



**MUTUAL NON-DISCLOSURE AGREEMENT**

**THIS MUTUAL NON-DISCLOSURE AGREEMENT (the "Agreement") dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_**

**BETWEEN:**

Midas Touch Towers Pty Ltd of 9701 Wilshire Blvd. Suite 1000, Beverly Hills, CA, 90212  
**(the " Disclosing Party ")**

**OF THE FIRST PART**

**- AND -**

\_\_\_\_\_ of

**(the "Recipient")**

**OF THE SECOND PART**

This Mutual Non-Disclosure Agreement (the "Agreement") is entered into mutually by both "parties" for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The parties agree to enter a confidential relationship with respect to the disclosure by one or each (the "Disclosing Party") to the other (the "Receiving Party") of certain proprietary and confidential information (the "Confidential Information").

**BACKGROUND:**

- A. Midas Touch Towers and the Recipient desire to enter into a mutual non-disclosure agreement with regard to the use by the Recipient of certain information owned by the Midas Touch Towers (the "Permitted Purpose") defined as follows:

\_\_\_\_\_  
\_\_\_\_\_

- B. In connection with the Permitted Purpose, the Recipient will receive certain confidential information (the "Confidential Information").

**IN CONSIDERATION OF** and as a condition of Midas Touch Towers providing the Confidential Information to the Recipient in addition to other valuable consideration, the receipt and sufficiency of which consideration is hereby acknowledged, the parties to this Agreement agree as follows:

**Confidential Information:**

1. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. All written and oral information and materials disclosed or provided by Midas Touch Towers to the Recipient under this Agreement constitute Confidential Information regardless of whether such information was provided before or after the date of this Agreement or how it was provided to the Recipient.
2. Non-Disclosure: The parties agree and acknowledge that, because of negotiating, entering, and performing this Agreement, each party has and will have access to certain of the other party's Confidential Information (as defined below). Each party also understands and agrees that misuse and/or disclosure of that information could adversely affect the other party's business. Accordingly, the parties agree that, during the Term of this Agreement and thereafter, each party shall use and reproduce the other party's Confidential Information solely for purposes of this Agreement and only to the extent necessary for such purpose and shall restrict disclosure of the other party's Confidential Information to its employees, consultants or independent contractors with a need to know and shall not disclose the other party's Confidential Information to any third party without the prior written approval of the other party. Notwithstanding the foregoing, it shall not be a breach of this Agreement for either party to disclose Confidential Information of the other party if required to do so under law (including compliance with any applicable federal or state securities laws) or in a judicial or other governmental investigation or proceeding, provided the other party has been given prior written notice and the disclosing party has sought all commercially reasonable safeguards against any further dissemination prior to such disclosure
3. "Confidential Information" shall mean all information relating to Midas Touch Towers, its services, products, business operations, financial data, and contracts, including business concepts, ideas, content, and databases containing confidential or protected information, namely (intellectual property), including services relating to the product or products of Midas Touch Towers as well as all data and information relating to Midas Touch Towers, including but not limited to, the following:

- a. **Customer Information** which includes names of customers of Midas Touch Towers, their representatives, all customer contact information, including customer databases (CRM) and contracts and their contents and parties, customer sales leads, customer profiles, and lists, namely data provided by customers and the type, quantity and specifications of products and services purchased, leased, licensed, or received by customers of Midas Touch Towers.
- b. **Intellectual Property** as used in this Agreement, shall mean all patents, trademarks, copyrights, designs, systems, processes, know how advice, trade secrets and clientele base or confidential or **proprietary information** designated as such in writing by the Disclosing Party. Midas Touch Towers (Disclosing party) shall hold and maintain all rights, title, and interests in and to any Confidential information including Proprietary information.

This Agreement and the disclosure of any Confidential Information by Disclosing Party to Receiving Party shall not be construed as granting Receiving Party any rights, title, or interest in the Confidential Information, including any rights in copyright, trademark, patent, or any other intellectual property right, nor of the disclosing party (Midas Touch towers) forfeiting any other rights that it may have under copyright, patent, or other intellectual property laws.

- c. **Marketing and Development Information** which includes marketing and development plans of Midas Touch Towers, price and cost data, price and fee amounts, pricing and billing policies, quoting procedures, marketing techniques and methods of obtaining business, forecasts and forecast assumptions and volumes, and future plans and potential strategies of Midas Touch Towers which have been or are being discussed.
- d. **Business Operations** which includes internal personnel and financial information of Midas Touch Towers, vendor names and other vendor information (including vendor characteristics, services and agreements), purchasing and internal cost information, internal services and operational manuals, external business contacts including those stored on social media accounts or other similar platforms or databases operated by Midas Touch Towers, and the manner and methods of conducting Midas Touch Towers business;
- e. **Product Information** which includes all specifications for products of Midas Touch Towers as well as work product resulting from or related to work or projects of Midas Touch Towers, of any type or form in any stage of actual or anticipated research and development;

- g. **Service Information** which includes all data and information relating to the services provided by Midas Touch Towers, including but not limited to, developments, proposals, plans, schedules, affiliates, and training information;
- k. **Confidential Information** will also include any information that has been disclosed by a third party to Midas Touch Towers and is protected by a non-disclosure agreement entered between the third party and Midas Touch Towers.

### **Exclusions from Confidential Information**

Receiving Party's obligations under this Agreement do not extend to information that is:

- (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party;
- (b) discovered or created by the Receiving Party before disclosure by Disclosing Party;
- (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or
- (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.
- (e) Information that the Recipient rightfully obtains from a third party who has the right to transfer or disclose it, the burden being on the Recipient to establish this through documentation.
- (f) Except as otherwise provided in this Agreement, the Confidential Information will remain the exclusive property of Midas Touch Towers and will only be used by the Recipient for the Permitted Purpose. The Recipient will not use the Confidential Information for any purpose that might be directly or indirectly detrimental to Midas Touch Towers or any associated affiliates or subsidiaries.

### **Obligations of Receiving Party**

- (a) Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party.
- (b) Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign nondisclosure restrictions at least as protective as those in this Agreement.

- (c) Receiving Party shall not, without prior written approval of Disclosing Party, use for Receiving Party's own benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information.
- (d) Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests, it in writing.
- (e) The obligations to ensure and protect the confidentiality of the Confidential Information imposed on the Recipient in this Agreement and any obligations to provide notice under this Agreement will survive the expiration or termination, of this Agreement and those obligations will last indefinitely.

**Disclosure:**

The Recipient may disclose any of the Confidential Information to such employees, agents, representatives, and advisors of the Recipient that have a need to know for the Permitted Purpose provided that the Recipient has:

- (a) informed such personnel of the confidential nature of the Confidential Information.
- (b) such personnel agree to be legally bound to the same burdens of non-disclosure and non-use as the Recipient;
- (c) the Recipient agrees to take all necessary steps to ensure that the terms of this Agreement are not violated by such personnel; and
- (d) the Recipient agrees to be responsible for and indemnify the Information Provider for any breach of this Agreement by its personnel to a third party where Midas Touch Towers has consented in writing to such disclosure; and to the extent required by law.
- (e) The Recipient agrees to retain all Confidential Information at its usual place of business and to store all Confidential Information separate from other information and documents held in the same location. Further, the Confidential Information may not be used, reproduced, transformed, or stored on a computer or device that is accessible to persons to whom disclosure may not be made, as set out in this Agreement.
- (f) This Agreement, with respect to Confidential and Proprietary Information will remain in effect for perpetuity.

**Non-Solicitation:**

The Recipient, its affiliates, subsidiaries, and representatives will not, from the date of this Agreement until \_\_\_\_\_ directly or indirectly solicit for employment or employ any person who is now employed or retained by Midas Touch Towers or any affiliate of Midas Touch Towers without the prior written consent of Midas Touch Towers.

**Ownership and Title:**

Nothing contained in this Agreement will grant to or create in the Recipient, either expressly or impliedly, any right, title, interest, or license in or to the intellectual property of Midas Touch Towers.

**Remedies:**

The Recipient agrees and acknowledges that the Confidential Information is of a proprietary and confidential nature and that any disclosure of the Confidential Information to a third party in breach of this Agreement cannot be reasonably or adequately compensated for in money damages and would cause irreparable injury to Midas Touch Towers. Accordingly, the Recipient agrees that the Information Provider is entitled to, in addition to all other rights and remedies available to it at law or in equity, an injunction restraining the Recipient, any of its personnel, and any agents of the Recipient, from directly or indirectly committing or engaging in any act restricted by this Agreement in relation to the Confidential Information.

**Return of Confidential Information:**

The Recipient will keep track of all Confidential Information provided to it and the location of such information. Midas Touch Towers may at any time request the return of all Confidential Information from the Recipient. Upon the request of the Information Provider, or if the Recipient ceases to require use of the Confidential Information, or upon the expiration or termination of this Agreement, the Recipient will:

- a. return all Confidential Information to Midas Touch Towers and will not retain any copies of this information.
- b. destroy or have destroyed all memoranda, notes, reports, and other works based on or derived from the Recipient's review of the Confidential Information; and
- c. provide a certificate to Midas Touch Towers that such materials have been destroyed or returned.

**Notices:**

1. If the Recipient is required in a civil, criminal, or regulatory proceeding to disclose any part of the Confidential Information, the Recipient will give to Midas Touch Towers prompt written notice of such request so Midas Touch Towers may seek an appropriate remedy or alternatively to waive the Recipient's compliance with the provisions of this Agreement in regard to the request.
2. If the Recipient loses or makes unauthorised disclosure of any of the Confidential Information, the Recipient will immediately notify Midas Touch Towers and take all reasonable steps necessary to retrieve the lost or improperly disclosed Confidential Information.
3. Any notices or delivery required in this Agreement will be deemed completed when hand-delivered, delivered by agent, or seven (7) days after being placed in the post, postage prepaid, to the parties at the addresses contained in this Agreement or as the parties may later designate in writing.
4. The addresses for any notice to be delivered to any of the parties to this Agreement are as follows:

- a. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- b. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Representations:**

In providing the Confidential Information, Midas Touch Towers makes no representations, either express or implied as to its adequacy, sufficiency, completeness, correctness, or its lack of defect of any kind, including any patent or trademark infringement that may result from the use of such information. Midas Touch Towers will not be liable for any damage or loss that may occur from such provision or use of the Confidential Information.

**Termination:**

Either party may terminate this Agreement by providing written notice to the other party. Except as otherwise provided in this Agreement, all rights and obligations under this Agreement will terminate at that time.

**Assignment:**

Except where a party has changed its corporate name or merged with another corporation, this Agreement may not be assigned or otherwise transferred by either party in whole or part without the prior written consent of the other party to this Agreement.

**Amendments:**

This Agreement may only be amended or modified by a written instrument executed by both Midas Touch Towers and the Recipient.

**Governing Law:**

This Agreement will be construed in accordance with and governed by the laws of the State of California.

**Additional Provisions:**

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**General Provisions:**

- (a) Time is of the essence in this Agreement.
- (b) This Agreement may be executed in counterparts.
- (c) Headings are inserted for the convenience of the parties only and are not to be considered when interpreting this Agreement. Words in the singular mean and include the plural and vice versa. Words in the masculine mean and include the feminine and vice versa.



(d) The clauses, paragraphs, and subparagraphs contained in this Agreement are intended to be read and construed independently of each other. If any part of this Agreement is held to be invalid, this invalidity will not affect the operation of any other part of this Agreement.

(e) The Recipient is liable for all costs, expenses and expenditures including, and without limitation, the complete legal costs incurred by Midas Touch Towers in enforcing this Agreement because of any default of this Agreement by the Recipient.

(f) Midas Touch Towers and the Recipient acknowledge that this Agreement is reasonable, valid, and enforceable. However, if a court of competent jurisdiction finds any of the provisions of this Agreement to be too broad to be enforceable, it is the intention of Midas Touch Towers and the Recipient that such provision be reduced in scope by the court only to the extent deemed necessary by that court to render the provision reasonable and enforceable, bearing in mind that it is the intention of the Recipient to give Midas Touch Towers the broadest possible protection against disclosure of the Confidential Information.

(g) No failure or delay by Midas Touch Towers in exercising any power, right or privilege provided in this Agreement will operate as a waiver, nor will any single or partial exercise of such rights, powers or privileges preclude any further exercise of them or the exercise of any other right, power or privilege provided in this Agreement.

(h) This Agreement will inure to the benefit of and be binding upon the respective heirs, executors, administrators, successors, and assigns of Midas Touch Towers and the Recipient

(i) This Agreement constitutes the entire agreement between the parties and there are no further items or provisions, either oral or otherwise.

**Time Periods:**

This Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until whichever of the following occurs first:

- (a) Disclosing Party sends Receiving Party written notice releasing it from this Agreement, or
- (b) Confidential Information disclosed under this Agreement ceases to be confidential.

**Relationships:**

Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint ventures, or employee of the other party for any purpose.

**Severability:**

If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to affect the intent of the parties.

**Integration:**

This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations, and understandings. This Agreement may not be amended except in a writing signed by both parties.

**Waiver:**

The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

**Successor and Assigns:**

This Agreement and each party's obligations shall be binding on the representatives, assigns and successors of such party.

**IN WITNESS WHEREOF** \_\_\_\_\_ and \_\_\_\_\_ have  
duly affixed their signatures under hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Receiving Party:**

Signature:

Type Name:

Date:

**Disclosing Party:**

Signature:

Type Name:

Date: