**MUTUAL NONDISCLOSURE AGREEMENT**

**THIS MUTUAL NONDISCLOSURE AGREEMENT** is made and entered into effective as of this \_\_\_\_\_ day of \_\_\_\_\_\_, 20\_\_\_, by and between **\_\_\_\_\_\_\_\_\_\_\_, Inc.**,a \_\_\_\_\_\_\_\_\_ corporation, and the person or company set forth on the signature page hereto with reference to the following:

**WHEREAS**, Each party hereto desires to obtain certain Confidential Information (as defined herein) from the other party hereto and, under the terms and conditions of this Agreement, each party is willing to provide such Confidential Information to the other; and

**WHEREAS,** each party acknowledges that the Confidential Information furnished and to be furnished by the other is and shall be secret, confidential and proprietary to the disclosing party; and

**WHEREAS,** the party disclosing such Confidential Information shall herein be referred to as the “Disclosing Party,” and the party receiving Confidential Information from the other party hereto shall be referred to herein as the “Reviewer;”

**NOW, THEREFORE,** in consideration for each party hereto furnishing to the other party hereto Confidential Information and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Confidential Information. The term “Confidential Information” shall mean all trade secrets, concepts, designs and all other information of a secret, confidential and proprietary nature involving the Disclosing Party, derived from or in any way relating to, or to the existing and proposed business activities of, such Disclosing Party including, without limitation, all specifications, instructions, processes, formulas, systems, programs, instrumentation, schematics, source code, data, printouts, patterns, compilations, devices, methods, techniques, procedures and other technical information; products or services developed or sold by the Disclosing Party; the identity and other information regarding the Disclosing Party’s existing and potential suppliers, customers, licensees or sublicensees; proprietary financial data regarding the Disclosing Party or any aspect of its business, including, without limitation, marketing plans, market research, market surveys, distribution plans, distribution agreements, corporate structure, information relating to the cost of its technology, products or services, its pricing, its employee compensation, its royalties or other consideration from customers, licensees or sublicensees; the existing and pro­posed business operating methods of the Disclosing Party; and all other information which, if known, would be of advantage to others competing with, or which may compete with, the Disclosing Party or would be of disadvantage to the Disclosing Party, whether or not subject to patent, trademark, trade secret, copyright or other statutory protection.
2. Receipt of Confidential Information. In consideration of being made privy to the Confidential Information, the Reviewer hereby acknowledges receipt of the Confidential Information, and agrees to all of the terms and conditions of this Agreement.
3. Proprietary Nature of Confidential Information. The Reviewer acknowledges that the Confidential Information is claimed as secret, confidential and proprietary to the Disclosing Party. The Reviewer shall have no claim, right, title, property or interest of any form in the Confidential Information disclosed by the Disclosing Party.
4. Confidentiality and Prohibition on Use. The Reviewer shall not use, apply, employ, practice, exploit or engage, in any fashion, any such Confidential Information disclosed by the Disclosing Party for any purpose, without the express written authorization of the Disclosing Party. The Reviewer shall keep secret and confidential the Confidential Information disclosed by the Disclosing Party and shall not disclose, transfer, provide, give, disseminate, divulge, reveal, or permit any employee, affiliate or representative to disclose, transfer, provide, give, disseminate, divulge or reveal, any Confidential Information to any person or entity. The Reviewer shall take all reasonable steps necessary to prevent the unauthorized disclosure, copying or use of such Confidential Information.
5. Efforts to Maintain Secrecy. Reviewer acknowledges that, as between Reviewer and the Disclosing Party, the Confidential Information has been the subject of efforts by the Disclosing Party that were reasonable under the circumstances to maintain the secrecy of the Confidential Information.
6. Return of Confidential Information. Within three (3) business days following demand by the Disclosing Party, Reviewer shall return to the Disclosing Party all Confidential Information and any materials containing or relating to the Confidential Information. Reviewer shall not make any copies or reproduction of any Confidential Information, whether magnetic, digital, photocopy, handwritten notes, recorded, or otherwise, in any method or form, without the prior written approval of the Disclosing Party, exercisable in the Disclosing Party’s absolute and sole discretion.
7. Injunction. Reviewer expressly acknowledges and agrees that any breach of any provision of this Agreement by Reviewer would immediately place the Disclosing Party in jeopardy of irreparable harm, that money damages would be inadequate and insufficient to compensate the Disclosing Party, and that the Disclosing Party should be awarded immediate temporary and preliminary injunctive relief. Reviewer further agrees that in the event of issuance of any injunction concerning or relating to misuse, wrongful disclosure or misappropriation of the Confidential Information, or other breach of this Agreement a bond or undertaking of no greater than Three Thousand Dollars ($3,000) shall provide full and adequate protection for Reviewer. Reviewer acknowledges that should Reviewer either intentionally or unintentionally misuse or disclose the Confidential Information, any balancing of the equities would weigh in the Disclosing Party’s favor inasmuch as such misuse or disclosure is not permitted hereunder. This Section 7 shall not apply to information that is generally known to the public, customarily disclosed to others without restrictions on disclosure, obtained from a third party without breach of a non-disclosure obligation, or independently derived.
8. Indemnification. Reviewer shall indemnify and hold harmless the Disclosing Party and each of the Disclosing Party’s employees, officers, directors and agents against any losses, damages, costs, liabilities, claims or actions (including, without limitation, any attorneys’ fees and costs incurred in the defense of any such claims or actions, in seeking enforcement of this indemnity or otherwise), and shall pay to the Disclosing Party any compensation realized by Reviewer, as a result of, arising out of, or in connection with any breach by Reviewer of any provision of this Agreement.
9. Notification. Reviewer shall notify the Disclosing Party immediately of any circumstances of which it has notice concerning any access, possession or use of the Confidential Information not authorized by this Agreement. Such notification shall be made by Reviewer to the Disclosing Party at its principal office address, in the most expeditious fashion available.
10. No Conflict. Reviewer represents to the Disclosing Party that Reviewer is not a party to or otherwise bound by any agreement that could con­flict in any manner with any of Reviewer’s obligations hereunder. Reviewer shall not undertake to perform services for others that are in conflict with (or that, if Reviewer were to perform such services fully, would create a conflict with) any of such obligations.
11. No Warranties. Reviewer acknowledges and agrees that any Confidential Information provided to Reviewer hereunder is provided as is, where at, and with all faults; and that the Disclosing Party makes no representations or warranties, express or implied, concerning such Confidential Information, including no warranties of fitness for any particular purpose whether or not the Disclosing Party had been apprised of such particular purpose and no warranties of merchantability.
12. Governing Law. The terms of this Agreement shall be governed by and construed in accordance with the laws of the State of Cali­fornia excluding any conflicts‑of‑law principles or rules that might otherwise cause the laws of another jurisdiction to apply. All actions or proceedings with respect to, arising directly or indirectly in connection with, out of, related to or from this Agreement shall be litigated exclusively in courts having situs in the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_. The parties hereby submit to the jurisdiction of any local, state or federal court located in the County of \_\_\_\_\_\_\_\_\_\_\_\_\_\_.
13. Invalidity. In the event any provision of this Agreement or the application of such provision shall be held by a court of competent jurisdiction, for any reason, to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement.
14. Attorneys’ Fees. In the event of litigation or arbitration arising out of, or concerning, this Agreement, or any asserted breach of this Agreement, the prevailing party shall be entitled to recover reasonable costs of suit and attorney’s fees in addition to monetary damages or equitable relief.
15. Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior agreements and understandings of the parties concerning the subject matter hereof. No covenants, agreements, representations or warranties of any kind whatsoever have been made by any party hereto, except as specifically set forth in this Agreement. No amendment or modification of this Agreement may be made except by an instrument in writing signed by both parties.
16. Notices. Except as otherwise provided in Section 9 hereof, all notices required to be given hereunder shall be in writing and shall be given by certified or registered mail, return receipt requested, to the parties at their respective addresses hereinbelow written, or at such other address as shall be specified in writing to all other parties. Notice given hereunder shall be effective upon receipt, or in the case of mailing, upon five (5) days following deposit in the United States mail, first class postage prepaid, addressed as set forth herein.
17. Headings. The titles and subtitles of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.
18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
19. No Assignment. Neither party shall assign this Agreement, or the rights or obligations hereunder, except for any assignment pursuant to operation of law in connection with a merger, consolidation or sale of all or substantially all of the assets of either party. Except as otherwise expressly provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors, assigns, heirs, executors and administrators of the parties hereto.
20. No Rules of Construction. No rules of construction are intended by the parties, nor shall be invoked or applied in the interpretation of this Agreement and, for all purposes hereunder, both parties shall be deemed to be the authors hereof.
21. Arbitration. Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by binding arbitration administered by the NeuCourt online arbitration platform, www.neucourt.com, in accordance with the NeuCourt Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Each party further acknowledges and agrees that communications from the NeuCourt platform, including initial notification of a dispute, shall be sent to the email addresses set forth for such party on the signature page hereto or to such email addresses customarily used by each party for the other party hereto, unless otherwise notified to the other party in writing in accordance with the notification provisions in this contract. The parties hereto understand the importance of ensuring that they are notified of a dispute and therefore represent that they have been careful to identify an email address to which they believe they will always have unfettered access. Nothing in this clause shall prevent a party from seeking provisional remedies in aid of arbitration from a court of competent jurisdiction.

**IN WITNESS WHEREOF,** the parties to this Agreement have duly executed it effective as of the day and year first above written.

 **\_\_\_\_\_\_\_\_\_\_\_\_\_, Inc.,**

 **a \_\_\_\_\_\_\_\_\_\_\_ corporation**

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

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, CEO

 **Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **[REVIEWER]**

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

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

 **Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Telephone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**