

# Confidentiality Agreement

## Sale of Business

### (All Prospective Buyers to Sign)

This Confidentiality Agreement (Agreement) is made and becomes effective on \_\_\_\_\_ (Date) by and between \_\_\_\_\_ (Owner) and \_\_\_\_\_ (Prospect).

#### 1. Confidential Information

Owner proposes to disclose certain of its confidential and proprietary information (Confidential Information) to Prospect. Confidential Information shall include the fact that the business is for sale, all client lists, prospect lists, data, materials, products, technology, computer programs, specifications, manuals, business plans and methods, software, marketing plans, pricing information, financial information, and other information disclosed or submitted, orally, in writing, or by any other means, to Prospect by Owner. Nothing herein shall require Owner to disclose any of its information.

#### 2. Prospect's Obligations

- A. Prospect agrees that the Confidential Information is to be considered confidential and proprietary to Owner and Prospect shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with Owner, and shall disclose it only to its officers, directors, or employees with a specific need to know, legal counsel, accountants, lenders, or other agents or advisors to whom disclosure or access is necessary for Prospect to evaluate the Business. Prospect will not disclose, publish or otherwise reveal any of the Confidential Information received from Owner to any other party whatsoever except with the specific prior written authorization of Owner.
- B. Confidential Information furnished in tangible form shall not be duplicated by Prospect except for purposes of this Agreement. Upon the request of Owner, Prospect shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within 48 hours of such request.

#### 3. Term

The obligations of Prospect herein shall be effective for three years from the date Owner last discloses any Confidential Information to Prospect pursuant to this Agreement. Further, the obligation not to disclose shall not be affected by merger, bankruptcy, receivership,

assignment, attachment, or seizure procedures, whether initiated by or against Prospect, by a trustee of Prospect in bankruptcy, or by the Prospect as a debtor-in-possession or the equivalent of any of the foregoing under local law.

#### **4. Other Information**

Prospect shall have no obligation under this Agreement with respect to Confidential Information which is or becomes publicly available without breach of this Agreement by Prospect; or is rightfully received by Prospect without obligations of confidentiality.

#### **5. No License**

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. Prospect agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product or service.

#### **6. Governing Law and Equitable Relief**

This Agreement shall be governed and construed in accordance with the laws of the State of California and Prospect consents to the exclusive jurisdiction of the state courts for any dispute arising out of this Agreement. Prospect agrees that in the event any breach or threatened breach by Prospect, Owner may obtain, in addition to any other legal remedies which may be available, such equitable relief as may be necessary to protect Owner against any such breach or threatened breach.

#### **7. Final Agreement**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

#### **8. No Assignment**

Prospect may not assign this Agreement or any interest herein without Owner's express prior written consent.

#### **9. Severability**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

## 10. Notices

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid, or commonly recognized overnight delivery services.

If to Owner:

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Prospect:

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## 11. No Implied Waiver

Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term contained in this Agreement.

## 12. Headings

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

## 13. Disputes

In the event that any suit is instituted concerning or arising out of this Agreement, the prevailing party shall recover all of such party's costs, including, without limitation, the court costs and reasonable attorney's fees incurred in each and every such action, suit or proceeding, including any and all appeals or petitions therefrom. Prior to filing suit, the parties agree to attempt mediation of any dispute before a retired judge. Both parties shall pay 50% of the costs. If either party becomes dissatisfied with the attempt to mediate, that party shall be free to file suit.

**14. Authority to Sign**

If the Owner or Prospect is a corporation, partnership, or other entity, the undersigned represents that he or she has full authority to sign this Agreement on behalf of the entity.

The parties have executed this Agreement as of the date set forth above.

Owner: \_\_\_\_\_  
\_\_\_\_\_

Prospect: \_\_\_\_\_  
\_\_\_\_\_

Prospect: \_\_\_\_\_  
\_\_\_\_\_