

## CSU East Bay Non-Disclosure Agreement

This AGREEMENT, effective as of the last date of execution written below, for the protection of California State University East Bay's (CSUEB) proprietary and or confidential information, (hereinafter referred to as "DISCLOSER"), and \_\_\_\_\_ (insert vendor's name) \_\_\_\_\_ (hereinafter referred to as "DISCLOSEE"), each or both of which shall be referred to hereinafter as "Party" or "Parties", respectively.

WHEREAS, DISCLOSER represents that it possesses or may in the future possess certain technical, business, financial and other information or data which DISCLOSER considers proprietary to it and which relates to (insert title of information considered proprietary or confidential) (hereinafter called "PROPRIETARY" or "PROPRIETARY INFORMATION"); and

WHEREAS, DISCLOSEE desires to have access to information deemed proprietary and confidential by DISCLOSER relating to DISCLOSER'S business and future development ideas and business considerations relating thereto, for the sole purpose(s) of (state title of Statement of Work); and

NOW, THEREFORE, in consideration of these promises, and of the mutual promises and covenants contained herein, the Parties agree as follows:

- 1) Information disclosed hereunder shall be considered "PROPRIETARY INFORMATION" and subject to the terms and conditions of this AGREEMENT if:
  - a) with respect to information which is in written form, the information is conspicuously marked with a stamp or legend identifying it as PROPRIETARY (e.g. "Proprietary," "Confidential," "Competition Sensitive" or with a substantially equivalent designation), or
  - b) with respect to information which is in non-written form (such as magnetic recordings or other machine readable forms, models, tools, or hardware), the information is orally or otherwise identified to the DISCLOSEE as being the DISCLOSER'S PROPRIETARY INFORMATION or PROPRIETARY INFORMATION belonging to a third party to whom DISCLOSER has an obligation to protect at the time it is disclosed, and subsequently confirmed as being PROPRIETARY INFORMATION in a written communication to the DISCLOSEE within thirty (30) days after such disclosure.
- 2) DISCLOSEE agrees:
  - a) the DISCLOSEE shall use the PROPRIETARY INFORMATION only in connection with the above-stated purpose and no other purpose without express written consent of the DISCLOSER, and
  - b) the DISCLOSEE shall not, without prior written authorization of the DISCLOSER, disclose the PROPRIETARY INFORMATION to any third party, and
  - c) the DISCLOSEE shall limit disclosure of the PROPRIETARY INFORMATION within its own organization to only those persons who have a need to know the PROPRIETARY INFORMATION and who have been advised of and agreed to be bound by the restrictions on disclosure and use set forth herein in order for the above-stated purpose to be accomplished, and

- d) the DISCLOSEE shall keep and maintain the PROPRIETARY INFORMATION in a safe and secure place with adequate safeguards to ensure that unauthorized persons do not have access to the PROPRIETARY INFORMATION.
- 3) The fact that individual elements of the PROPRIETARY INFORMATION may be in the public domain shall not relieve the DISCLOSEE of its obligations hereunder unless the specific combination or combinations of elements as disclosed in such PROPRIETARY INFORMATION is available to the public.
- 4) In the event this AGREEMENT is attached as an exhibit to or otherwise incorporated by reference into a contract between the Parties for goods or services, the term of this AGREEMENT shall be coextensive with the term of such contract. Otherwise, this AGREEMENT shall terminate thirty (30) days after one of the Parties provides written notice of termination to the other Party, or one (1) year after the effective date of this AGREEMENT, whichever occurs first. However, this AGREEMENT may be terminated immediately and the return of all PROPRIETARY INFORMATION may be demanded upon written notice in the event that the DISCLOSEE commits a breach of any material term of this AGREEMENT, is declared bankrupt, creates or permits an assignment for the benefit of its creditors, is dissolved, or ownership and control of the said Party is transferred to a third party.
- 5) Upon termination of this AGREEMENT or upon written request by the DISCLOSER, the DISCLOSEE shall, at the election of the DISCLOSER, either return or verify destruction to the DISCLOSER all of the PROPRIETARY INFORMATION, and any copies thereof, except that the DISCLOSEE may retain one copy of any such PROPRIETARY INFORMATION for archival purposes. Return or destruction of PROPRIETARY INFORMATION pursuant to this paragraph shall not act to relieve either Party of its obligations regarding disclosure or use set forth herein.
- 6) Notwithstanding any earlier termination of this AGREEMENT, the obligations imposed by this AGREEMENT shall extend for five (5) years from the date of the last disclosure.
- 7) The Parties agree that any and all modifications and improvements which both (a) directly pertain to the PROPRIETARY INFORMATION and (b) are conceived in conjunction with discussions hereunder shall be owned by the DISCLOSER, and the DISCLOSEE hereby assigns all right, title and interest therein to the DISCLOSER. Any and all modifications and improvements covered by this paragraph shall be considered the DISCLOSER's PROPRIETARY INFORMATION hereunder.
- 8) This AGREEMENT shall be construed in accordance with the laws of the State of California. In the event of a breach or threatened breach of any of the provisions of this AGREEMENT by the DISCLOSEE, the DISCLOSEE acknowledges and agrees that the DISCLOSER shall have no adequate remedy at law and shall therefore be entitled to enforce any such provision by temporary or permanent injunctive or mandatory relief obtained in any court of competent jurisdiction without the necessity of proving damages, posting any bond or other security, and without prejudice to or diminution of any other rights or remedies which may be available at law or in equity.
- 9) If any part of this AGREEMENT is held to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other part or provision of this Agreement, which other part or provision shall remain in full force and effect.

10) This AGREEMENT contains the entire understanding between the Parties regarding the protection of PROPRIETARY INFORMATION in connection with the above-stated purpose and supersedes all prior and collateral communication, reports, and understanding between the Parties in respect thereto; except that nothing in this AGREEMENT shall supersede or in any way modify any of the terms and conditions, or the rights and obligations of the Parties, included in any purchase agreement between the Parties unless said purchase agreement so stipulates. No change, modification, alteration, or addition to any provision hereof shall be binding unless in writing and signed by authorized representatives of both Parties.

11) Electronic Signatures. This agreement may be executed in duplicate with each party signing one original and providing a facsimile (fax), scanned (e.g., PDF), or other digitized, electronic copy of the signature page to the other party. The party receiving the fax or scanned or other digitized electronic signature shall acknowledge receipt of the electronic signature. Each party agrees to make its document with original signature available to the other party upon request. The parties further agree that the digitized, electronic signature shall be treated as if it were an original signature and neither party shall contest the validity of this agreement based on the use of electronic signatures.

IN WITNESS WHEREOF, the Parties have caused this AGREEMENT to be executed by their duly authorized representatives who have set their hands hereto as follows:

**DISCLOSEE**

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

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

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

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

**DISCLOSER**

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

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

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

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