

CONFIDENTIAL INFORMATION NONDISCLOSURE AGREEMENT

This Confidential Information Nondisclosure Agreement ("Agreement") is made by _____ (a California corporation) and _____ (an individual/a _____ corporation) as of the ____ day of _____, 20__.

In consideration of the mutual promises contained in this Agreement and the mutual disclosure of confidential information to each other, the parties hereto agree as follows:

1. Confidential Information and Materials.

(a) "Confidential Information" means non-public information provided by Disclosing Party, in any form or media, that is marked or designated by Disclosing Party as being proprietary or confidential and may include, without limitation, information regarding Disclosing Party's products, services, technical design and data, customers, employees, business strategies, policies and practices, marketing plans, financial status and tangible expressions and reproductions thereof.

(b) Confidential Information shall not include any information that

(i) is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed to Disclosing Party;

(ii) became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party;

(iii) became known to Receiving Party from a source other than Disclosing Party other than by a breach of an obligation of confidentiality owed to Disclosing Party; or

(iv) is independently developed by Receiving Party without the use of any Confidential Information.

2. Restrictions.

(a) The purpose of the disclosure of Confidential Information shall be solely to explore the possibility of Disclosing Party and Receiving Party entering into a business transaction with each other (the "Transaction"). Confidential Information shall be used by Receiving Party solely for the evaluation of the Transaction.

(b) Receiving Party shall not disclose any Confidential Information to others following the date of its disclosure to Receiving Party, except within its own organization to individuals whose duties justify the need to know such Confidential Information and then only if such individuals agree to maintain the confidentiality of such Confidential Information and to restrict the use thereof solely to the purpose specified herein.

(c) Receiving Party shall take reasonable security precautions, at least as great as the precautions it takes to protect its own proprietary and confidential information, to maintain the confidentiality of the Confidential Information.

(d) Receiving Party shall not reverse engineering, decompile or disassemble any software disclosed by Disclosing Party to Receiving Party.

3. Rights and Remedies.

(a) Receiving Party shall notify Disclosing Party immediately upon discovery of any authorized use or disclosure of the Confidential Information or any other breach of this Agreement by Receiving Party, and Receiving Party shall cooperate with Disclosing Party in every reasonable way to assist Disclosing Party in regaining possession of the Confidential Information and preventing further unauthorized use. Receiving Party shall return all

Confidential Information and preventing further unauthorized use. Receiving Party shall return all Confidential Information at Disclosing Party's request or, at Disclosing Party's option, certify to the destruction of such Confidential Information.

(b) Receiving Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure or use of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

(c) All Confidential Information shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any right or license to Receiving Party to or under Disclosing Party's copyrights, trademarks, trade secrets or other intellectual property.

(d) The terms of this Agreement shall not be construed to limit either party's right to independently develop or provide products or services without the use of the other party's Confidential Information.

(e) Disclosing Party makes no representations or warranty as to the accuracy or completeness of Confidential Information disclosed to Receiving Party.

(f) Neither of the parties shall be under any legal obligation of any kind whatsoever with respect to the Transaction unless and until a definite agreement has been entered into by the parties with respect to the Transaction.

4. Miscellaneous Provisions.

(a) This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, and any modification of this Agreement will be effective only if set forth in a separate written agreement entered into by the parties.

(b) This Agreement shall be construed and enforced in accordance with the laws of the State of _____. The parties hereto consent to the jurisdiction of the federal and state courts of _____ and agree that the venue of any legal action shall lie exclusively in the County of _____, State of _____. The prevailing party in any legal action shall be entitled to recover its reasonable attorney's fees and costs of litigation.

(c) No delay or failure by either party to exercise or enforce at any time any of its rights hereunder shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each such right. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such provision shall be modified to the minimum extent necessary to make its application valid and enforceable, and the remainder of this Agreement shall not be affected thereby.

(d) Each person executing this Agreement on behalf of a party hereto represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the party and that this Agreement is binding upon the party in accordance with its terms.

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

a California corporation _____

By: _____

By: _____

Its: _____

Its: _____

Zfirm/andy/nda