

Mutual Non-Disclosure Agreement

This Mutual Non-Disclosure Agreement (the "Agreement") is entered into as of _____ (the "Effective Date") by and between Kensu, Inc. ("Kensu") with offices at 353 Kearny Street, San Francisco, CA, 94108, and _____ ("_____"). Each of Kensu and _____ are referred to as "Parties" for the purposes of this Agreement.

RECITALS

A. Each of the Parties has disclosed and/or anticipates disclosing to the other Party certain Confidential Information (as defined below) in connection with a potential business relationship (collectively, the "Business Purpose").

B. In consideration of such disclosure, each Party is willing to maintain the confidentiality of Confidential Information disclosed to it by the other Party, and use such Confidential Information only in connection with the Business Purpose in accordance with the terms and conditions of this Agreement.

In consideration of the premises and the promises made herein, the Parties agree to be legally bound as follows:

1. Confidential Information.

(a) Definitions.

(i) "Confidential Information" of Discloser means any and all business and technical information of Discloser, or of a third party as to whom Discloser has an obligation of confidentiality, whether disclosed before or after the Effective Date and whether disclosed in writing, orally, or by electronic delivery. Confidential Information includes, without limitation, trade secrets, ideas, processes, formulae, software, services, data, data structures, lists, applications programming interfaces, protocols, know-how, copyrightable material, improvements, inventions (whether or not patentable), techniques, strategies, business plans, product development plans, timetables, forecasts, potential customer and supplier lists, and information relating to product and/or service designs, specifications, product and/or service prices, product and/or service names, financial information, employee information, marketing plans, business opportunities, research activities and results, development activities and results, and know-how.

(ii) "Discloser" will refer to a Party in its capacity as a provider of Confidential Information to the other Party.

(iii) "Recipient" will refer to a Party in its capacity as a recipient of Confidential Information from the other Party.

(b) Maintenance of Confidentiality and Limitations on Use. Without the prior written consent of Discloser, Recipient will hold in strict confidence and keep confidential all Confidential Information disclosed to it by Discloser. Recipient will use at least the same degree of care to avoid publication, disclosure or dissemination of such Confidential Information as it uses with respect to similarly confidential information of its own, but in no event less than reasonable care. Use of such Confidential Information by Recipient will be strictly limited to activities directly in support of considering entering into a business arrangement with Discloser related to the Business Purpose.

(c) Copying and Return of Confidential Information. Recipient shall not make any copies or extracts of Confidential Information of Discloser or include such Confidential Information in its own materials except as reasonably required directly in support of considering entering into a business arrangement or as a result of having entered into a business relationship with Discloser. When making copies or extracts of Confidential Information of Discloser, Recipient shall not remove any legend that identifies such Confidential Information as constituting or containing Confidential Information of Discloser. Upon request of Discloser, Recipient shall promptly cease using and shall return or destroy (and, if requested by Discloser, certify destruction of) all such Confidential Information along with all tangible and electronic copies which it may have made.

(d) Certain Exceptions. Information will not be, or will cease being, Confidential Information, as the case may be, as follows:

(i) from and after the date that such information enters the public domain other than by breach of this Agreement on the part of Recipient;

(ii) if it is rightfully known to Recipient without obligation of confidentiality to any third party known to Recipient prior to receipt of same from Discloser as evidenced by bona fide written, dated documents;

(iii) if it was or becomes available to Recipient from a person (other than Discloser) not subject to an obligation of confidentiality in favor of Discloser;

(iv) from and after the date that it is generally made available to third parties by Discloser without obligation of confidentiality; and

(v) is independently developed by the Recipient.

(e) Legally Required Disclosure. Recipient shall not be in breach hereof if it discloses Confidential Information of Discloser pursuant to a judicial, governmental or regulatory order, or as required by applicable law, but any such disclosure shall be made only to the extent so ordered or required. In any such event, to the extent permitted by applicable law, Recipient (i) shall make reasonable efforts to timely notify Discloser so that it may intervene in response to such order or take action to protect its interests (in which event Recipient will reasonably cooperate in such effort), or (ii) if timely notice cannot be given, shall make reasonable efforts to obtain a protective order or confidential treatment from the court, government or regulator for such information.

2. Certain Intellectual Property Matters.

(a) Title. As between the parties, title or right to possess Confidential Information of Discloser shall, except as otherwise provided herein, remain in Discloser.

(b) Decompilation, etc. Recipient shall not reverse engineer, disassemble or decompile any prototypes, software or tangible objects that embody or reflect Confidential Information of Discloser.

(c) Other Proprietary Rights. Nothing in this Agreement shall be construed as granting or conferring any rights to any Confidential Information or copyrights, by license or otherwise, except as stated explicitly in this Agreement or any rights or licenses in or to any patents, trademarks or service marks, by license or otherwise.

(d) Feedback. A Party may from time to time provide suggestions, comments or other feedback to the other Party with respect to Confidential Information provided by such other Party or suggestions for product or service offerings, changes, improvements or new functionality or capabilities of such other Party ("Feedback"). Feedback is entirely voluntarily and, if given, is provided without any representation or warranty of any kind. Such other Party is not required to treat such Feedback as confidential information of such Party and will be free to act on such Feedback with no obligation to such Party.

3. No Representation or Warranty. EXCEPT AS EXPRESSLY SET FORTH HEREIN, DISCLOSER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER WITH RESPECT TO ANY CONFIDENTIAL INFORMATION IT MAY PROVIDE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ACCURACY. ALL CONFIDENTIAL INFORMATION IS PROVIDED ON AN "AS-IS" BASIS AND RECIPIENT ASSUMES ALL RESPONSIBILITY FOR ITS USE THEREOF OR RELIANCE THEREON. Further, Recipient understands and acknowledges that any Confidential Information of Discloser concerning future plans may be tentative and may not represent firm decisions concerning such plans. Discloser shall not be liable to Recipient in any matter relating to or arising from Recipient's reliance on such Confidential Information.

4. Term. Discloser may terminate the right of Recipient to use, as provided hereunder, Confidential Information of Discloser at any time without any liability for such termination; provided, however, that the obligations of Recipient set forth herein regarding use and disclosure of Confidential Information of Discloser will be for a period of three (3) years from receipt.

5. No Obligation to Execute Agreement. Each party makes no commitment or representation that it will carry out the Business Purpose or enter into any particular agreement with the other related to the Business Purpose. Nothing in this Agreement will prevent a party from pursuing similar discussions with third parties or require that it continue discussions with the other or take, continue or forego any action relating to the Business Purpose (other than requirements expressly imposed by this Agreement).

6. Confidentiality of Business Purpose and Discussions. The possibility that the parties may cooperatively pursue the Business Purpose will constitute joint Confidential Information of the Parties. All media releases and public announcements by a Party relating to this Agreement, its subject matter or the Business Purpose shall be approved by the other Party in writing prior to release, except as expressly provided herein.

7. Miscellaneous.

(a) Any other agreement between the parties relating to different subject matter than the Business Purpose shall not be affected by this Agreement.

(b) The failure of either party to enforce any right resulting from breach of any provision of this Agreement by the other party shall not be deemed a waiver of any right relating to a subsequent breach of such provision or any other right hereunder. This Agreement and its interpretation will be governed by the substantive laws of the State of California, excluding its conflict of laws principles. There will be no presumption against either party as the draftsman of this Agreement. The courts of appropriate subject matter jurisdiction sitting San Francisco County shall have exclusive jurisdiction and proper venue over any dispute concerning the enforcement or interpretation of this Agreement. In the event of any dispute concerning this Agreement, the prevailing party will be entitled to recover its reasonable costs in such matter, including attorneys' fees, experts' fees and other costs.

(c) This Agreement states the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements, written or verbal, between the parties with respect to the subject matter hereof. This Agreement may not be amended except in writing signed by a duly authorized representative of each party.

(d) The parties agree that a breach of this Agreement by Recipient could cause Discloser irreparable harm that could not be compensated by money damages alone. In case of a breach or threatened breach of this Agreement by Recipient, Discloser may obtain equitable relief, including injunctive relief and specific performance, in addition to any other remedy available.

(e) Any notice herein required or permitted to be given will be given in writing and may be personally served or sent by an overnight delivery service, e-mail or first class mail and such notice will be deemed to have been given: (i) if personally given or sent by a delivery service, when received, or (ii) if mailed, three (3) business days after deposit in the United States with postage prepaid and properly addressed. Addresses for notice purposes will be as set forth beneath the signature lines below until changed by notice given as provided herein. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall be considered one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Name: _____
Signature: _____
Title: _____
Address: _____

Kensu, Inc.
Name: _____
Signature: _____
Title: _____
Address: 353 Kearny Street
San Francisco, CA, 94108