

SOFTWARE BETA TESTER NONDISCLOSURE AGREEMENT

This is an agreement, effective _____, 20____, between _____ (“Company”) and _____ (“Tester”), in which Tester agrees to test software known as _____ (the “Software”) and keep Company aware of the test results.

1. Company’s Obligations

Company shall provide Tester with a copy of Software and any necessary documentation and instruct Tester on how to use it and what test data is desired by Company.

Upon satisfactory completion of the testing:

[Choose one]

– Company shall furnish Tester with one free copy of the production version of Software, contingent upon Company’s decision to proceed with production of Software.

– Company shall _____.

2. Tester’s Obligations

Tester shall test Software under normally expected operating conditions in Tester’s environment during the test period. Tester shall gather and report test data as agreed upon with Company. Tester shall allow Company access to Software during normal working hours for inspection, modifications, and maintenance.

3. Software a Trade Secret

The software is proprietary and a valuable trade secret of the Company. It is entrusted to Tester only for the purpose set forth in this Agreement. Tester shall maintain Software in the strictest confidence. Tester will not, without Company’s prior written consent:

(a) disclose any information about Software, its design and performance specifications, its code, and the existence of the beta test and its results to anyone other than Tester’s employees who are performing the testing and who shall be subject to non-disclosure restrictions at least as protective as those set forth in this Agreement;

(b) copy any portion of Software or documentation, except to the extent necessary to perform beta testing; or

(c) reverse engineer, decompile or disassemble Software or any portion of it.

4. Security Precautions

Tester shall take reasonable security precautions to prevent Software from being seen by unauthorized individuals whether stored on Tester's hard drive or on physical copies such as CD-ROMS, diskettes or other media. Tester shall lock all copies of Software and associated documentation in a desk or file cabinet when not in use.

5. Term of Agreement

The test period shall last from _____, 20__ until _____, 20__.

This Agreement shall terminate at the end of the test period or when Company asks Tester to return Software, whichever occurs first. The restrictions and obligations contained in Clauses 4, 7, 8, 9 and 10 shall survive the expiration, termination or cancellation of this Agreement, and shall continue to bind Tester, its successors, heirs and assigns.

6. Return of Software and Materials

Upon the conclusion of the testing period or at Company's request, Tester shall within 10 days return the original and all copies of Software and all related materials to Company and delete all portions of Software from computer memory.

7. Disclaimer of Warranty

Software is a test product and its accuracy and reliability are not guaranteed. Tester shall not rely exclusively on Software for any reason. Tester waives any and all claims Tester may have against Company arising out of the performance or nonperformance of Software.

SOFTWARE IS PROVIDED AS IS, AND COMPANY DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO IT, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Limitation of Liability

Company shall not be responsible for any loss or damage to Tester or any third parties caused by Software. COMPANY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGE, WHETHER BASED ON CONTRACT OR TORT OR ANY OTHER LEGAL THEORY, ARISING OUT OF ANY USE OF SOFTWARE OR ANY PERFORMANCE OF THIS AGREEMENT.

9. No Rights Granted

This Agreement does not constitute a grant or an intention or commitment to grant any right, title or interest in Software or Company's trade secrets to Tester. Tester may not sell or transfer any portion of Software to any third party or use Software in any manner to produce, market or support its own products. Tester shall not identify Software as coming from any source other than Company.

10. No Assignments

This Agreement is personal to Tester. Tester shall not assign or otherwise transfer any rights or obligations under this Agreement.

11. General Provisions

(a) Relationships: Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venturer or employee of the other party for any purpose.

(b) Severability: If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as to best to effect the intent of the parties.

(c) Integration: This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations, and understandings. This Agreement may not be amended except in a writing signed by both parties.

(d) Waiver: The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

(e) Attorney Fees and Expenses: In a dispute arising out of or related to this Agreement, the prevailing party shall have the right to collect from the other party its reasonable attorney fees and costs and necessary expenditures.

(f) Governing Law: This Agreement shall be governed in accordance with the laws of the State of _____.

(g) Jurisdiction: The parties consent to the exclusive jurisdiction and venue of the federal and state courts located in [insert county and state in which parties agree to litigate] in any action arising out of or relating to this Agreement. The parties waive any other venue to which either party might be entitled by domicile or otherwise.

Company

Signature _____

Print Name _____

Title _____

Date _____

Tester

Signature _____

Print Name _____

Date _____