

Confidentiality Agreement

THIS AGREEMENT is Effective as of [Date]

BETWEEN

Fujitsu Network Communications, Inc., of 2801 Telecom Parkway, Richardson, Texas 75082

AND

[Company Name and Street Address]

WHEREAS

To facilitate the Purpose (as defined below), the Disclosing Party (as defined below) wishes to disclose to the Receiving Party (as defined below) and/or allow the Receiving Party access to Confidential Information (as defined below); and

The parties wish to regulate how such Confidential Information is to be treated while in the possession or control of the Receiving Party so as to protect the proper interests of the Disclosing Party.

Now it is hereby agreed as follows:

1. DEFINITIONS

- 1.1. "Authorized Representatives" shall mean any director, officer, employee, agent, contractor, consultant or advisor of the Disclosing Party or the Receiving Party that has a need to know the Confidential Information in connection with the Purpose. For the purpose of this Agreement, the Authorized Representative shall include employees of any company which is a direct or indirect subsidiary of Fujitsu Limited.
- 1.2. "Confidential Information" shall mean (a) in respect of information provided in documentary form or by way of a model or in other tangible or intangible form, information which at the time of disclosure to the Receiving Party is marked, or otherwise designated, to show expressly or by implication that it is imparted or disclosed in confidence or where the nature of the information or the circumstances in which it was supplied imply that it should be treated as confidential; and (b) in respect of information that is imparted or disclosed orally or by demonstration or presentation, any information that the Receiving Party has been expressly informed by the Disclosing Party at the time of disclosure, or prior to disclosure, to have been imparted or disclosed in confidence or where the nature of the information or the circumstances in which it was supplied imply that it should be treated as confidential; and (c) any copy, note or record of any of the foregoing.
- 1.3. "Disclosing Party" shall mean the party disclosing Confidential Information to Receiving Party.
- 1.4. "Effective Date" shall mean the date at the top of this Agreement.
- 1.5. "Jurisdiction" shall mean State of Texas, United States of America.
- 1.6. "Receiving Party" shall mean the party receiving Confidential Information, directly or indirectly, from the Disclosing Party.
- 1.7. "Purpose" shall mean to assess the potential of working together.

2. Duration

2.1 The obligations of the parties under this Agreement shall commence on the Effective Date and shall continue for a period of three (3) years unless earlier terminated by mutual written agreement, provided that the obligations undertaken herein with respect to Confidential Information received prior to the expiration or termination of this Agreement shall survive and continue for a period of three (3) years after any expiration or termination of this Agreement.

3. Obligations of the Receiving Party

3.1 The Receiving Party shall:

- a) take proper and all reasonable measures to ensure the confidentiality of all Confidential Information;
- b) not disclose, directly or indirectly, any Confidential Information, in whole or in part, to any person (including any legal entity) except to an Authorized Representative or otherwise as expressly permitted by this Agreement;
- c) not use or exploit the Confidential Information for its own business purposes other than in connection with the Purpose; and/or
- d) not make copies, reduce to writing or otherwise record any of the Confidential Information except as strictly necessary for the Purpose. If a copy or record of the Confidential Information is necessary, it must bear the Disclosing Party's proprietary notices and markings (in whatever format) which appear on the original Confidential Information.

3.2 The obligations of the Receiving Party set out in this Agreement apply equally to the Receiving Party's Authorized Representatives.

3.3 The Receiving Party shall ensure that each of its Authorized Representatives having access to any Confidential Information is aware of the obligations of confidentiality imposed on the Receiving Party under the terms of this Agreement and is bound by obligations of confidentiality no less onerous than contained in this Agreement.

3.4 The Receiving Party shall use the Confidential Information solely for the Purpose.

3.5 The Receiving Party shall establish and maintain adequate steps to keep the Confidential Information confidential including but without limitation adequate security measures to safeguard the Confidential Information from unauthorized use or access when in the possession or control of the Receiving Party.

3.6 The Receiving Party shall notify the Disclosing Party immediately upon becoming aware that the Disclosing Party's Confidential Information has been used and/or disclosed, or is at risk of being used and/or disclosed, for a reason other than for the Purpose.

4. Exceptions

4.1 Notwithstanding anything to the contrary contained herein, the obligations provided in Clause 3 above shall not apply to any information:

- a. which is at any time in the public knowledge other than through an act or failure to act on the part of Receiving Party;
- b. which was known, and can be evidenced to have been known, by the Receiving Party before its receipt of the same from the Disclosing Party, without obligations of confidentiality;
- c. which is at any time developed by Receiving Party independently of the Confidential Information received from Disclosing Party.

4.2 The Receiving Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law or by the rules of any government organization or by a court order. If the Receiving Party is required to make such disclosure, it shall, where permitted by law, give the Disclosing Party as much prior notice as is reasonably

Fujitsu Confidentiality Agreement

practicable so that the Disclosing Party, in its sole discretion, may elect and the Receiving Party shall reasonably cooperate with the Disclosing Party, to protect the confidential or proprietary nature of the Confidential Information to be disclosed.

5. Return of Materials

Upon the Disclosing Party's request, the Receiving Party shall return, destroy, or delete all materials whether in written, electronic or any other form which contain any Confidential Information received from the Disclosing Party, including all extracts and copies thereof, provided, however, that the Receiving Party may retain one (1) copy of all such Confidential Information that the Receiving Party is required to retain by applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction to which it is subject, or to the extent that it is required for compliance with its internal rules or policies. The Receiving Party will be under no obligation to return or destroy any material containing Confidential Information that cannot reasonably be expunged from computer systems, back-up devices and/or back-up systems. The provisions of this Agreement shall continue to apply to any Confidential Information retained pursuant to this Clause 5.

6. Ownership of Confidential Information

- 6.1 Any Confidential Information imparted, disclosed, or acquired hereunder shall remain the property of the Disclosing Party or the originator of such Confidential Information and must be used for the Purpose only.
- 6.2 No licence under any trademark, copyright, patent, design rights or any other intellectual property right is granted, whether expressly or by implication, estoppel, or otherwise, to the Receiving Party by the disclosure or acquisition of such Confidential Information.
- 6.3 The disclosure of such Confidential Information shall not constitute any representation or warranty, express or implied, with respect to the non-infringement of trademarks, patents, copyright, design rights or any other intellectual property rights belonging to third parties.
- 6.4 The parties acknowledge that any Confidential Information provided or received under this Agreement may be subject to government export control laws and regulations and each of the parties agrees that it will strictly comply with all applicable requirements under such laws and regulations. As such, each party warrants and undertakes that it will not export or transfer by any means, electronic or otherwise, any Confidential Information without complying in all respects with the applicable export control legislation, codes of conduct, the relevant export license(s), guidelines, notices and/or instructions in relation to any such export or transfer of Confidential Information.

7. Relief

Each party acknowledges that damages may be an insufficient remedy in the event of a party's breach of this Agreement. Therefore, in addition to any remedies otherwise available, the Disclosing Party may seek injunctive relief or equitable relief as well as monetary damages as may be deemed proper or necessary by a court of competent jurisdiction.

8. General

- 8.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements, and understandings between them, whether written or oral, relating to its subject matter.
- 8.2 The parties irrevocably agree that the federal and state courts of the State of Texas shall have non-exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) that arises out of or in connection with this Agreement or its subject matter or formation.
- 8.3 Any variation of this Agreement must be in writing and signed by the parties.
- 8.4 A breach of this Agreement is not waived by any failure or delay in the exercise, or partial exercise, of a right, power, authority, discretion, or remedy under this Agreement.

Fujitsu Confidentiality Agreement

- 8.5 If any provision of this Agreement is held invalid, unenforceable, or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provision which shall be deemed deleted.
- 8.6 This Agreement shall not constitute any representation, warranty, or guarantee to either party with respect to the value of the Confidential Information disclosed to the Receiving Party. Neither party shall be liable for any errors or omissions in the Confidential Information, or the use of the Confidential Information. The Confidential Information will be supplied "as is" without any express or implied warranty and in particular without any warranty as to fitness of such Confidential Information for the Purpose. Neither party shall be responsible or liable to the other party for any indirect, incidental, or consequential damages.
- 8.7 A party may not assign this Agreement or any part thereof, without the prior written consent of the other party.
- 8.8 This Agreement shall be binding on the parties and their successors, trustees, permitted assigns and receivers but not any other person.
- 8.9 Nothing in this Agreement shall impose an obligation on either party to continue discussions or negotiations in connection with the Purpose, or an obligation on each party to disclose any information to the other party.
- 8.10 All notices given under this Agreement must be in writing and sent to the party's address set out above.
- 8.11 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.
- 8.12 This Agreement may be executed electronically and may be executed in any number of counterparts, each of which once signed and dated shall be an original, and such counterparts taken together shall constitute one and the same agreement.

EXECUTED AS AN AGREEMENT

Signed for and on behalf of Fujitsu Network Communications, Inc., Inc. by an authorized representative	Signed for and on behalf of [Company Name] by an authorized representative
-----	-----
Name and Title	Name and Title
-----	-----
Signature	Signature
By executing this Agreement, the authorized representative warrants that they are authorized to sign on behalf of Fujitsu Network Communications, Inc.	By executing this Agreement, the authorized representative warrants that they are authorized to sign on behalf of [Company Name]