

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT (“Agreement”) is made between _____, (“Company”) and the **Tribe** (“Nation”), a sovereign tribal nation located within the boundaries of the State of (Insert state). Company and Nation are each referred to herein as a “Party” and collectively as the “Parties.” This Agreement governs the disclosure of confidential information by and between the Parties.

WHEREAS, Company has made a proposal (“Proposal”) to provide goods and/or to perform professional services (“Services”) for Nation; and

WHEREAS, in connection with the Proposal and any actions taken in furtherance of providing goods and/or services to Nation, Company is in need of certain Confidential Information belonging to Nation; and

WHEREAS, Nation agrees to provide certain Confidential Information at its discretion, subject to the terms of this Agreement.

Company hereby agrees as follows:

1. Confidential and Proprietary Information. (a) Company acknowledges and agrees that in connection with the proposal or the provision of goods or services, Nation shall divulge to Company and its employees, agents, and/or representatives certain proprietary and confidential information which, for purposes of this Agreement, shall mean and include any and all information about Nation and Nation’s business, Nation’s non-public information, Nation’s patrons or customers, technical data or know-how including, but not limited to, salaries, pricing, expenses, margins, revenues and other financial information; technical data, production data, technical designs, detail designs, network configurations and topologies, test data and results, flowcharts, drawings, designs, graphs, diagrams, notes, outlines and the like created in connection with any services or with any of Nation’s activities, and all formulas, processes, algorithms, ideas, inventions, know-how, techniques and other information of a general and technical nature, whether in tangible or intangible form; marketing, distribution, promotion, sales or advertising processes, programs, projections or proposals; consulting or other business projects or proposals; all customer lists, requirements, product usage and other customer data; sales procedures, volume figures and strategies; supplier lists; personnel information including compensation, incentive compensation and bonus structures, employment agreements, performance standards, performance evaluations and all information in any way concerning the products, projects, activities, business or affairs of Nation or its affiliates or customers; business or marketing plans; security processes or precautions; customer or vendor lists; and any other information not listed but that is designated as confidential by Nation, or which by its nature should reasonably be expected to remain confidential.
 - a) Confidential Information shall not include:
 - i. Information that is disclosed to Company by any third party which is not under a confidentiality obligation to Nation;
 - ii. Information that the Nation itself discloses to the public;
 - iii. Information that is already legally in the possession of Company at the time of disclosure by Nation as shown by the Company’s files and records immediately prior to the time of disclosure;
 - iv. Information that was publicly known and made generally available prior to the time of disclosure;
 - v. Information that becomes publicly known and made generally available after disclosure by Nation to Company through no action or inaction of Company; or

- vi. Information that is independently developed by Company without use of or reference to Nation's Confidential Information, as shown by documents and other competent evidence in Company's possession.
2. In connection with said Confidential Information, Company, on behalf of itself and all of its officers, directors, employees, shareholders, agents and representatives, covenants and agrees as follows:
 - a) Company agrees to keep confidential the Confidential Information and shall disclose the Confidential Information to only those personnel and agents of Company who have a professional need to know such information and shall use the Confidential Information solely for the purpose of performing its engagement for the Nation. Company will show this Agreement to all of its personnel and agents having access to the Confidential Information and will be responsible for any breach of this Agreement by its personnel and agents.
 - b) That it shall not, directly or indirectly, communicate, divulge, disseminate, use or disclose or permit to be disclosed to or by any individual, partnership, joint venture, corporation, association, syndicate, or any other group or combination (collectively "Entity"), in any manner or by any method at any time during or after the date hereof, any Confidential Information;
 - c) That it shall not, jointly or severally, directly or indirectly, pursue, use, utilize, take advantage of, explore, develop or otherwise become involved with, in any manner or by any method, any product, concept or idea which in any way uses, utilizes, or has as its basis or foundation any Confidential Information;
 - d) That it shall not permit at any time during or after the date of this Agreement, except as necessary to fulfill its obligation to the Nation pursuant to any agreement between them for the sale or purchase of products or services, any Entity to examine or make copies of any data, reports, papers, memoranda, correspondence, files, notebooks, compilations, drafts, prototypes, records or other documents (collectively "Documents") that contains Confidential Information belonging to the Nation;
 - e) That it shall promptly return, delete, or destroy any or all Confidential Information, and any copies thereof, as requested by Nation;
 - f) That it shall use commercially reasonable practices to protect confidential information, and that those practices shall meet or exceed the same degree of care Company employs with respect to avoid inadvertent disclosure or unpermitted use of the its own Confidential Information; and
 - g) That if Company is requested or becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demands, court order, or similar process) to disclose any of the Confidential Information or take any other action prohibited by this Agreement, Company shall provide the Nation with prompt written notice thereof (in reasonable detail) so that the Nation may elect to seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, or that the Nation waives compliance with provisions of this Agreement, Company shall furnish only that portion of the Confidential Information or take only such action as is required by law or binding order and shall exercise its best efforts to obtain reliable assurance that confidential treatment shall be accorded any Confidential Information so furnished.

3. Additional Documents. Company understands that the Nation may be subject to certain laws and regulations, including without limitation, data protection laws designed to protect personal employee information and “HIPAA”. While it is not currently expected that Company will have access to any such protected or confidential information, if in the course of rendering services, such access is deemed necessary, then Company agrees to execute such documents as may be necessary to enable the Nation to remain compliant with any such laws and regulations.
4. Remedies. Company, recognizing that substantial and irreparable injury will result to Nation, and Nation’s business and property, in the event of the breach of the covenants set forth in this Agreement, agree that in the event of any violation of any such covenants, whether threatened or actual, that the Nation shall be entitled, in addition to any other legal or equitable remedy available, to the issuance of restraining orders or injunctive relief without the necessity of bond in order to provide full and ongoing protection to the Nation. Nation shall have the right to recover its monetary damages, and may be entitled to its reasonable attorney’s fees and court costs that result from the breach of the covenants set forth herein, although the Parties hereby acknowledge and agree that said damages shall be difficult to ascertain and, in any event, cannot serve as an adequate remedy in the event of a violation of any covenant contained in the Agreement. These covenants shall survive the execution of this Agreement and the commencement and/or termination of the business relationship between the Parties.
5. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective legal representatives, voluntary and involuntary successors and permitted assigns.
6. Assignment. Company may not assign any of its duties, obligations, liabilities, responsibilities or rights set forth in this Agreement without the Nation’s prior written consent.
7. Survival. The confidentiality obligations contained herein shall survive the termination of the Parties’ business relationship.
8. Amendment. This Agreement shall not be amended, altered, changed or modified except by a written agreement signed by all parties hereto.
9. Notices. Any notice or communication required or permitted by this Agreement shall be given in writing and addressed as follows:

If to Nation:

Name:

Title:

Address:

City: _____, State: _____, ZIP _____

Phone:

Fax:

With a copy to:

Tribe

Legal Department

If to Company:

Name:
Title:
Address:
City:
Phone:
Fax:

Notices shall be served personally, by telecopy, facsimile, overnight express mail service, or first-class, certified mail, return receipt requested, postage pre-paid. If served personally, by telecopy, or facsimile, notice shall be deemed delivered upon receipt. If mailed by overnight express mail service, notice shall be deemed delivered 24 hours after mailing. If mailed by first-class, certified mail with return receipt verification, then notice shall be deemed delivered the earlier of seventy-two (72) hours after mailing, or the date set forth on the signed receipt, if any. Either party may give notification to the other party in any manner described above for changes of address for the sending of notices.

The person who signs below on behalf of Company warrants that he/she is authorized to bind Company to the terms contained herein.

COMPANY

Signed: _____

Print Name: _____

Title: _____

Date: _____

Tribe

Signed: _____

Print Name: _____

Title: _____

Date: _____