

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Confidentiality and Non-Disclosure Agreement (“Agreement”) is effective as of the last date of signature below (“Effective Date”) by and between the Brenda Simmons dba Cool U Warm U (“Discloser”) and the undersigned recipient (“Recipient”) (each a “Party” or collectively as the “Parties”).

Recipient Name: _____
Recipient Point of Contact: _____
Address: E-Mail: _____

Recitals

WHEREAS, Discloser and Recipient desire to participate in discussions wherein Discloser will disclose certain information to Recipient involving certain patents held by Discloser. This information contains privileged or other confidential material belonging to Discloser. It is the intent of Discloser to maintain and preserve all available privileges or other protections;

WHEREAS, Discloser desires to disclose the information to Recipient for the limited purpose of permitting Recipient to consider a potential business arrangement or transaction between Discloser and Recipient.

NOW THEREFORE, intending to be legally bound hereby, and upon the mutual promises contained herein, the Recipient and Discloser agree to the following terms and conditions.

1. Confidential Information. “Confidential Information” means and includes any nonpublic information, ideas and materials, whether or not marked “confidential” or “proprietary,” that is disclosed to or obtained by Recipient, in oral, written, graphic or machine-readable form, including without limitation that which relates to patents, patent applications, research, product plans, products, inventions, processes, designs, algorithms, source code, programs, business plans, agreements with third parties, services, customers, marketing, finances or information gained by Recipient as a result of its discussions with Discloser, which considering all the circumstances surrounding the disclosure, ought reasonably to be understood by Recipient to be confidential or proprietary. Confidential Information shall also include the terms of this Agreement.
2. Use of Confidential Information. The Recipient shall use Confidential Information exclusively for the purpose of evaluating potential business relationships and engagement with Discloser (“Business Engagement”). The Recipient shall not use or exploit for its own benefit or that of any third party and may make only such use of the Confidential Information as is expressly contemplated by this Agreement or as may otherwise be specifically authorized in writing by Discloser.
3. Nondisclosure of Confidential Information. The Recipient shall not disclose, produce, publish, permit access to, or reveal any Confidential Information to any person or entity without the express prior written consent of Discloser; provided, however, that such Confidential Information may be disclosed to the Recipient’s Representatives who (i) have a need to know the Confidential Information in connection with the Business Engagement , and (ii) have been informed of and agree to abide by the terms of this Agreement. By allowing any such access, the Recipient agrees to be and remain jointly and severally liable for any use or disclosure by its Representatives in violation of this Agreement. In the event that the Recipient receives express prior written approval from Discloser to disseminate Confidential Information to a third party, the Recipient shall secure and provide to Discloser upon request a confidentiality agreement containing the material terms hereof signed by said third party prior to the dissemination of any Confidential Information. The Recipient warrants that it will apply commercially reasonable safeguards to protect the Confidential Information against unlawful or otherwise unauthorized access, use, or disclosure and that it will take any other steps reasonably necessary to safeguard Confidential Information.
4. Nondisclosure of Existence of Negotiations. Without the express prior written consent of Discloser, the Recipient shall not, and shall direct its Representatives not to disclose to any third party the fact that any discussions or negotiations between the Recipient and Discloser are taking place or a possible transaction between them, or other facts with respect to those discussions or negotiations including the status thereof.

5. Notice of Required Disclosure. To the extent that the Recipient is required to disclose the Confidential Information pursuant to the legal requirements of any legal or administrative proceeding or investigation, the Recipient shall first provide advance notice to Discloser within three (3) business days of its knowledge of such legally required disclosure so that Discloser may, at its discretion, seek an appropriate protective order or such other appropriate remedy as Discloser deems necessary. Such notice to Discloser shall be both by telephone and in writing.
6. Ownership of Confidential Information. The Recipient acknowledges that the Recipient has no ownership or proprietary rights in the Confidential Information. Nothing contained in this Agreement shall be deemed, by implication or otherwise, to convey to the Recipient any right, title, or interest in any Confidential Information.
7. Return of Confidential Information. The Recipient shall promptly return or destroy all Confidential Information and/or all tangible materials embodying Confidential Information (in any form and including, without limitation, all summaries, copies, and excerpts of Confidential Information) upon written request of Discloser, without retaining any copy or reproductions thereof. The Recipient shall reasonably expunge electronic copies of Confidential Information as is practicable and not prohibited by law. Confidential Information that cannot be returned or destroyed shall be kept strictly confidential and continue to be subject to this Agreement. The Recipient shall provide written certification of its compliance with this Section 7 upon request.
8. No Binding Agreement for Business Engagement. The Parties agree that neither Party will be under any legal obligation of any kind whatsoever with respect to the Business Engagement by virtue of this Agreement, except for the matters specifically agreed to herein. The Parties further acknowledge and agree that they each reserve the right, in their sole and absolute discretion, to reject any and all proposals and to terminate discussions and negotiations with respect to the Business Engagement at any time. This Agreement does not create a joint venture or partnership between the Parties. If a Business Engagement goes forward, the express written non-disclosure provisions of any applicable transaction documents entered into between the Parties (or their respective affiliates) for the Business Engagement shall supersede this Agreement. In the event such provision is not provided for in said transaction documents, this Agreement shall control.
9. No Warranty. The Recipient acknowledges that Discloser makes no representations or warranties of any kind, whether expressed or implied, with respect to the Confidential Information or otherwise under this Agreement, nor shall Discloser have any duty or obligation to update or otherwise supplement the Confidential Information.
10. Nonexclusive. Nothing contained in this Agreement shall create or imply an exclusive relationship by or among the Parties. Nothing in this Agreement shall be construed to obligate Discloser to disclose any Confidential Information to the Recipient, or to preclude Discloser from disclosing any Confidential Information to any third party.
11. Remedies. The Recipient acknowledges that Discloser would be irreparably harmed by a breach or threatened breach of this Agreement, and it may be difficult to estimate damages resulting from such breach or threatened breach. Consequently, Discloser shall be entitled to injunctive or such other equitable relief, as well as reasonable attorneys' fees, costs and expenses, as may be appropriate to prevent a breach or threatened breach of this Agreement, and to secure the enforcement of this Agreement, without forgoing any legal relief which Discloser may otherwise be entitled. Discloser shall be entitled to preliminary and injunctive relief, without the necessity of showing irreparable harm or posting of bond, as well as to an equitable accounting of all profits or benefits arising out of such breach, which remedy shall be in addition to any other rights or remedies to which Discloser may be entitled. To the extent that Discloser may be able to demonstrate that it has sustained monetary damages by reason of such breach prior or subsequent to the award of injunctive relief, Discloser shall be entitled to recover the full measure of such damages, including fees, costs and expenses incurred in enforcing its rights under this Agreement, in either that action or a separate action.
12. Jury Waiver. The Recipient and Discloser hereby irrevocably waive, to the fullest extent permitted by law, all rights to a trial by jury in any action, proceeding or counterclaim, whether in contract, statute, tort, or otherwise, relating to this Agreement.
13. Term. This Agreement shall remain in effect for all periods during which the Recipient has possession of Confidential Information.

14. No Waiver. No failure or delay in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder. No waiver shall be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.
15. Severability. If any portion of this Agreement is found to be invalid or unenforceable, the remaining provisions shall continue in full force and effect.
16. Headings. Headings and captions used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.
17. Assignment. This Agreement shall not be assigned or transferred by either Party without the prior written consent of the other Party. All obligations contained in this Agreement shall extend to and be binding upon the Parties to this Agreement and their respective successors, assigns and designees.
18. Governing Law. This Agreement and performance thereunder shall be governed by the laws of the State of California, excluding its conflicts of laws rules.
19. Authority. The Parties to this Agreement represent and warrant that this Agreement has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity, enforceable in accordance with its terms.
20. Entire Agreement; Amendment. This Agreement constitutes the entire understanding between the Parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the Parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the Parties.
21. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall constitute one instrument. Copies (facsimile, scanned image or otherwise) of signatures to this Agreement shall be deemed to be originals, and may be relied on to the same extent as the originals.

IN WITNESS WHEREOF, the respective authorized representative of each Party has executed this Agreement to be effective as of Effective Date as set forth above.

DISCLOSER

By: Brenda Simmons

Date

RECIPIENT

By: (Authorized Signature)

Date

Name & Title (Print)