

## NONDISCLOSURE AGREEMENT

This Agreement (the "Agreement") is made as of \_\_\_\_\_ 2012 (the "Effective Date"), by and between \_\_\_\_\_, LLC, a Tennessee limited liability company ("Company"), and \_\_\_\_\_, a \_\_\_\_\_ with its principal place of business at \_\_\_\_\_ ("Participant"). Company and Participant are each sometimes referred to herein as a "Party" and collectively as the "Parties."

A. Participant is entering into discussions with Company in contemplation of entering into a business relationship with Company ("Business Purpose").

B. In order to pursue this Business Purpose, Participant and Company recognize that there is a need for Company to disclose to Participant certain confidential information of Company to be used only for the Business Purpose and to protect such confidential information from unauthorized use and disclosure.

NOW, THEREFORE, in consideration of the covenants, conditions and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. "Confidential Information" means any and all tangible and intangible information (whether written or otherwise recorded or oral) of the Company that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or (b) that the Company designates as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation (i) nonpublic information relating to the Company's technology, customers, business plans, promotional and marketing activities, finances and other business affairs, (ii) third-party information that the Company is obligated to keep confidential, (iii) any information described in this paragraph that is received from, belongs to or relates to any affiliate of Company, and (iv) any files, memoranda, reports, data, notes, drawings, or other tangible or electronic material containing any information described in this paragraph, whether created by the Participant or otherwise.

2. Notwithstanding the above, the term "Confidential Information" shall not include any information that is either:

(a) available from public sources or in the public domain, through no fault of the Participant; or

(b) received at any time from any third party without breach of a non-disclosure obligation to the Company; or

(c) readily discernible from publicly-available products or literature; or

(d) approved for disclosure by prior written permission of a corporate officer of Company.

Notwithstanding the foregoing, any personally-identifiable Confidential Information about any individual consumer shall not be subject to any of the exceptions noted above and may only be disclosed as permitted by law and any applicable privacy policies.

3. All Confidential Information furnished to Participant will be used solely in connection with the Business Purpose, will not be discussed with other persons without Company's express written authorization, will not be used in any way directly or indirectly except in furtherance of the Business Purpose, and will be kept confidential by Participant and its Representatives (defined below), provided however, that Participant may disclose the furnished Confidential Information or portions thereof to those of its officers, directors, employees, or other affiliates, agents, or representatives (including financial advisors, accountants and attorneys) who need to know such information for the purpose of evaluating or implementing the Business Purpose and who are otherwise bound by a duty of confidentiality to Participant (such necessary persons being collectively called "Representatives"), it being understood and agreed to by Participant that such Representatives will be informed of the confidential nature of the information and will be directed by Participant not to disclose to any other person any Confidential Information. Participant is responsible for any breach of this Agreement by its Representatives. The standard of care to be exercised by Participant to meet the obligations set forth in this paragraph shall be the standard exercised by Participant with respect to its own proprietary information of a similar nature, but in no event less than reasonable care.

4. Participant may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it or as otherwise required by law, provided that Participant (i) gives the Company reasonable written notice to allow the Company to seek a protective order or other appropriate remedy (except to the extent Participant's compliance with the foregoing would cause it to violate a court order or other legal requirement), (ii) discloses only such information as is required by the governmental entity or otherwise required by law, and (iii) and uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.

5. Participant understands and acknowledges that Company is not and will not be making any representation or warranty, express or implied, as to the accuracy or completeness of any furnished Confidential Information, and neither Company nor any of its Representatives has or will have any liability to Participant or any other person resulting from any reliance upon or use of, or otherwise with respect to, any furnished Confidential Information. Only those representations or warranties made expressly in a definitive agreement, when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such agreement, will have any legal effect.

6. If the Parties do not proceed with a transaction or business relationship, or if Company so requests at any time, Participant will return promptly to Company all copies, extracts, or other reproductions in whole or in part of the Confidential Information in the possession of Participant or its Representatives.

7. Participant shall notify Company immediately upon discovery of any unauthorized disclosure of Confidential Information, use of Confidential Information other than in pursuance of the Business Purpose, or any other breach of this Agreement. Participant will cooperate with Company in every reasonable way to help Company regain possession of its Confidential Information and prevent further unauthorized use.

8. All Confidential Information shall remain the exclusive property of Company. Company retains all rights and remedies afforded it under patent, copyright, trade secret, trademark, and any other applicable laws of the United States and the states thereof, or any applicable foreign countries, including, without limitation, any laws designed to protect proprietary or confidential information. This Agreement does not grant to Participant any express or implied right to Company's patents, copyrights, trademarks, or other intellectual property rights.

9. Participant further acknowledge that:

(a) irreparable injury and damage will result from unauthorized disclosure of Confidential Information and from uses of Confidential Information other than in pursuance of the Business Purpose;

(b) monetary damages may not be sufficient remedy for unauthorized disclosure of Confidential Information; and

(c) Company shall be entitled, without waiving any additional rights or remedies available to it at law, in equity, or by statute, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.

10. Participant agrees to indemnify, defend, and hold harmless Company from and against any claim, loss, liability, damage or expense, including but not limited to Company's reasonable attorneys' fees, arising out of or connected with any third party claim that, if true, would be a breach by Participant of any of the terms of this Agreement.

11. This Agreement shall be construed in accordance with and controlled by the laws of the State of Tennessee, without regard to its or any other jurisdiction's laws governing conflicts of law. The Parties agree that the federal and state courts of the State of Tennessee shall have exclusive subject matter and personal jurisdiction to determine all disputes surrounding this Agreement and disclosure of Confidential Information hereunder.

12. All agreements and covenants contained herein are severable, and if any of them shall be held to be invalid by a competent court, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein. Subject to the foregoing, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

13. This Agreement is intended to cover Confidential Information received by the Participant both prior and subsequent to the date hereof. All obligations created by this Agreement shall survive for the longer of (i) five (5) years from the date hereof, or (ii) five (5)

years from any termination or expiration of the parties' business relationship, if one exists or arises. Notwithstanding the foregoing, with respect to Confidential Information described in Section 1(a), the provisions of this Agreement shall survive indefinitely.

14. This Agreement constitutes the entire agreement of the parties with respect to the matters described herein, superseding in all respects any and all prior proposals, negotiations, understandings and other agreements, oral or written, between the parties with respect to the matters described herein.

15. This Agreement will inure to the benefit of and be binding upon the Parties and their successors and assigns.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the day first written above.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_