

## **MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This “Agreement” is made as of \_\_\_\_\_, 2007 between “M&A Forum, LLC, Profile Number” (sometimes referred to herein as “Client” or a “Party”) and \_\_\_\_\_ (sometimes referred to herein as “Company” or a “Party”). In consideration of the other Party's disclosure of Confidential Information (defined below), each Party agrees and acknowledges as follows:

1. Either Party may be the Party receiving Confidential Information (“Receiver”) from the other Party, or the Party disclosing Confidential Information (“Discloser”) to the other Party. Discloser wishes to disclose and Receiver wishes to review the Confidential Information, pursuant to the terms of this Agreement, to explore and evaluate the possibility of a transaction between them (the “Business Purpose”).

2. Each Party holds certain proprietary data, confidential information, trade secrets and product and service documentation, collectively referred to herein as “Confidential Information”. The term Confidential Information includes all information and data furnished by each Discloser to each Receiver, whether in oral, written, graphic or machine-readable form, including but not limited to, Confidential Information Memoranda, the fact that the Parties may be seeking a transaction, customer lists, financial information, manuals, work plans, software, including demonstration copies, product documentation, designs, procedures, concepts, techniques, product definitions and features, sales and marketing information, improvements, ideas, trade secrets, except such information and data as the Discloser agrees in writing is not Confidential Information.

3. Confidential Information will not include information which:
- (i) is now or hereafter becomes, through no act or failure to act on the part of Receiver, generally known or available to the public;
  - (ii) was acquired by Receiver before receiving such information from Discloser and without restriction as to use or disclosure;
  - (iii) is hereafter rightfully furnished to Receiver by a third party, without restriction as to use or disclosure;
  - (iv) is information which Receiver can document was independently developed by Receiver;
  - (v) is required to be disclosed pursuant to law, provided Receiver uses reasonable efforts to give Discloser reasonable notice of such required disclosure; or
  - (vi) is disclosed with the prior written consent of Discloser.

4. Receiver agrees: (i) to hold the Confidential Information in strict confidence, (ii) not to disclose such Confidential Information to any third parties other than attorneys, accountants and financial advisors who are subject to similar confidentiality obligations and are notified that the information is Confidential Information, and (iii) not to use any Confidential Information for any purpose except for the Business Purpose. Receiver may disclose the Confidential Information to its management, responsible employees, attorneys, accountants, and consultants with a bona fide need to know, but only to the extent necessary to carry out the Business Purpose. Receiver shall notify each person to whom disclosure is made that the Confidential

Information is confidential and shall be kept in confidence in accordance with the terms hereof and shall require each of them having use or access to Confidential Information to enter into appropriate agreements to protect the Confidential Information, if not otherwise subject to similar confidentiality requirements.

5. Upon Discloser's request, Receiver will promptly return to Discloser all tangible items containing or consisting of the Discloser's Confidential Information and all copies thereof and will delete from all computers the originals and all copies of the Confidential Information, except that Receiver's legal counsel may retain a copy for archival purposes.

6. Receiver recognizes and agrees that nothing contained in this Agreement will be construed as granting any rights to Receiver, by license or otherwise, to any of Discloser's Confidential Information except as specified in this Agreement.

7. Receiver acknowledges that all of the Confidential Information is owned solely by Discloser (or its licensors) and that the unauthorized disclosure or use of such Confidential Information would cause irreparable harm and significant injury, the degree of which may be difficult to ascertain. Accordingly, Receiver agrees that Discloser (or its licensors) will have the right to obtain an immediate injunction enjoining any breach of this Agreement, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.

8. This Agreement is the complete and exclusive statement regarding the subject matter hereof and supercedes all written and oral communication between Discloser and Receiver regarding the Confidential Information. This Agreement is made under and shall be construed according to the laws of the state of California excluding its conflicts of laws provisions.

9. This Confidentiality Agreement is effective from the above date and shall remain in effect until one year after the above date.

IN WITNESS WHEREOF, each Party hereto has executed this Agreement by duly authorized officers or representatives.

\_\_\_\_\_  
("Company Name")

**M&A Forum, LLC, Profile No.** \_\_\_\_\_

Client: \_\_\_\_\_

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

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

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_