

Mutual Nondisclosure Agreement

This **Mutual Nondisclosure Agreement** ("**Agreement**") is entered into as of the Effective Date set forth below, between Omnifi Inc., a Delaware corporation located at 6801 Koll Center Parkway, Suite 145, Pleasanton, CA 94566, and the party set forth below. The parties propose to work together in connection with a possible business relationship between the parties (the "**Purpose**"), including by entering into discussions and negotiations relating to the nature and terms of the Purpose, and wish to set out herein the terms and conditions upon which their respective Confidential Information (as defined below) may be disclosed to or used by the other in connection with the Purpose. Under this Agreement, the party receiving Confidential Information shall be referred to as the "Receiving Party," and the party disclosing such Confidential Information shall be referred to as the "Disclosing Party." In consideration of the covenants and conditions set forth below, the parties agree as follows:

1. **Confidential Information.** As used in this Agreement, "Confidential Information" means any information, including, without limitation, business, technical, financial and marketing information, that is in written, oral or any other form, that a party designates as being confidential or that, under the circumstances surrounding disclosure, should be clear that it is confidential. "Confidential Information" does not include information that: (i) is in the public domain at the time it was disclosed or subsequently comes into the public domain through no fault of the Receiving Party; (ii) is already known to the Receiving Party before receipt from the Disclosing Party; (iii) is independently developed by the Receiving Party without use of Confidential Information; or (iv) becomes known to the Receiving Party, on a non-confidential basis, from a source other than the Disclosing Party without breach of this Agreement by the Receiving Party.

2. **Nondisclosure and Use.** A Receiving Party shall retain in confidence any Confidential Information received from the Disclosing Party. Except with the prior written consent of the Disclosing Party, the Receiving Party will not (i) disclose such Confidential Information to any other person or (ii) use such Confidential Information for any purpose other than the Purpose. Confidential Information may be disclosed only to employees or consultants of the Receiving Party or any parent or subsidiary of the Receiving Party who have a need to know such information, provided that such persons are made aware of this Agreement and either (i) agree to observe the terms of this Agreement or (ii) are bound by obligations of confidentiality to the Receiving Party of at least as high a standard as those imposed on the Receiving Party under this Agreement. The Receiving Party shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, to prevent the unauthorized use, dissemination or publication of the Confidential Information.

3. **Legal Process.** If the Receiving Party becomes subject to a demand for discovery or disclosure of the Confidential Information of the other party under legal process, such Receiving Party shall give to the Disclosing Party prompt notice of the demand (where legally permissible) and shall cooperate with the Disclosing Party in seeking reasonable arrangements to protect the confidential and proprietary nature of the Confidential Information.

4. **Term and Duration.** This Agreement shall continue until terminated. This Agreement may be terminated by either party at any time upon thirty (30) days' written notice. All obligations hereunder shall continue for five (5) years from the date of disclosure.

5. **Property Rights.** All Confidential Information provided pursuant to this Agreement shall remain the exclusive property of the Disclosing Party. Nothing contained herein shall be construed as a grant, express or implied or by estoppel, of a transfer, assignment, license, lease of any right, title or interest in the Confidential Information.

6. **No Warranty.** No warranty or representation is made by either party hereto that any information transmitted by it hereunder is true and correct, patentable or copyrightable, or that any such information involves concepts or embodiments that are free of infringement of other rights.

7. **Return of Confidential Information.** Upon the completion or termination of any discussions between the parties, or at any time within fourteen (14) days of receipt of a written request of the Disclosing Party, the Receiving Party shall at its election either (i) promptly return to the Disclosing Party all Confidential Information disclosed in tangible form and copies thereof or (ii) promptly destroy such Confidential Information

(including all copies thereof) and certify such destruction to the Disclosing Party.

8. **Equitable Relief.** The parties acknowledge and agree that the covenants set forth in this Agreement are reasonable and necessary for the protection of the parties' business interests and that irreparable injury may result if they are breached. The parties further agree that in the event of any actual or potential breach of any such covenant, the non-breaching party may have no adequate remedy at law and shall be entitled to seek immediate temporary injunctive relief. Nothing herein shall be construed as prohibiting any party from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages.

9. **No Other Business Relationship.** This Agreement does not represent or imply any agreement or commitment to enter into any further business relationship. This Agreement does not create any agency or partnership relationship between the parties or authorize a party to use the other party's name or trademarks. This Agreement does not preclude either party from independently pursuing any activities similar to or in competition with the Purpose contemplated herein. Neither party will be liable to the other for any of the costs associated with the other's efforts in connection with this Agreement.

10. **Export Control.** The parties recognize that communication or transfer of any information received pursuant to the Purpose may be subject to specific government export approval. Each party agrees to comply with all applicable export control legislation with respect to Confidential Information received hereunder.

11. **Governing Law.** This Agreement shall be governed and construed in accordance with the internal laws of the State of California, without giving effect to its choice of law or conflicts of law principles. The parties consent to exclusive venue and jurisdiction for actions hereunder in state courts located in San Mateo County, California and federal courts located in the Northern District of California.

12. **Successors and Assigns.** This Agreement will be binding upon the successors and/or assigns of the parties.

13. **Waiver.** No failure or delay by either party to enforce or take advantage of any provision or right under this Agreement shall constitute a subsequent waiver of that provision or right, nor shall it be deemed to be a waiver of any of the other terms and conditions of this Agreement.

14. **Severability.** In the event that any provision of this Agreement is prohibited by any law governing its construction, performance or enforcement, such provision shall be ineffective to the extent of such prohibition without invalidating thereby any of the remaining provisions of the Agreement. The captions of sections herein are intended for convenience only, and the same shall not be interpretive of the content of such section.

15. **Entire Agreement/No Amendment.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter of this Agreement and supersedes and replaces all prior or contemporaneous agreements, written or oral, regarding such subject matter. Any amendment or modification of this Agreement shall be in writing and executed by a duly authorized representative of the parties.

16. **Counterparts.** This Agreement may be signed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

Agreed and Accepted:

OMNIFI INC.

By: _____

Name: _____

Title: _____

Effective Date: _____

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Agreed and Accepted:

Party _____

By: _____

Name: _____

Title: _____

Address: _____