

# Non-Disclosure Agreement

This Non-Disclosure Agreement (this "Agreement") is entered into by and between Action1 Corporation, a Delaware corporation ("ACTION1") and "your company" ("Company"). ACTION1 and Company are each sometimes referred to herein collectively as the "Parties," and individually as a "Party."

WHEREAS, ACTION1 may communicate or make available to Company certain confidential and proprietary information not known in the relevant trade or industry, including, without limitation, confidential and proprietary information of third parties, in connection with exploring and/or negotiating one or more proposed opportunities, transactions and/or other relationships with Company (the "Relationship").

Now, therefore, in consideration of the covenants contained herein and other good and valuable consideration, ACTION1 and Company agree as follows:

1. The term "Confidential Information" shall mean any and all confidential information or proprietary materials (in every form and media), including, but not limited to, (a) trade secrets, (b) confidential information regarding existing or contemplated products, services, designs, technology, processes, technical data, techniques, methodologies, and any information related thereto, (c) confidential business plans, financial reports, financial data, employee data, customer lists, forecasts, strategies, and all other confidential business information; and (d) confidential information regarding software programs, algorithms, specifications or code (regardless of whether in source or object form), product designs and/or specifications, inventions, unpublished patent applications, manufacturing or other technical or scientific know-how, technical drawings, diagrams, schematics, technology, processes, and any other trade secrets, and confidential discoveries, ideas, concepts, know-how, techniques, materials, formulae, compositions, information, data, results, plans, surveys and/or reports of a technical nature or concerning research and development activity, and which has been or is hereafter disclosed or made available by ACTION1 to Company (whether orally, visually, in writing or otherwise) in connection with the proposed Relationship. Confidential Information may also include the portion of any copies, notes, abstracts, and other tangible embodiments made by Company that are based on or contain any of such Confidential Information, as well as the existence and progress of the Relationship.

2. Company shall hold the Confidential Information disclosed or made available to it (in such capacity, the "Receiving Party") by ACTION1 (in such capacity, the "Disclosing Party") in trust and confidence and avoid the disclosure or release thereof to any other person or entity by using the same degree of care as it uses to avoid unauthorized use, disclosure, or dissemination of its own Confidential Information of a similar nature, but not less than reasonable care. The Receiving Party shall not use the Confidential Information disclosed or made available by the Disclosing Party for any purpose whatsoever, except to the extent necessary in connection with the Relationship for which the Confidential Information was disclosed. The Receiving Party shall disclose the Confidential Information disclosed or made available to it by the Disclosing Party only to those of its directors, officers, employees, agents and consultants (including attorneys, financial advisors, and accountants) (the "Personnel") having a need to know such Confidential Information and shall take all reasonable precautions to ensure that its Personnel comply with this paragraph 2. Company may disclose this Agreement and the progress of the Relationship to a third-party with whom it has: (1) entered into an agreement requiring the disclosure of this Agreement or its terms; or (2) entered into, or desires to enter into, discussions regarding a transaction (e.g., a financing or business combination transaction) which requires the disclosure of this Agreement and its terms, provided, however, that any such third party has first agreed in writing to keep the existence of this Agreement and progress of the Relationship confidential on terms no less stringent than those contained herein.

3. The obligations of Company under this Agreement will not apply to information that Company can demonstrate (i) was already in its possession at the time of disclosure or when made available and without restriction as to confidentiality, (ii) at the time of disclosure or when made available is already available to the public or after disclosure becomes available to the public through no breach of agreement or other wrongful act by Company or its Personnel or affiliates, (iii) has been received from a third party without restriction on disclosure and without breach of agreement or other wrongful act by Company or its Personnel, (iv) is independently developed by Company without benefit or use of the Confidential Information of ACTION1, or (v) is required to be disclosed by law, regulation or order of a court of competent jurisdiction or other governmental authority, to the extent of such required disclosure, provided that Company shall furnish prompt written notice of such required disclosure and reasonably cooperate with ACTION1, at ACTION1's cost and expense, in any effort made by ACTION1 to seek a protective order or other appropriate protection of its Confidential Information. In the event that such order or protection is not obtained,

Company will furnish only that portion of the Confidential Information which, on the advice of Company's counsel, is legally required to be disclosed and, upon ACTION1's request, use its commercially reasonable efforts to obtain assurances that confidential treatment will be accorded to such information.

4. The Disclosing Party understands that Company may currently or in the future be developing information internally or receiving information from other parties that may be similar to the Disclosing Party's information. Nothing in this Agreement shall prohibit Company from developing products or services, or having products or services developed for it, that compete with the Disclosing Party's products or services, provided in doing so Company does not use or disclose the Disclosing Party's Confidential Information.

5. Except for the obligations set forth in this Agreement or any other written agreement executed and delivered by both parties, nothing contained in this Agreement or otherwise shall be deemed to create a duty on the part of Company, or otherwise require Company, to enter into discussions, negotiate any agreement or consummate any business transaction relating to any Relationship.

6. Company acknowledges that ACTION1 will have no adequate remedy at law if it violates any of the provisions of this Agreement. Accordingly, ACTION1 shall have the right, in addition to any other rights and remedies it may have, at law, in equity or otherwise, to seek in any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach hereof or otherwise to specifically enforce any of the provisions of this Agreement, and without the necessity of posting any bond or surety of any kind.

7. All materials and Confidential Information furnished to Company by ACTION1 shall remain the property of ACTION1 (or the third party from which ACTION1 obtained such materials or Confidential Information), and no license or other rights to any materials or Confidential Information of ACTION1 or any trademark, trade secret, patent, copyright, or other proprietary right owned or controlled by ACTION1 are acquired or obtained by Company (whether by estoppel, implication, or otherwise). ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS," WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO A WARRANTY THAT IT IS ACCURATE OR COMPLETE OR A WARRANTY AGAINST INFRINGEMENT. Upon ACTION1's request or upon termination of this Agreement, (i) all materials in the possession or control of Company or its Personnel or affiliates that reflect or embody Confidential

Information disclosed by ACTION1 shall be returned promptly to ACTION1, together with any copies thereof, and (ii) Company and its Personnel and affiliates shall not use any of the Confidential Information

8. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be deemed modified to the extent necessary to make it enforceable under applicable law. If any such provision is not enforceable as set forth in the preceding sentence, the unenforceability of such provision shall not affect the other provisions of this Agreement, but this Agreement shall be construed as if such unenforceable provision had never been contained herein.

9. This Agreement, including the performance and enforceability hereof, will be governed by and construed in accordance with the laws of the State of Delaware, without reference to the principles of conflicts of law.