

NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT is entered into by and between _____, (“Disclosing Party”) and _____, (“Receiving Party”), collectively referred to as the “Parties”.

RECITALS

Whereas, Disclosing Party is contemplating disclosure to the Receiving Party of certain Confidential Information regarding _____ to Disclosing Party’s _____; and

Whereas, for the purpose of, including but not limited to obtaining Receiving Party’s potential investment, opinion, or advice, Disclosing Party will need to disclose certain Confidential Information to Receiving Party, which information is necessary for Receiving Party to have, but the disclosure or misuse of such information could substantially harm Disclosing Party in the competitive environment in which it operates; and

Whereas, this Agreement is being entered into in order to set forth the terms under which any such information is disclosed.

Now Therefore, Receiving Party and Disclosing Party agree as follows:

AGREEMENT

1. Definition of “Confidential Information”. For purposes of this Agreement, “Confidential Information” shall mean information disclosed by Disclosing Party to Receiving Party that relates to product plans, designs, proto-types, specifications, product molds, costs, prices, suppliers, finances, marketing plans, business opportunities, research, development, know-how, or personnel, or any other disclosed information that Disclosing Party labels “Confidential” or otherwise notifies Receiving Party in writing that the information is confidential. Confidential Information shall include all information within the definition of a Trade Secret, as defined in California Civil Code §3426, et seq., but the fact that certain information is found not to be a Trade Secret shall not affect its status as Confidential Information.

2. Nondisclosure and Nonuse of Confidential Information. Receiving Party shall not, without the prior written approval of Disclosing Party in each instance, or unless otherwise expressly permitted in this Agreement, use for its own benefit, publish or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information. Receiving Party shall carefully restrict access to the Confidential Information to those of Receiving Party’s professional advisors who clearly need such access in order to participate on behalf of Receiving Party in the analysis and negotiation of a business relationship or any contract or agreement, or the advisability thereof, with Disclosing Party. Receiving Party may disclose Confidential Information if required by any judicial or governmental request, requirement or order; provided that Receiving Party will give Disclosing Party sufficient prior notice of that request for Disclosing Party to contest that request, requirement or order.

3. Ownership of Confidential Information. Receiving Party specifically acknowledges and agrees that Disclosing Party’s Confidential Information has tangible value, contains valuable trade secrets, confidential and proprietary information of Disclosing Party and such Confidential Information is the sole property of Disclosing Party. All Confidential Information and all intellectual property rights therein remain the property of Disclosing Party, and no license or other right to Confidential Information is granted or implied hereby.

4. Term. This Agreement shall be in full force and effect during the entire course of negotiations or business dealings in connection with this confidential information between the parties, oral or written, with Disclosing Party. The term of this Agreement shall continue for _____ years, following the discontinuation of negotiations or business dealings in connection with this confidential information between the parties. Receiving Party’s duty to protect Disclosing Party’s Confidential Information shall survive expiration or termination of this Agreement and shall expire _____ years from the date of disclosure.

5. Injunctive Relief. Receiving Party understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause Disclosing Party irreparable harm, the amount of which may be difficult to ascertain and, therefore, agrees that Disclosing Party shall have the right to apply to a court of competent jurisdiction for an order restraining any further disclosure or misappropriation, and for such other relief as Disclosing Party shall deem appropriate. This right of Disclosing Party shall be in addition to the remedies otherwise available to Disclosing Party at law or in equity.

6. Return of Confidential Information. Receiving Party shall immediately return to Disclosing Party all product plans, designs, proto-types, specifications, product molds and any and all written Confidential Information of Disclosing Party including, but not limited to, records, copies, notes and other written, printed or tangible materials pertaining to that Confidential Information and shall destroy all electronic copies and emails containing such Confidential Information upon receipt of a written request from Disclosing Party.

7. Binding on Successors. This Agreement and Receiving Party's obligations hereunder shall be binding upon the representatives, assigns and successors of Receiving Party and shall inure to the benefit of the assigns and successors of Disclosing Party.

8. Governing Law. This Agreement shall be governed by and construed in accordance with California law.

9. Attorneys' Fees. The prevailing party in any action or proceeding arising from this Agreement shall be entitled to reasonable attorneys' fees in addition to any other relief to which the party is otherwise entitled.

10. Entire Agreement. This Agreement constitutes the sole understanding of the parties with respect to the subject matter of the Agreement, and may not be amended or modified except in writing signed by both of the Parties.

RECEIVING PARTY:

Dated: _____

Print Name: _____

DISCLOSING PARTY:

Dated: _____

Print Name: _____