



NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is effective the date that Company accepts the terms (the “Effective Date”) and is by and between Lambda, Inc., (“Lambda”) and the counterparty (“Company”). By accepting this Agreement you represent that you are authorized to bind the Company to this Agreement.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Purpose.** Lambda wishes to provide information of a proprietary and confidential nature relating to our respective businesses in connection with a business relationship between the parties (the “Business Purpose”).
- 2. Definition.** “Confidential Information” means any information not subject to exclusion pursuant to *Section 3* disclosed in connection with the Business Purpose by Lambda to Company, whether tangible or intangible, including without limitation design details, selection and sequence of components and materials, manufacturing processes, research plans and results, pricing information, financial information, business or marketing plans, business or technical methodologies, strategies, technology, specifications, development plans, customers, prospective customers, partners, suppliers, billing records, and products or services, provided that: (a) Lambda has marked or identified such information as confidential or proprietary; (b) Lambda identified as confidential such information within 30 days of disclosure to the Company; or (c) a reasonable person would deem such information to be confidential or proprietary given the nature of the information and the circumstances under which it is disclosed.
- 3. Exclusions.** Confidential Information shall not include any information that the Company can show: (a) was in its possession prior to disclosure by Lambda hereunder; (b) is or becomes generally known to the public other than through Company’s failure to observe any or all terms and conditions hereof; (c) is received from a third party without breach of any obligation owed to Lambda; and (d) any information that can be demonstrated to have been independently developed by the Company without use of or reliance on any of the Confidential Information.
- 4. Confidentiality and Use Restriction.** With respect to Confidential Information, the Company agrees as follows: (a) the Company shall not disclose any Confidential Information of Lambda except with Lambda’s prior written permission; provided that the Company may disclose any Confidential Information of Lambda to its employees and consultants who have a need to know such Confidential Information for the Business Purpose, and who are subject to confidentiality duties or obligations to the Company that are no less restrictive than the terms and conditions of this Agreement; (b) the Company shall not embody any of the Confidential Information in any of its products, processes, or services, or duplicate or exploit any of the Confidential Information in its business, or otherwise use any of the Confidential Information for any purpose other than in connection with the Business Purpose; (c) the Company shall use at least reasonable care and adequate measures to protect the security of the Confidential Information and to ensure that any Confidential Information is not disclosed or otherwise made available to other persons or used in violation of the foregoing. Such measures shall be at least the equivalent of measures which the Company uses to protect its own most valuable proprietary information.
- 5. Required Disclosures.** If Company is compelled by law to disclose Confidential Information of Lambda, it shall provide Lambda with prior written notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Lambda’s expense, if Lambda wishes to contest the disclosure.
- 6. Export Controls.** Confidential Information disclosed under this Agreement may be subject to export controls under the laws of the United States. Each party will comply with such laws and agrees not to knowingly export, re-export or transfer Confidential Information of the other party without first obtaining all required United States authorizations or licenses.
- 7. Term and Termination.** This Agreement is intended to cover Confidential Information disclosed after the Effective Date and to Confidential Information disclosed earlier to the extent that the parties began discussions concerning the Business Purpose prior to the Effective Date. This Agreement will expire three (3) years from the Effective Date unless either party earlier terminates this Agreement upon 30 days written notice; however, any termination or expiration of this Agreement shall not relieve the Company from its confidentiality and use obligations with respect to Confidential Information disclosed prior to the date of termination.
- 8. Reserved.**
- 9. No License; Inventions.** The Confidential Information will remain the sole property of Lambda. Neither this Agreement nor any disclosure of information hereunder grants the Company any rights, title, or license under any trademark, copyright, or patent now or hereafter owned or controlled by Lambda. This Agreement is not intended to confer any right or license with respect to the Confidential Information. This Agreement shall not reduce, limit, or supersede any intellectual property, trade secret, or other rights or remedies of either party available under applicable law.
- 10. Survival of Obligations.** The Company’s obligations under Sections 4 and 11 shall survive the return or destruction of such materials and any expiration or termination of this Agreement.
- 11. Notice of Breach.** The Company agrees to notify Lambda promptly in writing if the Company becomes aware of any breach of confidentiality with respect to the Confidential Information in its possession. Notice by email is sufficient where receipt is confirmed.
- 12. No Other Obligation.** This Agreement imposes no obligations on either party to exchange any Confidential Information or to purchase, sell, license, transfer or otherwise transact in any technology, services or products. Nor does this Agreement create any agency or partnership relationship between the parties hereto.

NO WARRANTY IS MADE BY EITHER PARTY UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED “AS IS.”



Lambda

13. Remedies. The Company agrees that any violation of this Agreement by it may cause irreparable injury to Lambda which would not be adequately compensated by money damages. Accordingly, Lambda shall be entitled to seek an injunction or other appropriate equitable relief to restrain any breach or threatened breach of this Agreement without the requirement to post bond.

14. Notices. All notices under this Agreement shall be in writing and shall be delivered to the addresses set forth herein. Notice shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; (iii) 48 hours after sending by confirmed facsimile; or (iv) 48 hours after sending by email. Notices to Lambda shall be sent to the attention of its General Counsel via email to legal@Lambdal.com and by mail to 2510 Zanker Road, San Jose, California 95131. Notice to the Company shall be sent to the address provided in the signature block. Either party may change its address for notice by giving notice of such address change in the manner provided herein.

15. Enforcement and Entire Agreement. This Agreement shall be governed by the laws of the State of California, without regard to California's conflict of laws rules. In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (a) such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (b) the remaining terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect. No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. This Agreement and all expressly referenced documents constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications, including any reseller or similar agreements previously executed by the parties.