

evercast

MUTUAL NON-DISCLOSURE AND NON-CIRCUMVENTION AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 20____ by and between Evercast Ventures, LLC, and _____, a _____ (State), _____ (Entity), and his/her/their owners, officers, directors, agents, employees and assigns.

Whereas, each of the undersigned parties owns and possesses certain information concerning their respective businesses, (hereinafter referred to as the "Information"), which Information may include, but is not limited to, trade secrets, and other proprietary information concerning products, technology source code, plans, locations, processes and financial matters, as well as financial, strategic and business contacts including but not limited to investors, lenders, partners, service providers, equipment providers, vendors, customers, agents and employees; and

Whereas, the parties desire to engage in making introductions, and entering into discussions and/or negotiations concerning possible relationships in the course of which either party may disclose certain amounts of such Information ("Disclosor") to the other ("Disclosee") for the purpose of allowing Disclosee to review the Information or develop a mutually beneficial relationship for purposes and pursuant to the terms and conditions of this Agreement with a view toward entering into a further relationship and/or contract.


NOW THEREFORE, in consideration of the disclosure of such Information and other valuable consideration, receipt of which is hereby acknowledged, Disclosee agrees to the following terms and conditions:

1. Disclosee will maintain in confidence and secret all such Information from the date hereof, subject to the exceptions set out in section 4 of this agreement or subject to the mutual agreement of the parties. Additionally, for a period of two (2) years from the date of introduction by Disclosor, Disclosee shall not directly or indirectly solicit, circumvent, by-pass or interfere with Disclosor Information, contacts and/or opportunities introduced by Disclosor nor contact, solicit or engage in business with persons, their employees, officers, directors, agents, representatives, assigns, subsidiaries or direct referrals introduced by Disclosor with whom Disclosee had no prior relationship, unless Disclosor first provides Disclosee permission in writing to do so.
2. The disclosure of such Information to Disclosee will be made only to persons designated by Disclosor who have obligations to Disclosee at least commensurate with obligations of Disclosee to Disclosor under this Agreement. Accordingly, Disclosee agrees to take all steps reasonably necessary to protect the Information and prevent it from entering the public domain or falling into the hands of others not bound by this Agreement or pledged to maintain the secrecy of the Information.
3. Within ten (10) days after written notice from Disclosor, Disclosee shall, in accordance with such notice, return to Disclosor all Information given from Disclosor to Disclosee.
4. Disclosee agrees that Disclosee will not use or disclose the Information in any manner, directly or indirectly, competitive with the business of Disclosor without the prior written consent of Disclosor throughout the entire world for an indefinite period of time subject to the exceptions set out below. The restrictions against disclosure and use set forth in this Agreement shall not apply to information, material or portions of material and persons which (a) existed in the possession of Disclosee prior to the disclosure by Disclosor for which Disclosee can demonstrate such prior possession appropriate documentary evidence; (b) were discovered or learned or developed independently by the Disclosee without use of the Information; (c) were rightfully acquired by Disclosee without restriction from a third party who, upon due inquiry, was not subject to any confidentiality obligations and, further provided that the source of such information (if other than the third party) was also not subject to such restrictions; (d) were made

publicly available by the Disclosor or were otherwise available to the public; or (e) were required by law to be made available without reservation with respect to confidentiality.

5. This contract is entered into and to be performed in Marin County, California and is subject to the laws, jurisdiction, and venue thereof. If either party commences an action (including arbitration) arising out of this Agreement, the prevailing party shall, in addition to any other damages and costs awarded, be entitled to reasonable legal fees incurred in connection with the prosecution or defense of such action.
6. The parties hereto acknowledge that the Information protected hereunder is of an extraordinary nature and value and cannot, in the event of any unauthorized disclosure or use by the Disclosee, be adequately or reasonably compensated for in damages awarded in an action at law. Each party therefore agrees that in the event of such unauthorized disclosure or use by the Disclosee, the Disclosor shall be entitled to require of the Disclosee specific performance of all acts and undertakings so required hereunder and to obtain injunctive and other equitable relief to prevent any further violation of any provisions herein. In any action taken by the Disclosor to enforce its rights under this Agreement, the Disclosor shall be entitled to recover its costs of enforcement, including reasonable attorney's fees.
7. Each and all of the covenants, terms, provisions, and agreements contained herein shall be binding upon the parties and their agents, employees, and assigns and shall inure to the benefit of the successors and permitted assigns of the respective parties hereto. In the event that any provision of this Agreement is deemed invalid or unenforceable, such provision shall be severed from the Agreement and the remaining portions of this Agreement shall be deemed valid, binding and enforceable.
8. Any notice or other communication required or permitted to be given by either party shall be given in writing by (i) registered or certified mail, postage prepaid, (ii) acknowledged fax or email, or (iii) by personal delivery
9. This Agreement may be executed in any number of counterparts and in electronic copies each true and correct version of which may be used for all purposes as though it were an original.
10. The persons signing this agreement have full authority to do so on behalf of themselves and the entity with whom they are employed or represent.
11. This agreement reflects the entire understanding of the parties hereto and no other writing or oral agreement which contradicts this written agreement shall be valid or enforceable.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date abovewritten.

Signed: 
Vishal Modha, Co-Founder
Evercast

Signed: _____

By: _____ Title: _____