

Company A

MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (the “Agreement”) is made as of April 12, 2000 By and between Company A, a Washington company (herein the “Company”), and Company B, (herein the “Third Party”).

1. Purpose. The Company and Third Party wish to explore a possible business opportunity of mutual interest regarding the Company A Business Plan and Company A business strategies (herein the “Relationship”) in connection with which each party (**has disclosed and/or**) may (**further**) disclose its Confidential Information (as defined below) to the other. This Agreement is intended to allow the parties to (**continue 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.

2. Definition of Confidential Information. “Confidential Information” shall mean any proprietary and nonpublic information or material that the disclosing party regards as being confidential or which, under the circumstances surrounding disclosure ought to be treated as confidential. Confidential Information includes, but is not limited to, the following forms of information (whether oral, written, graphic or machine-readable) which relates to discoveries, inventions, ideas, concepts, designs, drawings, specifications, methods, techniques, flow charts, models, systems, improvements, data, algorithms, documentation, diagrams, research, development, processes, procedures, know-how, trade secrets, marketing techniques, materials, plans, forecasts, customers names, files, agreements with third parties, and other information or private matter, relating to the disclosing party’s sales, past and prospective customers, costing data, pricing, financial information, organization or the salaries and terms of employee compensation. Confidential Information also includes any information described above that disclosing party obtains from another person and which disclosing party treats, or agrees, to treat, as proprietary or have designated as Confidential Information.

3. Nondisclosure of confidential Information

(a) The Company and Third Party each agree 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. Neither party shall disclose or permit disclosure of any Confidential Information of the other party to third parties or to employees of the party receiving Confidential Information, other than directors, officers, employees, consultants and agents who are required to have the information in order to carry out the discussions regarding the Relationship. (**Each party has had or will have its directors, officers, employees, consultants and agents who have access to Confidential Information of the other party sign a nondisclosure agreement in content substantially similar to this Agreement (and shall notify the other party in writing of the names of each person who has signed such agreements promptly after such agreements are signed).**) Each party agrees that it shall take all reasonable measures to protect the secrecy of and the 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 the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;
- (iii) is disclosed with the prior written approval of the disclosing party;
- (iv) becomes known to the receiving party, without restrictions, 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;
- (v) is disclosed generally to third parties by the disclosing party without restrictions similar to those contained in this Agreement; or
- (vi) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that the receiving party shall provide prompt notice of such court order or requirement to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure.

Sample Preview