



Confidentiality and Non-Disclosure Agreement

THIS AGREEMENT, made this ____ day of _____ (month), ____ (year), between _____, (hereinafter "Disclosing Party"), and _____ (hereinafter "Receiving Party").

BACKGROUND

WHEREAS, the Disclosing Party and Receiving Party wish to discuss and exchange certain items and information related to business programs, products, applications, systems, components, technologies and business topics (the "Invention") which the parties hereto consider highly confidential and proprietary.

WHEREAS, Receiving Party's evaluation requires Disclosing Party to submit to Receiving Party information regarding the Invention;

WHEREAS, the parties acknowledge that such information is confidential and proprietary and should be used by Receiving Party only for the limited purpose of evaluating the purchase of the Invention;

NOW THEREFORE, the parties hereto, intending to be legally bound in consideration of the mutual covenants and agreements set forth herein, hereby agree as follows:

1. DEFINITIONS

1.1. "**Invention**" shall mean all information relating to business programs, products, applications, systems, components, technologies and business topics.

1.2. "**Confidential Information**" shall mean all information provided by Disclosing Party with respect to the Invention regardless of whether it is written, oral, audio tapes, video tapes, computer discs, machines, prototypes, designs, specifications, articles of manufacture, drawings, human or machine readable documents. Confidential Information shall also include all information related to the Invention provided by Disclosing Party to Receiving Party prior to the signing of this agreement. Confidential Information shall not include any of the following:

(a) such information in the public domain at the time of the disclosure, or subsequently comes within the public domain without fault of the Receiving Party;

(b) such information which was in the possession of Receiving Party at the time of disclosure that may be demonstrated by business records of Receiving Party and was not acquired, directly or indirectly, from Disclosing Party; or (c) such information which Receiving Party acquired after the time of disclosure from a third party who did not require Receiving Party to hold the same in confidence and who did not acquire such technical information from Disclosing Party.

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1.3. “**Disclosing Party**” shall mean the party disclosing information to the other relating to the Invention.

1.4. “**Receiving Party**” shall mean the party receiving information from the other relating to the Invention.

2. USE OF CONFIDENTIAL INFORMATION

The Receiving Party agrees to:

- (a) receive and maintain the Confidential Information in confidence;
- (b) examine the Confidential Information at its own expense;
- (c) not reproduce the Confidential Information or any part thereof without the express written consent of Disclosing Party;
- (d) not, directly or indirectly, make known, divulge, publish or communicate the Confidential Information to any person, firm or corporation without the express written consent of Disclosing Party;
- (e) limit the internal dissemination of the Confidential Information and the internal disclosure of the Confidential Information received from the Disclosing Party to those officers and employees, if any, of the Receiving Party who have a need to know and an obligation to protect it. Receiving Party shall take all steps necessary to insure that every employee, agent or representative of Receiving Party to whom the Confidential Information is divulged observes the undertakings in this Agreement;
- (f) not use or utilize the Confidential Information without the express written consent of Disclosing Party;
- (g) not use the Confidential Information or any part thereof as a basis for the design or creation of any method, system, apparatus or device similar to any method, system, apparatus or device embodied in the Confidential Information unless expressly authorized in writing by Disclosing Party; and
- (h) utilize the best efforts possible to protect and safeguard the Confidential Information from loss, theft, destruction, or the like.

3. RETURN OF CONFIDENTIAL INFORMATION

All information provided by the Disclosing Party shall remain the sole property of the Disclosing Party. Receiving Party agrees to return all Confidential Information to Disclosing Party within 15 days of written demand by Disclosing Party, including copies thereof. When the Receiving Party has finished reviewing the information provided by the Disclosing Party and has made a decision as to whether or not to work with the Disclosing Party, Receiving Party shall return all information to the Disclosing Party without retaining any copies.

4. NON-ASSIGNABLE

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This Agreement shall be non-assignable by the Receiving Party unless prior written consent of the Disclosing Party is received. If this Agreement is assigned or otherwise transferred, it shall be binding on all successors and assigns.

5. GOVERNING LAW

This Agreement and all questions relating to its validity, interpretation, performance and enforcement (including, without limitation, provisions concerning limitations of actions), shall be governed by and construed in accordance with the laws of the State of _____ (State), notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary, and without the aid of any canon, custom or rule of law requiring construction against the draftsman.

6. No License

Neither party does, by virtue of disclosure of the Confidential Information, grant, either expressly or by implication, estoppel or otherwise, any right or license to any patent, trade secret, invention, trademark, copyright, or other intellectual property right.

7. Binding Nature of Agreement

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

8. Provisions Separable

The provisions of this Agreement are independent of and separable from each other, and no provision shall be affected or rendered invalid or unenforceable by virtue of the fact that for any reason any other or others of them may be invalid or unenforceable in whole or in part.

9. ENTIRE AGREEMENT

This Agreement sets forth all of the covenants, promises, agreements, conditions and understandings between the parties and there are no covenants, promises, agreements or conditions, either oral or written, between them other than herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party unless reduced in writing and signed by them.

10. Arbitration

Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by arbitration conducted by the Commercial Division of the American Arbitration Association and in accordance with the rules thereof, conducted in Chicago, Illinois, or in any other convenient forum agreed to in writing by the parties.

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Any arbitration award shall be final and binding, and judgment upon the award rendered pursuant to such arbitration may be entered in any court of proper jurisdiction. Notwithstanding the foregoing, Receiving Party hereby confirms and acknowledges that Receiving Party and Disclosing Party have entered into this Agreement on the understanding that any breach hereof by Receiving Party will cause Disclosing Party irreparable and continuing injury for which there will be no adequate remedy at law. Receiving Party expressly agrees that, in addition to all other remedies (including monetary damages) that Disclosing Party may be entitled to as a matter of law, Disclosing Party shall be entitled to specific performance and any other form of equitable relief (including injunctive relief) to enforce the provisions of this Agreement.

IN WITNESS OF THEIR AGREEMENT, the parties have set their hands to it below effective the day and year first written above.

Disclosing Party

Receiving Party

By: _____

By: _____

Its: _____

Its: _____