**Mutual Nondisclosure Agreement**

**[*Overview****: Mutual Nondisclosure Agreement is appropriate to use when two parties are contemplating a potential business opportunity. In such a transaction, it is likely that the parties will be required to share confidential information with each other. This form creates affirmative duties for each party not to share the confidential information of the other.*]

This Mutual Nondisclosure Agreement (the “Agreement”) is made as of [Date] (the “Effective Date”), by and between [Name A] (“Party A”) and [Name B] (the “Party B”); A and B are collectively referred to herein as the “Parties” and individually as a “Party”.

1. **Purpose**. A and B wish to explore a possible business opportunity of mutual interest regarding [***describe the proposed transaction***] (the “Relationship”) in connection with which each Party has disclosed and may further disclose its Confidential Information (as defined below) to the other. This Agreement is intended to allow the Parties to discuss and evaluate the Relationship while protecting each Party’s Confidential Information (including Confidential Information previously disclosed to the other Party) against unauthorized use or disclosure. For purposes of this Agreement, the Party receiving Confidential Information is referred to as the “Receiving Party” and the Party disclosing Confidential Information is referred to as the “Disclosing Party.”

2. **Definition of Confidential Information**. “Confidential Information” means any and all information provided by the Disclosing Party to the Receiving Party in connection with this Agreement, including without limitation: any request for proposals issued in connection with this Agreement; all technical and non-technical data; formulae; patterns; compilations; programs; software; devices; methods; techniques; designs; drawings; processes; business practices; client and potential client lists and contact information; copyrights, trademarks, or other intellectual property; plans or proposals; financial information; information relating to actual or potential customers or suppliers; sales and marketing information; training and operations materials; and pricing and other financial information relating to the business or affairs of the Disclosing Party.

3. **Nondisclosure of Confidential Information**.

(a) Each Party agrees not to use any Confidential Information disclosed to it by the other Party for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Relationship. Without the prior written consent of the Disclosing Party, neither Party shall disclose or permit disclosure of any Confidential Information of the other Party to third parties or to employees of the Receiving Party, other than directors, officers, employees, consultants, contractors, and agents who are required to have the information in order to carry out the discussions regarding the Relationship. The Receiving Party is responsible for breaches of this Agreement by persons to whom it discloses Confidential Information received hereunder. Each Party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other Party in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that the Receiving Party utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Each Party agrees to notify the other in writing of any actual or suspected misuse, misappropriation, or unauthorized disclosure of Confidential Information of the Disclosing Party which may come to the Receiving Party’s attention.

(b) Exceptions. Notwithstanding the above, neither Party shall have liability to the other with regard to any Confidential Information of the other which the Receiving Party can prove:

(i) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Receiving Party;

(ii) was known to or in the possession of the Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence, or other competent evidence, at the time of disclosure;

(iii) is disclosed with the prior written approval of the Disclosing Party;

(iv) was independently developed by the Receiving Party without any use of the Confidential Information of the Disclosing Party and by employees of the Receiving Party who have not had access to the Confidential Information, as demonstrated by files created at the time of such independent development or other competent evidence; or

(v) 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.

(c) Required Disclosures. If the Receiving Party is confronted with legal action to disclose Confidential Information received under this Agreement, unless prohibited by applicable law, the Receiving Party shall promptly notify the Disclosing Party, and reasonably assist the Disclosing Party, at the Disclosing Party’s expense, in obtaining a protective order to prevent or limit the requested disclosure. In the event that the Disclosing Party is unable to obtain or does not seek a protective order, the Receiving Party shall furnish only that portion of the Confidential Information which it is legally required to produce.

**4. Return of Materials**. At the option of the Disclosing Party, any materials or documents that have been furnished by the Disclosing Party to the Receiving Party in connection with the Relationship shall be either (a) promptly returned by the Receiving Party, accompanied by all copies of such documentation, or (b) destroyed by the Receiving Party within ten (10) days after (i) the Relationship has been rejected or concluded or (ii) by the written request of the Disclosing Party.

**5. No Rights Granted**. As between the Parties, all Confidential Information will remain the exclusive property of the Disclosing Party. Nothing in this Agreement shall be construed as granting any rights or licenses under any patent, copyright, or other intellectual property right of either Party, nor shall this Agreement grant either Party any rights in or to the other Party’s Confidential Information other than the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the Relationship.

**6. Confidentiality Period**. The foregoing commitments of each Party shall survive any termination of the Relationship between the Parties, and shall continue for a period terminating on the later to occur of the date (a) three (3) years following the date of this Agreement or (b) three (3) years from the date on which Confidential Information is last disclosed under this Agreement.

**7. Successors and Assigns**. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the Parties, provided that Confidential Information of the Disclosing Party may not be assigned without the prior written consent of the Disclosing Party, with the exception of an assignment carried out as part of a merger, restructuring, or reorganization, or as a sale or transfer of all or substantially all of a Party’s assets. Any assignment made in violation of this provision shall be null and void. Nothing in this Agreement, expressed or implied, is intended to confer upon any party other than the Parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

**8. Severability**. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the Parties agree to renegotiate such provision in good faith. In the event that the Parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded, and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

**9. Independent Contractors; No Obligation**. The Parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute A and B as partners, joint venturers, co-owners, or otherwise as participants in a joint or common undertaking. No Party shall incur any debts or make any commitments for the other under this Agreement. Nothing contained in this Agreement shall be construed as obligating either Party to enter into any agreement or transact any business with the other Party, or to purchase, transfer, or otherwise dispose of any technology, services, or products as a result of the execution of this Agreement.

**10. Governing Law**; Jurisdiction. This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the Parties hereto shall be governed, construed, and interpreted in accordance with the laws of the State of [name of state], without giving effect to principles of conflicts of law. Each of the Parties hereto consents to the exclusive jurisdiction and venue of the courts of [name of state].

**11. Remedies**; Indemnification. Each Party agrees that its obligations set forth in this Agreement are necessary and reasonable in order to protect the Disclosing Party and its business. The Parties each expressly agree that due to the unique nature of the Disclosing Party’s Confidential Information, monetary damages may be inadequate to compensate the Disclosing Party for any breach by the Receiving Party of its covenants and agreements set forth in this Agreement. Accordingly, the Parties each agree and acknowledge that any such violation or threatened violation may cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity, or otherwise, the Disclosing Party shall be entitled (a) to seek injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by the Receiving Party, without the necessity of proving actual damages, and (b) to be indemnified by the Receiving Party from any loss or harm, including but not limited to attorney’s fees, arising out of or in connection with any breach or enforcement of the Receiving Party’s obligations under this Agreement or the unauthorized use or disclosure of the Disclosing Party’s Confidential Information.

**12. Attorney’s Fees**. In the event of any dispute arising out of the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other damages assessed or relief afforded, its attorney fees and court costs incurred in litigating or otherwise settling or resolving such dispute hereunder.

**13. Warranty**. The Disclosing Party warrants that it has the right to make the disclosures under this Agreement. No other warranties, including warranties of merchantability, fitness for a particular purpose, or noninfringement, are made by either party under this agreement. Any information exchanged under this agreement is provided “AS-IS.” The Disclosing Party shall have no liability to the Receiving Party whatsoever relating to or arising from the Receiving Party’s use of the Confidential Information or from any errors or omissions in, or any business decisions made by the Receiving Party in reliance on, any Confidential Information. Nor shall the Disclosing Party be liable for any expenses, losses, damages, or action incurred or undertaken by the Receiving Party as a result of its receipt of the Confidential Information.

**14. Amendment and Waiver**. The terms of this Agreement may only be amended in writing signed by authorized representatives of both Parties. Any amendment or waiver effected in accordance with this Section shall be binding upon the Parties and their respective successors and assigns. The waiver by a Party of a breach of any provision of this Agreement by the other Party will not operate or be interpreted as a waiver of any other or subsequent breach. All waivers must be in writing and signed by the waiving Party.

**15. Counterparts**. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

**16. No Publicity**. Neither A nor shall, without the prior consent of the other Party, disclose to any other person that Confidential Information of the other Party has been and/or may be disclosed under this Agreement, that discussions or negotiations are taking place between the Parties, or any of the terms, conditions, status, or other facts with respect thereto, except as required by law and then only with prior notice, unless prohibited by applicable law, as soon as possible to the other Party.

**17. Entire Agreement**. This Agreement is the product of both of the Parties hereto, and constitutes the entire Agreement between such Parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the Parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the Parties hereto regarding such transactions are expressly canceled.

The Parties have executed this Mutual Nondisclosure Agreement as of the date first written above.

NAME A

[Name of Party A]

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME B

[Name of Party B]

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

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_