

Mutual Non-Disclosure Agreement

This Mutual Non-Disclosure Agreement (this "Agreement") is entered into between Pantheon Systems, Inc. ("Pantheon") and _____ ("Company") as of _____ (the "Effective Date"), to protect the confidentiality of certain confidential information of Pantheon or of Company to be disclosed under this Agreement solely for use in discussions regarding a potential business relationship between the Parties (the "Permitted Use"). Pantheon and Company may be referred to herein individually as a "Party" and collectively as the "Parties."

1. As used herein, the "Confidential Information" of a Party will mean any and all technical and non-technical information disclosed by such Party (the "Disclosing Party") to the other Party (the "Receiving Party"), that is marked or otherwise identified in writing as confidential or proprietary, or that is provided under circumstances indicating that it is confidential or proprietary by Disclosing Party, or that otherwise should reasonably be understood by Receiving Party to be confidential or proprietary to Disclosing Party because of the nature of the information or material itself, which may include without limitation: (a) patent and patent applications, (b) trade secrets, and (c) proprietary and confidential information, ideas, media, drawings, works of authorship, inventions, know-how, processes, algorithms, software programs and software source documents related to the current, future, and proposed products and services of each of the Parties, such as information concerning research, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, and marketing plans.
2. Subject to Section 3, each Receiving Party agrees that at all times it will hold in strict confidence and not disclose to any third party any Confidential Information of the Disclosing Party, except as approved in writing by the Disclosing Party, and will use the Confidential Information of the Disclosing Party for no purpose other than the Permitted Use. Each Receiving Party will limit access to the Confidential Information of the Disclosing Party to only those of the Receiving Party's employees or authorized representatives having a need to know and who have signed confidentiality agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein.
3. The Receiving Party will not have any obligations under this Agreement with respect to a specific portion of the Confidential Information of the Disclosing Party if such Receiving Party can demonstrate with competent evidence that such portion of Confidential Information (a) was in the public domain at the time it was disclosed to the Receiving Party; (b) entered the public domain subsequent to the time it was disclosed to the Receiving Party, through no fault of the Receiving Party; (c) was in the Receiving Party's possession free of any obligation of confidence at the time it was disclosed to the Receiving Party; (d) was rightfully communicated to the Receiving Party free of any obligation of confidence subsequent to the time it was disclosed to the Receiving Party; or (e) was developed by employees or agents of the Receiving Party independently of and without reference to any information communicated to the Receiving Party by the Disclosing Party.
4. Notwithstanding the above, the Receiving Party may disclose certain Confidential Information of the Disclosing Party as permitted by law, or if required by a valid order of a court or other governmental body with jurisdiction, *provided that* the Receiving Party provides the Disclosing Party with reasonable prior written notice of such order and makes a reasonable effort to obtain, or to assist the Disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required.
5. The Receiving Party will promptly notify the Disclosing Party upon discovery of any loss or unauthorized disclosure of the Confidential Information of the Disclosing Party.

6. Immediately upon completion of the Parties' authorized use of the Confidential Information, or upon written request of either Party, each Receiving Party will return to the Disclosing Party or destroy all documents and other tangible materials representing the Disclosing Party's Confidential Information and all copies thereof, and certify that such Confidential Information has been deleted and expunged.
7. The Receiving Party acknowledges and agrees that the Confidential Information of the Disclosing Party is owned by and shall remain the sole and exclusive property of the Disclosing Party. Each Receiving Party recognizes and agrees that nothing contained in this Agreement will be construed as granting any property rights, by license or otherwise, to any Confidential Information of the Disclosing Party, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information.
8. Each Receiving Party will not reproduce the Confidential Information of the Disclosing Party in any form except as required to accomplish the intent of this Agreement. Any reproduction by a Receiving Party of any Confidential Information of the Disclosing Party will remain the property of the Disclosing Party and will contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Disclosing Party.
9. The Parties agree that during the course of communications pursuant to this Agreement, the Parties will not make any unauthorized use or disclosure of any confidential or proprietary information or trade secrets of any other person or entity to whom they owe an obligation of confidentiality with respect to such information, including but not limited to, any current or former employer.
10. Except as may be otherwise agreed by both Parties in writing, no warranties of any kind, whether express or implied, are given by the Disclosing Party with respect to any Confidential Information or any use thereof, and the Confidential Information is provided on an "AS IS" basis. DISCLOSING PARTY HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ACCURACY, AND ANY WARRANTIES ARISING OUT OF COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.
11. Each Party's obligations under this Agreement will survive termination of the discussions or dealings between the Parties related to the Permitted Use and will be binding upon such Party's heirs, successors, and assigns.
12. This Agreement will be governed by and construed in accordance with the laws of California without reference to conflict of laws principles. Any disputes under this Agreement may only be brought in the state courts and the Federal courts located in San Francisco, California, and the Parties hereby consent to the exclusive personal jurisdiction and venue of these courts.
13. Each Party acknowledges that its breach of this Agreement may cause irreparable damage to the other Party and hereby agrees that the other Party will be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.
14. If any provision of this Agreement is found to be unenforceable or invalid, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole and, in such event, such provision will be changed and interpreted to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.
15. Neither Party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party, except that a Party may assign this Agreement without such consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets.
16. The waiver by either Party of a breach of or a default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either Party to exercise or avail itself of any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

17. This Agreement represents the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior discussions relating to the subject matter of this Agreement. This Agreement is entered into without any reliance on any promise or representation, written or oral, other than those expressly contained herein, and may not be modified or amended in any way except by a writing signed by duly authorized officers of the Parties hereto. This Agreement may be executed in counterparts, which shall be deemed to be part of one original, and facsimile and electronic image signatures shall be equivalent to original signatures.

In Witness Whereof, the Parties have caused this Mutual Non-Disclosure Agreement to be executed as of the Effective Date.

<p>Pantheon Systems, Inc. (Pantheon)</p> <p><u>Signature:</u></p> <p><u>Name:</u></p> <p><u>Title:</u></p> <p><u>Date:</u></p> <p><u>Address:</u></p> <p>717 California Street San Francisco, CA 94108</p>	<p>Company:</p> <p><u>Signature:</u></p> <p><u>Name:</u></p> <p><u>Title:</u></p> <p><u>Date:</u></p> <p><u>Address:</u></p>
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