

# iStarUSA Group

## CONFIDENTIAL INFORMATION NONDISCLOSURE AGREEMENT

This Confidential Information Nondisclosure Agreement ("Agreement") is made by iStarUSA Group, a California corporation ("Disclosing Party") and \_\_\_\_\_, an individual/a \_\_\_\_\_ corporation ("Receiving Party") as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

In consideration of the mutual promises contained in this Agreement and the mutual disclosure of confidential information to each other, the parties hereto agree as follows:

### **1. Confidential Information and Materials**

- a) Disclosing Party proposes to disclose certain of its confidential and proprietary information (the "Confidential Information") to Receiving Party. Confidential Information could be in any form or media, that is marked or designated by Disclosing Party as being proprietary of confidential and may include, without limitation, information regarding Disclosing Party's products, technical design and data, computer programs, specifications, manuals, software, marketing plans, business plans, financial information, and other information disclosed or submitted, orally, in writing, or by any other media, to Receiving Party by Disclosing Party.
- b) Confidential Information shall not include any information that
  - (i) is or subsequently becomes publicly available without Receiving Party's breach of any obligation owed to Disclosing Party;
  - (ii) became known to Receiving Party prior to Disclosing Party's disclosure of such information to Receiving Party;
  - (iii) become known to Receiving Party from a source other than Disclosing Party other than by a breach of an obligation of confidentiality owed to Disclosing Party; or
  - (iv) is independently developed by Receiving Party without the use of any Confidential Information.

### **2. Restrictions**

- (a) The purpose of the disclosure of Confidential Information shall be solely to explore the possibility of Disclosing Party and Receiving Party entering into a business transaction with each other (the "Transaction"). Confidential Information shall be used by Receiving Party solely for the evaluation of the Transaction.
- (b) Receiving Party shall not disclose any Confidential Information to others following the data of Disclosing Party's disclosure to Receiving Party, except within its own organization to individuals whose duties justify the need to know such Confidential Information and then only if such individuals agree to maintain the confidentiality of such Confidential Information and to restrict the use thereof solely to the purpose specified herein.
- (c) Receiving Party shall take reasonable security precautions, at least as great as the precautions it takes to protect its own proprietary and confidential information, to maintain the confidentiality of the Confidential Information.

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- (d) Receiving Party shall not reverse engineering, decompile or disassemble any software disclosed by Disclosing Party to Receiving Party.

### 3. Obligations.

- A. Receiving Party agrees that the Confidential Information is to be considered confidential and proprietary to Disclosing Party and Receiving Party shall hold the same in confidence, shall not use the Confidential Information other than for the purposes of its business with Disclosing Party, and shall disclose it only to its officers, directors, or employees with a specific need to know. Receiving Party will not disclose, publish or otherwise reveal any of the Confidential Information received from Disclosing Party to any other party whatsoever except with the specific prior written authorization of Disclosing Party.
- B. Confidential Information furnished in tangible form shall not be duplicated by Receiving Party except for purposes of this Agreement. Upon the request of Disclosing Party, Receiving Party shall return all Confidential Information received in written or tangible form, including copies, or reproductions or other media containing such Confidential Information, within five (5) days of such request. Receiving Party shall provide a written certificate to Disclosing Party regarding destruction within five (5) days thereafter.

### 4. Rights and Remedies

- (a) Receiving Party shall notify Disclosing Party immediately upon discovery of any authorized use or disclosure of the Confidential Information or any other breach of this Agreement by Receiving Party, and Receiving Party shall cooperate with Disclosing Party in every reasonable way to assist Disclosing Party in regaining possession of the Confidential Information and preventing further unauthorized use. Receiving Party shall return all Confidential Information and preventing further unauthorized use. Receiving Party shall return all Confidential Information at Disclosing Party's request or, at Disclosing Party's option, certify to the destruction of such Confidential Information.
- (b) Receiving Party acknowledges that monetary damages may not be a sufficient remedy for unauthorized disclosure or use of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief as may be deemed proper by a court of competent jurisdiction.
- (c) All Confidential Information shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any right or license to Receiving Party to or under Disclosing Party's copyrights, trademarks, trade secrets or other intellectual property.
- (d) The terms of this Agreement shall not be construed to limit either party's right to independently develop or provide products or services without the use of the other party's Confidential Information.
- (e) Disclosing Party makes no representations or warranty as to the accuracy or completeness of Confidential Information disclosed to Receiving Party.

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- (f) Neither of the parties shall be under any legal obligation of any kind whatsoever with respect to the Transaction unless and until a definite agreement has been entered into by the parties with respect to the Transaction

## 5. Term and Termination

(a) The term of this Agreement is one year from the Effective Date of this Agreement, subject to the terms and conditions set forth below regarding early termination (the "Term"). The Term of this Agreement shall automatically extend for successive one year terms unless sooner termination as provided herein.

(b) This Agreement may be terminated at any time by either party for its convenience upon ninety (90) days written notice. Each of the parties has considered its expenditure in preparing for performance of, and performing, this Agreement and possible losses resulting from its termination. It is expressly understood that this right of termination is absolute and that neither party shall be liable to the other for damage in case of termination of this Agreement for convenience.

(c) This Agreement may also be terminated in the event of one party's breach of any of the terms and conditions set forth herein, providing that such breach is not remedied within thirty (30) business days of the breaching party having received written notice of such breach.

(d) The obligations of Receiving Party herein shall be effective from the date Disclosing Party last discloses any Confidential Information to Receiving Party pursuant to this Agreement to the date when the Confidential Information disclosed to Receiving Party is no longer confidential.

(e) Further, the obligation not to disclose shall not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against Receiving Party, nor by the rejection of any agreement between Disclosing Party and Receiving Party, by a trustee of Receiving Party in bankruptcy, or by the Receiving Party as a debtor-in-possession or the equivalent of any of the foregoing under local law.

## 6. Other Information.

Receiving Party shall have no obligation under this Agreement with respect to Confidential Information which is or becomes publicly available without breach of this Agreement by Receiving Party; is rightfully received by Receiving Party without obligations of confidentiality; or is developed by Receiving Party without breach of this Agreement; provided, however, such Confidential Information shall not be disclosed until thirty (30) days after written notice of intent to disclose is given to Disclosing Party along with the asserted grounds for disclosure.

## 7. No License.

Nothing contained herein shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information. It is understood and agreed that neither party solicits any change in the organization, business practice, service or products of the other party, and that

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the disclosure of Confidential Information shall not be construed as evidencing any intent by a party to purchase any products or services of the other party nor as an encouragement to expend funds in development or research efforts. Confidential Information may pertain to prospective or unannounced products. Receiving Party agrees not to use any Confidential Information as a basis upon which to develop or have a third party develop a competing or similar product.

## 8. No Publicity.

Receiving Party agrees not to disclose its participation in this undertaking, the existence or terms and conditions of the Agreement, or the fact that discussions are being held with Disclosing Party.

## 9. Governing Law and Equitable Relief.

This Agreement shall be governed and construed in accordance with the laws of the United States and the State of California and Receiving Party consents to the exclusive jurisdiction of the state courts and U.S. federal courts located in Los Angeles County for any dispute arising out of this Agreement. Receiving Party agrees that in the event of any breach or threatened breach by Receiving Party, Disclosing Party may obtain, in addition to any other legal remedies which may be available as well as the attorney fees and court cost, such equitable relief as may be necessary to protect Disclosing Party against any such breach or threatened breach.

## 10. Final Agreement.

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

## 11. No Assignment.

Receiving Party may not assign this Agreement or any interest herein without Disclosing Party's express prior written consent.

## 12. Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

## 13. Notices.

Any notice required by this Agreement or given in connection with it, shall be in writing and shall be given to the appropriate party by personal delivery or by (i) certified mail, postage prepaid, in which case the notice shall be deemed given on the date it is sent or (ii) recognized overnight delivery services such as Federal Express, UPS, DHL or any other overnight carrier, in which case the notice shall be deemed given two (2) days from the date of transmission. All notices sent to iStarUSA which concern this Agreement shall be addressed as follows:

727 Phillips Drive, City of Industry, CA 91748-1748

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## 14. No Implied Waiver.

Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement shall not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

## 15. Headings.

Headings used in this Agreement are provided for convenience only and shall not be used to construe meaning or intent.

## 16. Miscellaneous Provisions

- (a) This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof, and any modification of this Agreement will be effective only if set forth in a separate written agreement entered into by the parties.
- (b) No delay or failure by either party to exercise or enforce at any time any of its rights hereunder shall be considered a waiver thereof or of such party's right thereafter to exercise or enforce each such right. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable, such provision shall be modified to the minimum extent necessary to make its application valid and enforceable, and the remainder of this Agreement shall not be affected thereby.
- (c) Each person executing this Agreement on behalf of a party hereto represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of the party and that this Agreement is binding upon the party in accordance with its terms.

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

Disclosing Party:

Receiving Party:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

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

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

iStarUSA Group

Company: \_\_\_\_\_

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