

# Mutual Nondisclosure Agreement

THIS MUTUAL NONDISCLOSURE AGREEMENT (this "*Agreement*") is made as of \_\_\_\_\_, 20\_\_\_\_ by and between Bilrite Ripley Operations LLC, a limited liability company, and \_\_\_\_\_. The party disclosing information pursuant to this Agreement is referred to as the "*Disclosing Party*" and the party receiving such information is referred to as the "*Receiving Party*." The Disclosing Party and the Receiving Party are sometimes individually referred to herein as a "*Party*" or collectively as the "*Parties*".

**WHEREAS**, the Disclosing Party possesses technical, operational and business information which is non-public, confidential or proprietary in nature, and which the Disclosing Party wishes to protect against unrestricted disclosure and competitive use; and

**WHEREAS**, the Parties agree that, in order to facilitate discussions between them relating to potential business opportunities for their mutual benefit, it may be necessary for the Disclosing Party to disclose such confidential information to the Receiving Party.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the Parties hereby agree as follows:

**1. Confidential Information.** "*Confidential Information*" of the Disclosing Party shall mean any non-public information or materials disclosed by the Disclosing Party to the Receiving Party and identified as confidential in accordance with paragraph 2. Such Confidential Information may include, but is not limited to the following: business and strategic plans, business summaries, business procedures and processes, business and financial forecasts and reports, prospective product offerings, pricing policies and methods, vendor and business partner identities, purchasing methods and information, operational material and manuals, financial data, accounting information and systems, customer lists, customer profiles and purchase preferences, marketing plans, market analysis reports, sales data, marketing forecasts, licensing procedures, leasing information, trademarks, service marks, copyrights, patents, proposed trademarks or service marks, patent applications, trade secrets, technical and engineering data, drawings, models, software products, source code, algorithms, object and load modules, content, formulas, design specifications, progress and development reports, coding sheets, flow charts, employee information, corporate information, and phone lists.

**2. Identification of Confidential Information.** All information which is to be protected as Confidential Information of the Disclosing Party shall be:

- (a) If written, conspicuously labeled and identified as confidential by the Disclosing Party;
- (b) If oral or visual, identified to the Receiving Party prior to disclosure as confidential; or
- (c) Otherwise provided under circumstances indicating its confidential nature.

**3. Limitations on Confidential Information.** Confidential Information shall not include information, which the Receiving Party can clearly demonstrate, that falls within any of the following categories:

- (a) Information which has come within the public domain through no fault of or action by the Receiving Party or its employees or consultants;
- (b) Information which is rightfully available to the Receiving Party prior to its disclosure hereunder;
- (c) Information which becomes rightfully available to the Receiving Party from any third party under no obligation of confidentiality to the Disclosing Party and who has not otherwise gained the information, either directly or indirectly, through improper means; or

(d) Information, which was or is independently developed by the Receiving Party or any of its affiliates who have not had access, directly or indirectly, to any information disclosed hereunder.

If any portion of any disclosed Confidential Information falls within any of the above exceptions, the remainder of the Confidential Information shall continue to be subject to the requirements of this Agreement.

**4. Protection of Confidential Information.** The Receiving Party acknowledges that the Disclosing Party claims its Confidential Information as a special, valuable and unique asset. For itself and on behalf of its officers, directors, agents, employees, and affiliates, the Receiving Party agrees that it shall, for a period of three (3) years after the date of disclosure:

- (a) Not use Confidential Information for any purpose whatsoever other than evaluation and/or facilitating discussions between the Parties;
- (b) Keep in confidence all Confidential Information received, and not distribute, disclose, or disseminate such Confidential Information in any way to anyone except to the minimum number of employees or consultants of the Receiving Party with a need to know and who are involved in a consideration or evaluation of the Confidential Information; provided however, that such employees or consultants have been advised of the obligations to protect the Confidential Information, and provided further, that notwithstanding the foregoing, the Receiving Party shall be liable for any misuse of such Confidential Information by such employees or consultants;
- (c) Enter into and/or maintain written agreements with the aforementioned employees or consultants sufficient to safeguard any Confidential Information disclosed hereunder consistent with the terms of this Agreement. Upon request, copies of such agreements will be made available to the Disclosing Party;
- (d) Use reasonable care to protect the Confidential Information, and in no event use less than the same degree of care as the Receiving Party safeguards its own Confidential Information of like kind; and
- (e) Not reverse engineer the Confidential Information for any purpose whatsoever.

It is further understood that neither of the Parties shall disclose to any third party the fact that discussions are taking place between the Parties concerning any contemplated business transactions.

**5. Exclusions.** Notwithstanding paragraph 4, disclosure or use of Confidential Information by the Receiving Party shall not be precluded if it is:

- (a) Approved in writing and in advance by the Disclosing Party;
- (b) In response to a valid order of a court or other governmental body of the United States or any political subdivision thereof; provided, however, that the Receiving Party shall have given prior written notice to the Disclosing Party and shall make commercially reasonable efforts to obtain a protective order requiring that the Confidential Information so disclosed be used only for purposes of the court or Governmental authority;

(c) Otherwise required by law; provided, however, that the Receiving Party shall have given prior written notice to the Disclosing Party so that the Disclosing Party may seek a protective order or other confidential treatment with respect to the Confidential Information so disclosed; or

(d) Necessary to establish the relative rights of the Parties under this Agreement.

**6. Return of Confidential Information.** All Confidential Information disclosed under this Agreement shall remain the property of the Disclosing Party and shall be returned or destroyed within ten (10) days of request together with all copies made of such Confidential Information by the Receiving Party. All documents, memoranda, notes and other writings whatsoever prepared by the Receiving Party based on Confidential Information shall be destroyed and such destruction shall be certified in writing to the Disclosing Party by an authorized officer of the Receiving Party who is supervising such destruction.

**7. No Commitment.** It is understood that this Agreement does not obligate either of the Parties to enter into further business discussions. Each Party acknowledges that Confidential Information provided by the Disclosing Party does not, and is not intended to represent a commitment to enter into a business relationship with the Receiving Party.

**8. No License.** The Disclosing Party shall retain all right, title and interest in and to its Confidential Information. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed by the Disclosing Party.

**9. No Warranty.** The Receiving Party acknowledges that the Disclosing Party has not made and will not make any representation or warranty as to the accuracy or completeness of its Confidential Information, and the Receiving Party agrees that the Disclosing Party shall have no liability resulting from the use of the Confidential Information.

**10. Non-Solicitation.** Each Party agrees that for a period of three (3) years from the date of this Agreement, no officer, director, shareholder, partner, member, employee, agent, advisor or representative of such Party will, without the prior written consent of the other Party, whether directly or indirectly, solicit to employ on behalf of such Party any of the other Party's personnel.

**11. No Waiver.** A waiver of any provision or breach of this Agreement must be in writing and signed by an authorized official of the Party executing the same. No such waiver shall be construed to affect or imply a subsequent waiver of the same provision or subsequent breach of this Agreement.

**12. Binding Effect.** This Agreement shall benefit and be binding upon the Parties hereto and their respective successors and assigns.

**13. Severability.** In the event that any provision of this Agreement is determined by a court to be invalid, such determination shall not affect the validity of any of the other provisions hereof, which shall remain in full force and effect and shall be construed so as to be valid under applicable law.

**14. Entire Agreement.** This Agreement contains the entire understanding of the Parties with respect to the subject matter contained herein and supersedes all prior agreements and understandings between the Parties with respect to such subject matter. Except as otherwise provided in paragraph 11 with respect to waivers and in paragraph 15 with respect to termination, this Agreement may be amended only by written instrument duly executed by each of the Parties.

**15. Effective Date and Termination.** This Agreement shall become effective on the date first written above and shall continue for three (3) years unless terminated earlier in writing by either Party. The obligation to protect the confidentiality of the Confidential Information received prior to such termination shall survive the Agreement.

**16. Equitable Relief.** The Receiving Party acknowledges that its breach of the provisions of this Agreement may cause irreparable harm to the Disclosing Party, and that remedies at law may be inadequate. Therefore, in addition to any other remedies available at law or in equity, the Disclosing Party may obtain specific enforcement or injunctive relief in the event of any breach or attempted breach of this Agreement without proving actual damages.

**17. Attorneys' Fees.** Each of the Parties agrees to reimburse the other for all costs and expenses, including reasonable attorneys' fees, incurred by the other Party in enforcing any provisions of this Agreement.

**18. Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California and not the principles of conflicts of law thereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative as of the date first above written.

**Bilrite Ripley Operations LLC**

\_\_\_\_\_  
*Company Name*

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_