

# ATTACHMENT D

## MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (the "Agreement"), effective as of the date of execution, is between the County of San Bernardino- Assessor-Recorder-County Clerk ("County"), a political subdivision duly organized under the Constitution of the State of California, and the Party identified below ("Company") (collectively, the "Parties," or individually, a "Party"). The Parties agree as follows:

1. Company acknowledges that County is bound by the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code Section 54950, and California Government Code Section 7920.000 (collectively, "Regulations"), and that the terms of this Agreement are subject to County's compliance with these Regulations.

2. "Confidential Information" means information disclosed by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") that falls within an exemption to the Regulations and the Disclosing Party clearly designates as "Confidential" or "Proprietary". Confidential Information may include, information relating to the Disclosing Party's technology, customers, business plans, promotional and marketing activities, finances and other business affairs, including, but not limited to, that which relates to research, products, software, services, development, inventions, processes, specifications, designs, drawings, diagrams, marketing techniques, documentation, customer information, procedures, data, concepts, business policies or practices, financial statements, and third-party information that the Disclosing Party is obligated to keep confidential. Company represents that it has a good faith belief that information it designates "Confidential" or "Proprietary" is exempt from disclosure under the Regulations.

3. For ten (10) years from the date of execution of this Agreement, the Receiving Party shall hold Confidential Information in confidence, limit use of Confidential Information to discussions between the parties, and use at least as great a standard of care in protecting the Disclosing Party's Confidential Information as it uses to protect its own Confidential Information of like character, but in no event less than a reasonable degree of care. The Receiving Party shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the Disclosing Party's Confidential Information.

4. These restrictions on the use or disclosure of Confidential Information shall not apply to any Confidential Information:

- i. which is independently developed by the Receiving Party or lawfully received free of restriction from another source having the right to so furnish such Confidential Information; or
- ii. after it has become generally available to the public without breach of this Agreement by the Receiving Party; or
- iii. which at the time of disclosure was already known to the Receiving Party, and free of restriction as evidenced by documentation in the Receiving Party's possession; or
- iv. which the Disclosing Party agrees in writing is free of such restrictions.

5. If the Receiving Party receives a subpoena, validly issued administrative or judicial process, or County receives a public records request, the Party subject to such demand or request will, to the extent legally permissible, promptly notify the Disclosing Party, and, if requested by the Disclosing Party, tender the defense of the subpoena or process, or action for protective order. Unless the subpoena or process is timely limited, quashed, or extended, the Receiving Party will be entitled to comply with the request to the extent permitted by law. Company agrees to reimburse County for, and to indemnify and hold harmless County, its officers, employees, agents, and volunteers from and against any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses, including without limitation, attorneys' fees, expenses, and court costs of any nature arising from or relating to County's non-disclosure of any information.

6. Each Party hereto shall endeavor to keep to a minimum the amount of Confidential Information that is furnished to the other.

7. All Confidential Information will remain the exclusive property of the Disclosing Party. No license under any trademark, patent, copyright, mask work protection right or any other intellectual property right is granted or implied by the conveying of Confidential Information. The Disclosing Party provides Confidential Information solely on an "as is" basis. None of the Confidential Information which may be disclosed or exchanged by the Parties shall constitute any representation, warranty, assurance, guarantee or inducement by either Party to the other of any kind, and, in particular, with respect to the non-infringement of trademarks, patents, copyrights, mask protection rights or any other intellectual property rights, or other rights of third persons or of either party.

8. Neither this Agreement nor the disclosure or receipt of Confidential Information shall constitute or imply any promise or intention to make any purchase of products or services by either Party or any commitment by either Party with respect to the present or future marketing of any product or service.

9. To the extent legally permitted, the Receiving Party will return or destroy all tangible materials embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) promptly following the Disclosing Party's written request. At the Disclosing Party's request, the Receiving Party will provide written certification of its compliance with this section.

10. Absent the prior written consent of the other Party, neither Party shall distribute any publicity, news release, or announcement, written or oral, to the public or press, relating to this Agreement or its existence.

11. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

12. The Parties agree that a breach of the confidentiality obligations by Receiving Party may cause immediate and irreparable damage to Disclosing Party and shall entitle Disclosing Party to seek injunctive relief in addition to all other remedies.

13. This Agreement constitutes the entire understanding between the Parties hereto as to the Confidential Information and supersedes all prior understandings, whether oral or written, between them relating hereto. No amendment or modification of this Agreement shall be valid or binding upon the Parties unless in writing and signed by an officer of each Party.

14. This Agreement shall be governed by and construed under the laws of the State of California, U.S.A.

In witness thereof, the parties have executed this Agreement on the respective dates entered below:

SAN BERNARDINO COUNTY

COMPANY, a [state of incorporation] corporation

By:

By:

(Signature)

(Signature)

Name:

Name:

Title:

Title:

Date:

Date:

Address:

Address:

Phone:

Phone:

Fax:

Fax: