



1632 Mai Avenue, Desoto, TX 75115 Tel: 972-283-2900 Fax: 270-512-3850 Email: bclough@ayrdata.com

Mutual Non Disclosure and Confidentiality Agreement

Individual and Company Information for Representative, Representative, Agent, Contractor, etc. (Answer all questions in black ink. Initial all pages, sign and date form.)

First Name _____ Middle _____ Last _____

Business Name: _____

Type of Business: _____

Discussing What Kind of Relationship: _____

Social Security #: _____ Tax ID #: _____

Street Address _____

City, State, Zip Code _____

Telephone Numbers: Office: (____) _____ Home: (____) _____

Cell: (____) _____ Email: _____

This Non Disclosure and Confidentiality Agreement (“Agreement”) is entered into between the entity or person identified above, and its affiliates and subsidiaries, (“Representative”) and Ayr Data, Inc. (“Company”). In order to evaluate the possibility of a potential business relationship or transaction, the parties agree as follows:

- A. The Company and the Representative desire to discuss certain matters regarding potential business transactions between the parties.
- B. In connection with these discussions, certain confidential and proprietary information of the Company and/or Representative may be disclosed to permit each party to evaluate the potential and/or ongoing business transactions.
- C. The parties desire to establish the terms under which they will disclose certain confidential and proprietary information. For purposes of this Agreement the term “Discloser” means the party disclosing confidential information pursuant to the terms of this Agreement and “Recipient” means the party receiving such confidential information.

Therefore, the parties agree as follows:

- 1. Confidential Information. “Confidential Information” means information, knowledge or data that is nonpublic, confidential or proprietary in nature and was disclosed to or known by Recipient as a consequence of or through Recipient’s evaluation of the potential and/or ongoing business transactions between the parties, about: Discloser’s activities (including this Agreement), Discloser’s actual or anticipated business or research and development, technical data, trade secrets or know-how, including, but not limited to, research, product plans or other information regarding Discloser’s products or services and markets therefore, customer lists and customer records, confidential client information (including any third party confidential or proprietary information subject to a duty of confidentiality by Discloser), contractual agreements, business plans, forecasts, ideas, concepts, pricing data, sources of supply, fees,

Initials: Ayr Data _____ Representative/Other _____

costs and pricing structures, computer software, specifications and code, developments, inventions, improvements, devices, methods and processes, projections, data, formulas, technology, designs, analysis, drawings, engineering, hardware configuration information, specifications, source code, object code, architecture, protocols, prototypes and models, photographs and reports, computer operating systems, applications and program listings, flow charts, manuals and documentation, databases, marketing information, financial information or other information. Such information shall be deemed Confidential Information regardless of whether disclosed orally, in writing or in any other form or medium (including without limitation electronic or computer-based data) and includes without limitation information obtained by meeting with representatives of Discloser and all notes, analyses, compilations, forecasts, reports, studies or other materials (in whatever form, whether documentary, computer storage or otherwise) prepared by Recipient or its Representatives (as hereinafter defined) that contain or otherwise reflect such information.

2. Confidentiality Obligations. With respect to Confidential Information, Recipient agrees, both during and after discussions with the Company, to: (a) take all reasonable precautions to assure that all Confidential Information is properly protected and is not disclosed to unauthorized persons, using the same degree of care that it regularly employs to safeguard its own Confidential Information of a similar nature from unauthorized use or disclosure; (b) make no use of any Confidential Information except such use as is required in the evaluation of the potential and/or ongoing business transactions between the parties; (c) limit access to any Confidential Information to those employees, agents and consultants who (i) have a need-to-know such Confidential Information for the purpose of evaluating and conducting the business transaction (potential or otherwise) between the parties, (ii) have been advised of the confidential and proprietary nature of the Confidential Information and of the obligations set forth in this Agreement; and (iii) have agreed to be bound by the provisions hereof; and (d) be responsible for any breach of this Agreement by its Representatives;

Upon the written request of Discloser or, in any event, upon termination of the business relationship between the parties, Recipient shall surrender to Discloser, return to Discloser or destroy all materials in the possession, or under the reasonable control, of Recipient that contain Confidential Information, including any reports, analyses, memoranda and other materials that were prepared by Recipient, or its advisors, and that include or were based on the Confidential Information. Upon the return or destruction of such materials, Recipient agrees to certify, in writing, that all of the foregoing materials have been surrendered to the other party or destroyed in accordance with this Agreement.

3. Exclusions from Confidential Information. The obligations of confidentiality and restriction on use in Section 2 shall not apply to any Confidential Information that the receiving party proves: (a) was in the public domain prior to the date of this Agreement or subsequently came into the public domain through no wrongful act of Recipient or its Representatives in violation of this Agreement; (b) was lawfully received, on a non-confidential basis, by Recipient from a third party free of any obligation of confidentiality; (c) was rightfully in the possession of Recipient prior to receipt thereof, directly or indirectly, from Discloser; (d) is required to be disclosed pursuant to a judicial or governmental order, provided that Recipient gives Discloser prompt written notice of such requirement by law prior to such disclosure and assists in obtaining an order protecting the Confidential Information from public disclosure; or (e) is subsequently and independently developed by Representatives of Recipient without the aid, application or use of any Confidential Information.
4. Rights in Confidential Information. All Confidential Information of Discloser and copies thereof are, and will remain, exclusively owned by Discloser. All items and information prepared by Recipient incorporating or derived from any part of the Confidential Information of Discloser will also be considered Confidential Information of Discloser and owned exclusively by Discloser. Nothing in this Agreement is intended to grant any rights to either party under any patent, mask work right or copyright of the other party, nor shall this Agreement grant any party any rights in or to the Confidential Information of the other party except as expressly set forth herein.
5. Term and Termination. This Agreement is intended to cover Confidential Information disclosed or received by either party prior or subsequent to the date of this Agreement. Unless otherwise earlier terminated, this Agreement will automatically expire four (4) years from the date written at the end of this Agreement.
6. Equitable Relief. It is hereby understood and agreed that damages shall be an inadequate remedy in the event of a breach by Recipient of any of said covenants and that any such breach by Recipient will cause Discloser great and irreparable injury and damage. Accordingly, Recipient agrees that Discloser shall be entitled, without waiving any additional rights or remedies otherwise available to Discloser at law or in equity or by statute, to injunctive and other equitable relief in the event of a breach or intended or threatened breach by Recipient of any of said covenants. In the event of litigation relating to this Agreement, the non-prevailing party will reimburse the prevailing party for its costs

Initials: Ayr Data _____ Representative/Other _____

and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection with such litigation.

7. **No Warranty.** All confidential information is provided "as is." Each party makes no warranties, express, implied or otherwise, regarding its accuracy, completeness or performance.
8. **Miscellaneous.**
 - (a) *No Obligation.* Nothing herein shall obligate either party to proceed with any potential and/or ongoing business transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement.
 - (b) *Governing Law.* This Agreement will be governed by and construed in accordance with the laws of the State of Texas, excluding the conflicts of law provisions, and the sole and exclusive venue for any dispute arising under or relating in any way to this Agreement shall be in the state or federal courts located in Dallas County, Texas. The parties further agree and acknowledge that they are each fully subject to the jurisdiction of the courts of the State of Texas.
 - (c) *Severability.* In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited or eliminated only to the extent necessary to remove the invalidity, illegality or unenforceability.
 - (d) *Waiver.* No waiver by Discloser of any breach by Recipient of any of the provisions of this agreement shall be deemed a waiver of any preceding or succeeding breach of the same or any other provisions hereof. No such waiver shall be effective unless in writing and then only to the extent expressly set forth in writing.
 - (e) *Entire Agreement.* This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein. Neither this Agreement nor the disclosure or receipt of the Confidential Information or any other activity contemplated hereunder shall constitute, or imply, any promise or intention by either party to enter into any type of business transaction or relationship with the other party.
 - (f) *No Assignment.* Neither party may assign this Agreement without prior written approval of the other party.
 - (e) *Construction.* The language used in this Agreement will be deemed to be the language chosen by the parties to express their mutual intent and no rules of strict construction will be applied against either party.
 - (g) *Counterparts.* This Agreement may be executed in any number of counterparts, each of which shall be enforceable, and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written below.

Ayr Data, Inc.	Representative _____
Name _____	Name _____
Title _____	Title _____
Signature _____	Signature _____
Date _____	Date _____

Initials: Ayr Data _____ Representative/Other _____