

# MUTUAL NON-DISCLOSURE AGREEMENT

**THIS AGREEMENT** is made and entered into as of the **INSERT DATE** (the "Effective Date") by and between **INSERT SUPPLIER NAME** with a principal place of business at **INSERT SUPPLIER ADDRESS** and **YOUR ORGANIZATION NAME**, for and on behalf of itself and its affiliate and subsidiary companies (collectively, "Company") with a principal place of business at **YOUR ADDRESS**.

The parties hereto intend to exchange information for the purpose of exploring a potential business relationship. In the course of such exchange of information, it is anticipated that each party may disclose or deliver to the other certain trade secrets or other Confidential Information for the purpose of enabling the other to evaluate the feasibility and desirability of establishing such a business relationship. The parties hereto have entered into this Agreement in order to assure the continued confidentiality of such trade secrets and other information in accordance with the terms of this Agreement.

**NOW, THEREFORE**, for good and valuable mutual consideration (the receipt and sufficiency of which are hereby acknowledged by the parties) the parties agree as follows:

## ARTICLE 1 - CONFIDENTIALITY

1.01 *Definition Confidential Information.* As used in this Agreement, the term "*Confidential Information*" means the confidential, secret or proprietary information of one party (the "Disclosing Party"), including, without limitation, financial and business information such as, without limitation, financial and business plans, financial statements, marketing plans, business processes, business ideas and strategies, clients, customers, and contracts, and technical information such as, without limitation, information and ideas concerning software. In addition, Software includes system design, workflow, program functionality and output formats that are unique to the Disclosing Party, hardware, products and technology of the Disclosing Party which has been or may hereafter be disclosed, directly or indirectly to the other party hereunder (the "Recipient"), either orally, in writing or in any other material form, or delivered to the Recipient.

1.02 *Confidential Information Covered.* The obligations of the Recipient under this Agreement shall apply to all Confidential Information of the Disclosing Party which has been or may hereafter be disclosed, directly or indirectly, to the Recipient, either orally, in writing or in any other material form, or delivered to the Recipient.

1.03 *Use of Confidential Information.* The Recipient and its employees shall use Confidential Information only to the extent necessary to determine the feasibility and desirability of establishing a business relationship with the Disclosing Party, and shall not use or exploit Confidential Information for its own benefit or for the benefit of another without the prior written consent of the Disclosing Party. All disclosures to such persons shall be on a need to know

only basis.

1.04 *Non-Disclosure Obligations.* The Recipient shall not directly or indirectly disclose, communicate or in any way divulge to any other person or entity any Confidential Information. The Recipient shall use the same degree of care, but no less than a reasonable degree of care, to prevent the disclosure of Confidential Information to others as it uses to prevent the disclosure of its own confidential or Confidential Information.

1.05 *Limitations.* Notwithstanding Section 1.04, the Recipient may use or disclose Confidential Information to the extent that the Recipient can show that such Confidential Information: (a) at the time of disclosure or acquisition is generally available to the public; (b) is rightfully in the Recipient's possession prior to the time of disclosure or acquisition; (c) is rightfully made available to the Recipient by others; or (d) the disclosure is made in order to comply with the requirements of applicable law or an order of a court or tribunal, provided that the Recipient makes best efforts to give the Disclosing Party prior written notice of such disclosure and takes reasonable actions to avoid such disclosure or minimize its extent.

1.06 *No License.* The Recipient agrees that no license or conveyance of any rights to Confidential Information is granted to the Recipient or implied under this Agreement.

1.07 *Obligations of Confidentiality* The Recipient's obligations of confidentiality under this Agreement shall survive indefinitely, whether or not the Recipient ultimately pursues the purpose of this agreement further. The Recipient's obligations of confidentiality shall also survive any expiration, termination, if at all, of any other agreement with the other party. This Agreement does not, and is not intended to, obligate either party to enter into any further agreements or to pursue the exploration of a potential business relationship or any other transactions with the other party.

1.08 *Return of Confidential Information.* At the request of the Disclosing Party, the Recipient shall promptly deliver to the Disclosing Party all of the Confidential Information of the Disclosing Party and all copies and reproductions thereof.

1.09 *Violation of Agreement.* The Recipient agrees that its obligations hereunder are necessary and reasonable to protect the Disclosing Party, and expressly agrees that monetary damages would be inadequate to compensate the Disclosing Party for any breach of any covenant or agreement set forth herein. The Recipient agrees and acknowledges that any such violation or threatened violation would cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party shall be entitled to obtain injunctive relief against any threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

## **ARTICLE 2 - MISCELLANEOUS**

2.01 *Modification of Agreement.* This Agreement may not be modified except by mutual written consent of both parties, and supersedes all prior agreements, written or oral, between the parties relating to its subject matter.

2.02 *Notices.* Any notices permitted or required under this Agreement shall be in writing and shall be mailed by registered mail or sent by facsimile addressed to the respective party at the address set forth in the preamble to this Agreement, or to such other address as may be specified by a party in the same manner.

2.03 *Publicity.* Neither party shall make or cause to be made any press release or public announcement relating to this Agreement, or otherwise communicate with any news media in respect of this Agreement on the subject matter hereof without the prior written consent of the other party (which such other party may give or withhold in its sole discretion).

2.04 *Independent Contractors.* The parties are independent contractors and not agents, joint venturers, or partners of each other. Employees of each party shall at all times be the sole responsibility of that party. This Agreement shall be binding on the parties and any successors in interest to the parties.

2.05 *No Obligation to Complete Transactions.* Nothing herein shall imply any obligation of either party to proceed with any transaction between the parties, and each party explicitly reserves the right to terminate the discussions contemplated by this Agreement for any reason or no reason, without liability for such termination.

2.06 *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of **YOUR STATE** and the laws of the United States applicable therein. Each party agrees to the jurisdiction of the courts of the State of Wisconsin with respect to matters arising out of or related to this Agreement.

2.07 *No Assignment.* Neither party may assign this Agreement, nor may any of the rights hereunder be assigned or otherwise transferred to any third party, without the prior written consent of the other party. Any attempted or purported assignment or other such transfer by either party to any third party without such consent having first been obtained shall be void.

2.08 *Further Assurances.* Each party shall provide such further documents or instruments reasonably required by the other party to effect the purpose of this Agreement or to carry out its provisions.

2.09 *Severability.* If any portion of this Agreement is found to be illegal or unenforceable, such provisions shall be severed or modified to the extent necessary to make this Agreement enforceable, and so severed or modified, this Agreement shall remain in full force and effect.

2.10 *Waiver.* The waiver of any breach of any one or more of the provisions of this Agreement shall not be, or be construed to be, a waiver of any subsequent or other breach of this Agreement; nor shall any failure on the part of the non-breaching party to require the exact full and complete compliance with any of the provisions of this Agreement be construed as in any manner changing the terms

hereof.

2.11 *Counterparts.* This Agreement may be executed in any number of counterparts and by the different parties in separate counterparts, each of which when executed shall be deemed to be an original, and all of which taken together shall constitute one and the same agreement with the same effect as if such signatures were upon the same instrument. Delivery of an executed counterpart hereof by fax machine shall be as effective as delivery of a manually executed counterpart hereof.

2.12 *Entire Agreement.* This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, discussions, and understanding of the parties, whether written or oral.

**INSERT SUPPLIER NAME**

**YOUR ORGANIZATION NAME**

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_