Section 3 of this Agreement, RECEIVING PARTY shall be entitled to an injunction restraining such breach, without the requirement of posting bond; but nothing here shall be construed as prohibiting RECEIVING PARTY from pursuing any other remedy available to it as a result of such breach or threatened breach.

5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto, as well as their respective devisees, legatees, heirs, legal representatives, successors and assigns.

6. Arbitration. If a dispute or claim shall arise between the parties with respect to any of the terms or provisions of this Agreement, or with respect to the performance by any of the parties under this Agreement, then the parties agree that the dispute shall be arbitrated in Orange County, California, before a single arbitrator, in accordance with the rules of either the American Arbitration Association ("AAA") or Judicial Arbitration and Mediation Services, Inc./Endispute ("JAMS/Endispute"). The selection between AAA and JAMS/Endispute rules shall be made by the claimant first demanding arbitration. The arbitrator shall have no power to alter or modify any express provisions of this Agreement or to render any award which by its terms affects any such alteration or modification. The parties to the arbitration may agree in writing to use different rules and/or arbitrator(s). In all other respects, the arbitration shall be conducted in accordance with Part III, Title 9 of the California Code of Civil Procedure. The parties agree that the judgment award rendered by the arbitrator shall be considered binding and may be entered in any court having jurisdiction as stated in Paragraph 9 of this Agreement. The provisions of this Paragraph shall survive the termination of this Agreement.

7. Notices. Any notice, request, demand, or other communication given pursuant to the terms of this Agreement shall be deemed given upon delivery, if hand delivered, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, and sent certified or registered mail, return receipt requested, correctly addressed to the addresses of the parties indicated below or at such other address as such party shall in writing have advised the other party.

To DISCLOSING PARTY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile (\_\_\_\_) \_\_\_\_\_  
Attn: \_\_\_\_\_

To RECEIVING PARTY:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Facsimile (\_\_\_\_) \_\_\_\_\_  
Attn: \_\_\_\_\_

8. Assignment. Subject to all other provisions of this Agreement, any attempt to assign or transfer this Agreement or any of the rights conferred hereby, by judicial process or otherwise, to any person, firm, company, or corporation without the prior written consent of the other party except for a transfer of either party's rights to a subsidiary or affiliate of said party, shall be invalid, and may, at the option of such other party, result in an incurable event of default resulting in termination of this Agreement and all rights hereby conferred.

9. Choice of Law. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of California including all matters of construction, validity, performance, and enforcement and without giving effect to the principles of conflict of laws.

10. Entire Agreement. Except as provided herein, this Agreement, including exhibits, contains the entire agreement of the parties, and supersedes all existing negotiations, representations, or agreements and all other oral, written, or other communications between them concerning the subject matter of this Agreement. There are no representations, agreements, arrangements, or understandings, oral or written, between and among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.

11. Severability. If any provision of this Agreement is unenforceable, invalid, or violates applicable law, such provision shall be deemed stricken and shall not affect the enforceability of any other provisions of this Agreement.

12. Modification. No change, modification, addition, or amendment to this Agreement shall be valid unless in writing and signed by all parties hereto.

13. Attorneys' Fees. If a dispute should arise between the parties hereunder, the prevailing party shall be reimbursed by the nonprevailing party for all reasonable attorney's fees and costs (including all arbitration costs) incurred by the prevailing party in resolving such dispute.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

DISCLOSING PARTY

RECEIVING PARTY

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_