

## MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (the "Agreement") is made by and between **Fund PDX** (inclusive of its principals and affiliates, "**Fund PDX**"), an Oregon LLC with a principal place of business at 13980 NW Main St., Banks, OR 97106, and \_\_\_\_\_ (inclusive of its principals and affiliates, "**Company**"), a \_\_\_\_\_ with a place of business located at \_\_\_\_\_ (each a "**Party**" and collectively the "**Parties**").

The Parties desire to assure the protection and preservation of the confidential and/or proprietary nature of information which may be disclosed or made available to each other for the limited purpose of internally evaluating, discussing and pursuing a prospective business relationship (the "Purpose"). In the course of the Parties' discussions relating to the Purpose, the Parties expect that each is or may become a recipient of the other Party's Confidential Information, as defined below. The Parties intend by this Agreement, among other things, to limit the manner and extent to which each recipient may use or disclose the other Party's Confidential Information.

### **1. Confidential Information.**

"Confidential Information" means any non - public information or material relating to the existing or prospective business and/or technology of a Party or its partners. Confidential Information includes, but is not limited to, a Party's product and roadmap information, business and marketing plans, financial/pricing information, employee or contractor information, customer and vendor related data, strategies, plans, software, techniques, drawings, designs, processes, specifications, technical data, research and development, inventions, intellectual property and know-how and shall include all information that an experienced business person would reasonably understand to be of a confidential nature, given the circumstances surrounding the disclosure and nature of the information.

### **2. Obligations of Confidence.**

Except as expressly permitted or further restricted by Section 3 below, each Party agrees as recipient of a disclosing Party's Confidential Information that it will: (a) not disclose such Confidential Information to any third parties, and (b) exercise the same degree of care to protect such Confidential Information from any possession, use or disclosure not expressly permitted by this Agreement that the recipient Party generally uses to protect its own information of similar nature, but no less than a reasonable standard of care.

### **3. Permitted Use and Disclosure.**

Each disclosing Party's Confidential Information may be possessed, used and disclosed by the recipient Party only as follows:

a. Possession and Use:

The recipient Party may possess, use and reproduce such Confidential Information solely for the Purpose defined above. The Purpose shall not include disclosure except as expressly permitted below. Recipient shall not use the Confidential Information for any other purpose. Recipient shall not disassemble, decompile or otherwise reverse engineer any samples, prototypes, software or other tangible objects provided by the disclosing Party hereunder.

b. Disclosure:

The recipient Party may disclose such Confidential Information to its, or its Affiliates', employees, legal and financial advisors, and consultants on a strict "need to know" basis and solely for the Purpose, provided that each such person to whom such disclosure is made is notified of the confidential nature of the disclosure and is under an obligation to hold the Confidential Information in confidence under terms and conditions at least as restrictive as the terms and conditions of this Agreement. "Affiliate" a Party's parent or subsidiary company or a corporate affiliate that controls, is controlled by or under common control with such Party. Recipient Party shall be responsible for any breach by its Affiliates of the terms set forth in his Agreement.

c. Legally Required Disclosure:

Disclosure of any Confidential Information by a Party hereunder shall not be precluded if such disclosure is required by the recipient Party pursuant to court or

administrative order, but only to the extent required and provided that, to the extent permitted by law and practicable, the recipient Party in each instance before making such disclosure first (i) promptly upon receipt of such order notifies the other party of such order; and (ii) 2 reasonably cooperates with the other Party, at the other Party's expense, in making, if available under applicable law, a good faith effort to obtain a protective order or other appropriate determination against or limiting disclosure or use of the Confidential Information.

**4. Return or Destruction of Confidential Information.**

Upon the earlier of: the expiration of this Agreement or the request (at any time) of the disclosing Party, the recipient Party shall, at the disclosing Party's option, either: (a) promptly destroy all copies of the written Confidential Information in its and its representatives possession and confirm such destruction to the disclosing Party in writing, or (b) promptly deliver to the disclosing Party all copies of the written Confidential Information in its and its representatives' possession.

**5. Exceptions to Confidentiality.**

Notwithstanding any other provisions of this Agreement, each Party acknowledges that Confidential Information shall not include any information which:

a. is now or becomes part of the public domain through no fault or omission of the recipient Party;

- b. is already known by the recipient Party prior to the disclosure without restriction on disclosure;
- c. is lawfully received, without obligation of confidentiality, by the recipient Party from others; or
- d. is independently developed by or for the recipient Party without use of or reference to the disclosing Party's Confidential Information, as evidenced by the recipient Party's records.

## **6. Right to Disclose; No Other Warranties.**

Each Party represents and warrants that (a) it has the right to disclose all Confidential Information provided under this Agreement and (b) such Party will not export, directly or indirectly, the other Party's Confidential Information or any portion thereof in violation of any relevant law or regulation, including without limitation any law or regulation of the United States government or any agency thereof. Except for the foregoing, the Parties agree that the Confidential Information provided by either Party to the other Party is provided "as is." No other representations or warranties with respect to Confidential Information, either express or implied and including, but not limited to, completeness or accuracy, are made by either Party.

## **7. Term; Term of Confidentiality.**

This Agreement shall be effective as of the date the Agreement is fully executed and shall continue for a

period of one (1) year thereafter unless terminated earlier by written notice from one Party to the other. Either Party may terminate this Agreement at any time with or without cause upon thirty (30) days written notice to the other Party. Notwithstanding the expiration or termination of this Agreement, all provisions of this Agreement relating to the rights and obligations concerning Confidential Information disclosed prior to the expiration or termination of this Agreement shall continue indefinitely until the Confidential Information becomes part of the public domain through no fault or omission of recipient Party.

## **8. Disclaimers.**

Nothing in this Agreement shall operate to create or transfer an ownership or other interest in any Confidential Information, nor require the disclosure by a disclosing Party of any of its Confidential Information, nor restrict, inhibit or encumber any disclosing Party's right or ability to dispose of, use, distribute, disclose or disseminate in any way its own Confidential Information. Neither party acquires any patent, copyright, mask work or trademark rights under this Agreement. Nothing herein shall obligate either Party to (a) enter into any business arrangements or agreements with the other Party, or (b) reimburse the other Party for costs and expenses for any effort expended by such Party. Each Party shall bear its own costs and expenses in connection with this Agreement and the Purpose.

## **9. Independent Development.**

The Parties acknowledge and agree that this Agreement shall not preclude a Party from independently developing and marketing products or services involving technology or ideas similar to those disclosed, provided that the receiving Party does not violate any of its obligations under this Agreement in connection with such activities. The Parties agree that nothing in this Agreement prohibits competition of the Parties in the marketplace.

## **10. Miscellaneous.**

a. The recipient Party acknowledges that remedies at law may be inadequate to protect the disclosing Party against any actual or threatened breach of this Agreement by the recipient Party or its representatives and, without prejudice to any other rights and remedies otherwise available to the disclosing Party, recipient Party agrees to the granting of injunctive or other equitable relief in the disclosing Party's favor, without proof of actual damages or the requirement of posting a bond or other security.

b. Neither Party may disclose the existence or terms of this Agreement without the prior express written consent of the other Party.

c. Should any provision of this Agreement be deemed illegal or otherwise unenforceable, that provision shall be severed and the remainder of this Agreement shall remain in full force and effect.

d. Neither Party may assign or otherwise transfer its rights, duties or obligations under this Agreement to any other person or entity, in whole or in part, without the prior written consent of the other Party not to be unreasonably withheld. Any attempt to assign this Agreement without the other Party's written consent will be void. Notwithstanding the foregoing, either Party may assign this Agreement without consent to any parent, subsidiary, or Affiliate of such Party, or to the surviving entity resulting from any merger, acquisition, or consolidation involving such Party so long as the assignee agrees in writing to be bound by the terms of this Agreement. This Agreement binds and inures to the benefit of the Parties and their permitted successors and assigns.

e. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. The Parties hereby irrevocably submit to the personal jurisdiction of any state or federal court sitting in the State of Oregon, County of Multnomah, in any suit, action, or proceeding arising out of or relating to this Agreement. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection which such party may raise now, or hereafter have, to the laying of the venue of any such suit, action or proceeding brought in such court and any claim that any such suit, action or proceeding brought in such a court has been brought in an inconvenient forum.

f. No waiver or modification of this Agreement will be binding upon either Party unless made in writing and signed by a duly authorized representative of each Party.

g. The signatories hereto warrant and represent that they are duly authorized to bind their respective entities and to execute this Agreement.

h. This Agreement contains the sole and entire agreement between the Parties related to the subject matter hereof, and supersedes all prior and

contemporaneous understandings and agreements relating thereto.

i. All notices sent under this Agreement, including notices of address change, shall be in writing and sent by registered mail or reputable overnight courier to the Party's address first set forth above.

IN WITNESS WHEREOF, Fund PDX and Company have executed this Mutual Nondisclosure Agreement, effective as of the later of the dates below.

**FUND PDX**

**Company:** \_\_\_\_\_

\_\_\_\_\_  
(print name and title)

\_\_\_\_\_  
(print name and title)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(signature)

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_