

Nondisclosure Agreement

This Nondisclosure Agreement (the "AGREEMENT") is made and entered into on the _____ day of _____, 2010, by and between **JOHN SMITH** ("INVENTOR") and _____ ("RECIPIENT").

WHEREAS, INVENTOR may provide certain confidential and proprietary information and materials in connection with discussions between RECIPIENT and INVENTOR regarding possible forthcoming products, marketing and business plans, joint development efforts or other business arrangements between RECIPIENT and INVENTOR which INVENTOR seeks to keep confidential; and

WHEREAS, RECIPIENT may provide certain confidential and proprietary information and materials in connection with discussions between RECIPIENT and INVENTOR regarding possible forthcoming products, marketing and business plans, joint development efforts or other business arrangements between INVENTOR and RECIPIENT which RECIPIENT seeks to keep confidential;

NOW THEREFORE, for and in consideration of the mutual obligations contained herein and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

- [1] Each party hereby agrees to treat confidentially and not to disclose any non-public or proprietary information (herein collectively referred to as the "CONFIDENTIAL INFORMATION") furnished by either party to the other, whether such information is conveyed directly or on a party's behalf. For purposes of this AGREEMENT, the term CONFIDENTIAL INFORMATION shall mean
 - all written, graphic or electromagnetic information conveyed whether or not it is marked by a party as confidential. The term CONFIDENTIAL INFORMATION also includes information conveyed orally unless the party disclosing the oral information notifies the other party in writing that such information is not confidential and is not subject to this AGREEMENT.
- [2] The term CONFIDENTIAL INFORMATION does not include information that
 - (a) is or becomes generally available to the public through no fault of the receiving party,
 - (b) was known to the receiving party prior to its disclosure hereunder, as demonstrated by files in existence at the time of the disclosure,
 - (c) becomes known to the receiving party, without restriction, from a source other than the disclosing party, without breach of this AGREEMENT by the receiving party and otherwise not in violation of the disclosing party's rights, or
 - (d) is explicitly approved for release by written authorization of the disclosing party.
- [3] Each party shall use the CONFIDENTIAL INFORMATION of the other party only for the purpose of discussions between INVENTOR and RECIPIENT regarding joint development of products involving said CONFIDENTIAL INFORMATION. Each party shall maintain in confidence the CONFIDENTIAL INFORMATION of the other, protecting it from unauthorized use or disclosure with the same degree of care, but no less than a reasonable degree of care, as the party uses to protect its own information of a similar nature. If a party is required by Judicial or administrative process to disclose CONFIDENTIAL INFORMATION of the other, the party so required shall promptly notify the other so that the latter has a reasonable opportunity to oppose such process. Each party shall promptly notify the other of any actual or suspected misuse or unauthorized disclosure of the other's CONFIDENTIAL INFORMATION.
- [4] In addition, without the prior written consent of the other party, neither party shall disclose to any person, and each party will direct its directors, officers, employees, representatives and agents not to disclose to any person, either the fact that discussions or negotiations are taking place concerning a possible transaction or the status thereof; provided that if, in the opinion of a party's counsel, disclosure is required by law, such party may make such disclosure after notifying the other party of the reasons for and the nature of the proposed disclosure, but then only after delivering to such other party a copy of the proposed disclosure and giving such party an opportunity to make comments and changes thereon to the end that such publicity shall be reasonably satisfactory to the other party. The term "person" as used herein shall include, without limitation, any corporation, company, partnership and individual.
- [5] Except as may otherwise be expressly set forth in a subsequent definitive statement between the parties hereto, neither party nor any representative of such party shall be deemed to make or have made any representation or warranty as to the accuracy or completeness of any CONFIDENTIAL INFORMATION furnished hereunder.
- [6] If either party determines that it does not wish to enter into any transaction with the other, such party will promptly advise the other party of this fact. In such case or promptly upon the other party's

request, each party will either destroy or deliver to the other party any CONFIDENTIAL INFORMATION furnished to it, whether furnished before or after the date of this AGREEMENT, without retaining any copies or extracts thereof.

- [7] It is understood and agreed that money damages would not be a sufficient remedy for any breach of this AGREEMENT by a party or its employees, officers, directors, representatives or agents and that the non-breaching party shall be entitled to specific performance as a remedy for any such breach. Such remedy shall not be deemed the exclusive remedy for any such breach of this AGREEMENT but shall be in addition to all other remedies available at law or in equity to the non-breaching party.
- [8] It is further understood and agreed that no failure or delay by either party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- [9] The parties have from time to time, prior to the execution of this AGREEMENT, exchanged information considered CONFIDENTIAL INFORMATION. Such CONFIDENTIAL INFORMATION supplied to the receiving party by the other party prior to the execution of this AGREEMENT shall be considered in the same manner and be subject to the same treatment as the CONFIDENTIAL INFORMATION made available after the execution of this AGREEMENT, and it is understood that this AGREEMENT is not intended to, and does not, obligate either party to enter into any further agreements or to proceed with any possible relationship or other transaction.
- [10] Each receiving party acknowledges that it is not prohibited by the Office of Export Administration of the U.S. Department of Commerce from receiving technical information, know-how, data or other information, and the receiving party agrees not to export such information, or products incorporating it, to any prohibited country.
- [11] Each party represents and warrants to the other that it has the right to disclose to the other whatever CONFIDENTIAL INFORMATION it discloses.
- [12] The parties do not intend to create any agency or partnership by this AGREEMENT.
- [13] No license is granted to any intellectual property rights of the parties by this AGREEMENT except the limited right of use described in paragraph [3] above.
- [14] This AGREEMENT shall be governed by, and construed, interpreted and enforced in accordance with, the laws of the State of Texas, and the state and federal courts in said state shall have exclusive jurisdiction over any controversy hereunder.
- [15] This AGREEMENT constitutes the entire agreement between the parties and supersedes all prior agreements or understandings between them with respect to the matters referred to herein. All additions or modifications must be in writing and signed by duly authorized representatives of the parties.

IN WITNESS WHEREOF the parties have executed this AGREEMENT on the date first set forth above.

JOHN SMITH

<RECIPIENT>

By: _____

By: _____

Title: _____

Title: _____