

# NONDISCLOSURE AGREEMENT

This NONDISCLOSURE AGREEMENT (this "Agreement"), effective from the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, is made by and between \_\_\_\_ [You]\_\_\_\_\_, having its principal place of business at \_\_\_\_\_, CA, \_\_\_\_\_, and \_\_\_\_ [Other Party]\_\_\_\_\_, having a place of business at \_\_\_\_\_, for itself and its subsidiaries ("[Other Party]" or "Receiving Party").

WHEREAS, each party desires to receive and disclose to the other certain of its proprietary information including without limitation technical data, business, financial and marketing plans, technology and product roadmaps, present and future product and integration plans, information on strategic partnerships and alliances and customer relationships, and other technical and business information (collectively hereinafter "Confidential Information") regarding:

Development of an [ insert product/service/business description] - including [ insert specific application or information to be shared] .

NOW THEREFORE, in consideration of the aforesaid disclosures and further in consideration of the rights, obligations and covenants hereinafter set forth, it is hereby agreed as follows:

1. The Receiving Party will hold in confidence any and all Confidential Information disclosed by the Disclosing Party (including, without limitation, any Confidential Information of a third party, which shall be considered to be Confidential Information of the Disclosing Party for purposes of this Agreement) and will exercise the same amount of diligence in preserving the secrecy of that information as the diligence used in preserving the secrecy of the Receiving Party's own most valuable Confidential Information, but in no event less than reasonable diligence.
2. The Receiving Party acknowledges that the Confidential Information comprises valuable trade secrets and proprietary information belonging to the Disclosing Party. The Receiving Party agrees not to disclose to any third party Confidential Information disclosed by the Disclosing Party unless otherwise agreed by the Disclosing Party in writing.
3. Information received from the Disclosing Party shall not be deemed to be Confidential Information if:
  - A. The information is not provided to the Receiving Party in writing or electronic form and marked with a conspicuous written legend as being confidential or, if provided orally or visually, is not identified as confidential at the time of delivery and confirmed as confidential in writing to the Receiving Party within thirty (30) days thereafter or which a reasonable person would not recognize from the surrounding facts or circumstances to be confidential or secret;
  - B. The information is or becomes generally available to the public, except as the result of

an unauthorized disclosure;

- C. The information is known to the Receiving Party prior to receipt, and is not subject to a separate non-disclosure commitment on the part of the Receiving Party;
- D. The information is or becomes available on an unrestricted basis to a third party other than from the Receiving Party or from someone acting under its control (except that a corporate subsidiary of either party shall not be deemed a "third party" hereunder); or
- E. The information is independently developed by the Receiving Party without use of or recourse to Confidential Information of the Disclosing Party.

In the event that a court or any other governmental entity ("Authority") requires the Receiving Party to produce any of the Disclosing Party's Confidential Information under a subpoena, court order, or other request pursuant to legal process, then the Receiving Party may produce only the information specifically required to be disclosed. In the event that any such order is proposed or issued, the Receiving Party will immediately notify the Disclosing Party in writing of the order, and shall cooperate with the Disclosing Party if the Disclosing Party elects to object before the Authority regarding the disclosure.

4. Any notice required or permitted by this Agreement shall be addressed as follows:

1) If to [Other Party]

\_\_\_\_\_  
\_\_\_\_\_

Phone: (\_\_\_\_) \_\_\_\_\_

Fax: (\_\_\_\_) \_\_\_\_\_

\_\_\_\_\_.@\_\_\_\_\_.com

2) If to [You]:

[You]

\_\_\_\_\_  
\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

5. The Disclosing Party's Confidential Information shall be made available only to those employees of the Receiving Party who are parties to nondisclosure agreements containing terms at least as stringent as those contained in this agreement and who have reasonable need for such information. Specifically, without limitation, the Receiving Party acknowledges and agrees to use the Disclosing Party's Confidential Information solely for the purpose of considering a potential business transaction with the Disclosing Party and for no other purpose.
6. The Confidential Information and all intellectual property rights fixed, embodied, or otherwise subsisting therein or arising therefrom, and in all works, inventions, discoveries, know-how, techniques, processes, methods, systems, ideas and other elements thereof, are, and will remain the sole and exclusive property of the Disclosing Party, over which the Disclosing Party retains all ownership and all right, title, and interest. Nothing in this Agreement shall be construed to grant to the Receiving Party any right or license under any patents, patent applications, trademarks, copyrights, trade secrets or know-how of the Disclosing Party, except for the

limited purpose of carrying out the evaluation contemplated by this Agreement.

7. Receiving Party nor any of its employees, officers, representatives, agents or affiliates may copy Confidential Information, in whole or in part, absent the prior written consent of the Disclosing Party. The Receiving Party, within 10 days of the Disclosing Party's written request, will promptly return all Confidential Information received from the Disclosing Party, together with all copies, recordings, summaries or other reproductions thereof and all notes and/or other works prepared or based thereon, or certify in writing that all such Confidential Information and copies have been destroyed.
8. The obligations of the Receiving Party under paragraphs 1, 2, 3 and 4 shall continue for a period of five (5) years from the effective date of disclosure of the Confidential Information. The remainder of the terms of this Agreement shall survive in perpetuity.
9. Although the parties are considering a potential business transaction, neither party has made any commitments to the other. Neither party has been given any assurance that any sort of transaction will ever be entered or even negotiated. Neither party is in any way responsible for the other party's costs or expenses incurred in any negotiations that may occur. This Agreement constitutes the full and final understanding of the parties with respect to the subject matter hereof. This Agreement merges and supersedes any and all other agreements and representations, written or oral, relating to that subject matter. This Agreement may not be amended except by a writing expressly referring to this Agreement and signed by the authorized representatives of both parties. Any waiver of the requirements in this Agreement must be in writing and should not in any way be deemed a waiver to enforce any other requirements or provisions of this Agreement. If any provision of this Agreement is deemed unenforceable, then such provision will be severed from this Agreement and the remaining provisions will remain in full force and effect.
10. The Receiving Party acknowledges that the unauthorized disclosure of the Confidential Information of the Disclosing Party would cause irreparable harm to the Disclosing Party that monetary damages alone may not redress. The Disclosing Party is entitled to injunctive or other equitable relief as provided from any court of competent jurisdiction to stop or prevent the unauthorized disclosure of the Disclosing Party's Confidential Information.
11. Receiving Party shall comply, at its own expense, with the U.S. Foreign Corrupt Practices Act and all import and export laws, restrictions, national security controls and regulations of the United States and any applicable foreign agency or authority. The Receiving Party shall not import, export or re-export, or authorize the export or re-export of the Confidential Information or any other product, technology, or information that it obtains or learns hereunder, without any license or approval required thereunder.
12. This Agreement will be interpreted under California law, notwithstanding the choice of law rules of California or any other jurisdiction. The parties consent to the exclusive jurisdiction and venue of the state and federal courts located in Orange County, California to adjudicate any and all disputes arising under this Agreement. In the event of any action or proceeding to enforce or interpret any of the provisions of this Agreement, the prevailing party shall be entitled to be

reimbursed for all costs of such action or proceeding, including attorney's fees and costs.

13. **[You]** and **[Other Party]** hereby execute this Agreement as of the day and year first above written.

**[You]**

**[Other Party]**

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

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

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

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

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

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

3/10/2011 NDA