

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-disclosure Agreement (this "Agreement") is made as of the "Effective Date" set forth by the undersigned below, by and between IT SOLUTIONS CONSULTING, LLC, a Delaware limited liability company, on behalf of itself and its subsidiaries, affiliates, agents and representatives (the "Company") and _____, a _____ (the "Client"). Company and Client sometimes are collectively referred to herein as "Parties" and individually as a "Party". References to each Party herein includes that Party's agents, employees, officers, partners, owners, attorneys, contractors, affiliated entities, and other representatives.

For purposes of this Agreement, "Disclosing Party" means the party disclosing its Confidential Information to Receiving Party; "Receiving Party" means the party receiving Confidential Information from Disclosing Party.

The Parties acknowledge that, for purposes of evaluating, negotiating and entering into a potential business relationship or commercial transaction (the "Purpose"), either Party may disclose or provide access to the the other Party certain information and materials concerning its business, plans, financials, products and technical data which is confidential and of substantial value to the Disclosing Party, which would be injured if the disclosed information were published to third parties or used by the Receiving Party for any reason other than the Purpose.

NOW, THEREFORE, to protect any confidential information that may be provided, and in consideration of the mutual covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

- 1. Confidential Information.** For the purposes of this Agreement, "Confidential Information" shall include all nonpublic information of any type or character regarding the Disclosing Party or its business that is disclosed by Disclosing Party, before or after the Effective Date, to the Receiving Party or to which the Receiving Party is provided access in connection with the Purpose, including, but not limited to, trade secrets, financial information, technical information (including research, development, procedures, algorithms, data, code, applications, designs, product specifications, drawings, concepts, samples, intellectual property, inventions, and know-how), and business information (including financial data, operations, business plans, marketing strategies and interests, sales plans and data, products, services, sources, costs, customers and customer lists (including mailing lists), vendors, employee data, distribution methods and inventories). For the avoidance of doubt, this Agreement shall not require the Disclosing Party to disclose any of its Confidential Information.
- 2. Standard of Care; Restrictions on Use and Disclosure.** The Receiving Party agrees:
 - (a) to maintain the Confidential Information in strict confidence and without disclosure and publication to third-parties except in accord with this Agreement or any subsequent agreement in which the Parties elect to do business;
 - (b) to protect Confidential Information received pursuant to this Agreement by using the same standard of care which it uses to protect and safeguard its own Confidential Information;
 - (c) to use the Confidential Information solely for the Purpose and not for any other reason or for its own benefit or for the benefit of any other third-party;

- (d) not to incorporate all or any portion of the Confidential Information into any other work or product other than for the sole purpose of performing its obligations in connection with this Agreement or with any agreement in which the parties elect to do business;
- (e) to disclose the Confidential Information only to its employees who have a need to know such Confidential Information in order to fulfill the Purpose and who are under confidentiality obligations no less restrictive than the terms of this Agreement to maintain the confidential nature of such Confidential Information;
- (f) not to decompile, disassemble, or reverse engineer all or any part of the Confidential Information; and
- (g) that if it discovers that any Confidential Information has been used, disclosed, disseminated or published in violation of this Agreement, it will immediately notify the Disclosing Party, take all commercially reasonable actions available to minimize the impact of such use, disclosure, dissemination or publication, and take any and all necessary steps to prevent any further breach of this Agreement.

3. Exceptions to Confidential Information. Confidential Information shall not include and this Agreement shall not impose any obligation upon the Receiving Party with respect to information which the Receiving Party can establish by documentary or other competent evidence:

- (a) is generally available to the public through no direct or indirect fault of the Receiving Party; or
- (b) was rightfully in the possession of the Receiving Party prior to its receipt from the Disclosing Party.
- (c) comes to the Receiving Party, without any restrictions on its use or disclosure, from a third party that did not receive it directly or indirectly from the Disclosing Party and that is not bound by any obligation of non-use or non-disclosure or otherwise prohibited from transmitting it to the Receiving Party; or
- (d) is independently developed by the Receiving Party without use of, reliance on or reference to the Disclosing Party's Confidential Information.

4. Required Disclosures of Confidential Information. In the event that the Receiving Party is requested or required to disclose any Confidential Information by law, regulation or court or government order, the Receiving Party will, to the extent practicable and legally permissible, give the Disclosing Party prompt written notice of such request or requirement and cooperate with the Disclosing Party, at the Disclosing Party's expense, to enable the Disclosing Party to seek a protective order or other appropriate remedy. In the event that such protective order or other remedy is not obtained, the Receiving Party will disclose only that portion of the Confidential Information which, in the advice of the Receiving Party's counsel, is legally required to be disclosed and will use the Receiving Party's reasonable best efforts to obtain assurances that confidential treatment will be accorded to such Confidential Information.

5. Term. This Agreement shall remain in effect until the earlier of: (a) two (2) years beginning with the Effective Date; or (b) the Parties execution of a subsequent agreement between them wherein they elect to do business as contemplated by or arising from the Purpose. Notwithstanding the foregoing, no expiration or termination of this Agreement shall relieve a Receiving Party from liability for any breach hereof prior to such expiration or termination.

6. Return of Confidential Information. The Receiving Party shall promptly return or, at the Disclosing Party's option, destroy all copies of Confidential Information at any time upon request by the Disclosing Party and in any case within ten (10) days following the expiration or earlier termination of this Agreement. Upon reasonable request, an authorized representative of the Receiving Party shall certify

that all such Confidential Information has been returned or destroyed. If and to the extent the Receiving Party has any applications, notes, analyses, compilations, studies, interpretations, memoranda, photographs, electronic media, or any other documents prepared by or on behalf of the Receiving Party that contain, reflect or are based upon, in whole or in part, any Confidential Information, then the Receiving Party shall continue to keep such documents confidential so that the Confidential Information is not accessible or discernible to third-parties. Receiving Party may retain copies of any Confidential Information which has been electronically archived as a result of scheduled back-up of its systems or retention of communications, in the ordinary course of business, provided that such retention is pursuant to the regular policies of Receiving Party and that retrieval of such Confidential Information would require special efforts to separate such information from other information similarly archived.

7. **No License.** All Confidential Information will remain the exclusive property of the Disclosing Party. The Receiving Party acknowledges and agrees that no right or license is granted to the Receiving Party in relation to any part of the Disclosing Party's Confidential Information. This Agreement does not grant any intellectual property rights or licenses (express or implied) to the Receiving Party.
8. **Warranty.** NO WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY THE DISCLOSING PARTY UNDER THIS AGREEMENT WITH RESPECT TO THE CONFIDENTIAL INFORMATION, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. ANY INFORMATION PROVIDED UNDER THIS AGREEMENT IS PROVIDED "AS IS."
9. **No Obligation; No Agency or Partnership.** The Parties agree that neither the holding of discussions between the Parties nor the Disclosing Party's disclosure of Confidential Information hereunder shall be construed as an obligation to enter into any business arrangement or agreement with the other Party, and no such obligation shall exist until such time, if any, that a separate, written agreement has been executed by authorized representatives of both Parties. This Agreement does not create any agency, partnership or joint venture relationship between the Parties. Nothing in this Agreement prohibits the Disclosing Party from providing the same or similar information to third parties and/or entering into agreements with third parties, or from developing, making and marketing products or services which may be similar to or competitive with the Receiving Party's products or services.
10. **Governing Law and Venue.** This Agreement shall be construed in accordance with the laws of the State of Delaware excluding its conflict of law provisions. The Parties hereby agree that any action arising out of this Agreement will be brought solely in any state or federal court located in the State of Delaware. The Receiving Party hereby consents to the exclusive personal jurisdiction of such courts, and waives any objection in any such action based on improper venue, inconvenient forum or similar grounds.
11. **Equitable Relief.** The Receiving Party acknowledges and agrees that in the event of a breach or threatened breach of any obligation concerning disclosure of Confidential Information, the Disclosing Party will suffer irreparable harm for which it will not have an adequate remedy at law. The Disclosing Party shall therefore be entitled to obtain an injunction enjoining and restraining the Receiving Party from doing or continuing to do any such act and any other violations or threatened violations of this Agreement, without the necessity of posting any bond or other security and without having to prove any actual damages. The Disclosing Party's right to injunctive relief shall be in addition to all other rights or remedies which may be available to it at law or in equity.
12. **Attorney's Fees.** A prevailing Disclosing Party shall be entitled to recover reasonable attorney's fees and costs in conjunction with any successful action brought to enforce this Agreement.

13. Waiver; Severability. No waiver of any term or right in this Agreement shall be effective unless in writing, signed by an authorized representative of the waiving Party. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or modification of such provision, or impairment of its right to enforce such provision thereafter. If any provision of this Agreement is held invalid under any applicable law, such provision shall be limited or eliminated to the minimum extent necessary, and all other provisions of this Agreement shall remain in full force and effect.

14. Entire Agreement; Modifications. This Agreement is the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement or communications between the Parties, whether written, oral, electronic, or otherwise. This Agreement may be modified only by a written amendment signed by authorized representatives of both Parties.

AGREED, this ____ day of _____, 20____
(the "Effective Date")

IT SOLUTIONS CONSULTING, LLC

By: _____

Name:

Title:

CLIENT: _____

By: _____

Name:

Title: