

Hypermean Nondisclosure Agreement

1. This Agreement is made between Hypermean ("Consultant") of Santa Fe, NM and _____ ("Client").
2. In this Agreement, the party who owns the Confidential Information will be referred to as "Hypermean", and the party to whom the Confidential Information will be disclosed will be referred to as "_____".
3. This purpose of this Agreement is to protect Proprietary Information disclosed.
4. Each party to this Agreement agrees to protect all of the other party's Proprietary Information coming to the party's attention, and not to disclose it to any third party for 3 years from the date of the agreement. The party's agree to maintain the Proprietary Information in confidence and to treat the Proprietary Information with at least the same degree of care and safeguards that are taken with the Consultant's and Client's own Proprietary Information. Proprietary Information shall not be deemed to include information that:
 - (a) is in or becomes in the public domain without violation of this Agreement; or
 - (b) is already in the possession of one party, as evidenced by written documents, prior to the disclosure thereof by the other party; or
 - (c) is rightfully received from a third entity having no obligation to the Client or Consultant and without violation of this Agreement by either party.
5. Hypermean is engaged in technical consulting. _____ is engaged with embedded software development. Hypermean has requested that _____ will protect the confidential material and information, which may be disclosed between Hypermean and _____.

Therefore, the parties agree as follows:

- I. CONFIDENTIAL INFORMATION. The term "Confidential Information" means any information or material which is proprietary to Hypermean, whether or not owned or developed by Hypermean, which is not generally known other than by Hypermean, and which _____ may obtain through any direct or indirect contact with.
 - A. Confidential Information includes without limitation:
 - Business records and plans
 - Strategies
 - Financial statements
 - Customer lists and records
 - Technical information
 - Product design information
 - pricing structure
 - Discounts
 - Costs
 - Computer programs and listings
 - Source code and/or object code
 - Copyrights and other intellectual property and other proprietary information.

II. PROTECTION OF CONFIDENTIAL INFORMATION. _____ understands and acknowledges that the Confidential Information has been developed or obtained by Hypermean by the investment of significant time, effort and expense, and that the Confidential Information is a valuable, special and unique asset of Hypermean which provides Hypermean with a significant competitive advantage, and needs to be protected from improper disclosure.

In consideration for the disclosure of the Confidential Information, _____ agrees to hold in confidence and to not disclose the Confidential Information to any person or entity without the prior written consent of Hypermean . In addition, _____ agrees that:

i. No Copying/Modifying. _____ will not copy or modify any Confidential Information without the prior written consent of Hypermean, using the same degree of care it uses to protect its own confidential information, but in no case less than reasonable care.

ii. Application to Employees. Further, _____ shall not disclose any Confidential Information to any employees of any other funded venture, except those employees or contacts who are required to have the Confidential Information in order to perform their job duties in connection with the limited purposes of this Agreement. Each permitted employee to whom Confidential Information is disclosed shall sign a non-disclosure agreement substantially the same as this Agreement

iii. Unauthorized Disclosure of Information. If it appears that _____ has disclosed (or has threatened to disclose) Confidential Information in violation of this Agreement, Hypermean shall be entitled to an injunction to restrain _____ from disclosing, in whole or in part, the Confidential Information. Hypermean shall not be prohibited by this provision from pursuing other remedies, including a claim for losses and damages.

III. RETURN OF CONFIDENTIAL INFORMATION. Upon the written request of Hypermean, _____ shall return to Hypermean all written materials containing the Confidential Information. _____ shall also deliver to Hypermean written statements signed by _____ certifying that all materials have been returned within five (5) days of receipt of the request.

IV. RELATIONSHIP OF PARTIES. Neither party has an obligation under this Agreement to purchase any service or item from the other party, or commercially offer any products using or incorporating the Confidential Information. This Agreement does not create any agency, partnership, or joint venture.

V. NO WARRANTY. _____ acknowledges and agrees that the Confidential Information is provided on an AS IS basis. HYPERMEAN MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CONFIDENTIAL INFORMATION AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL HYPERMEAN BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THE PERFORMANCE OR USE OF ANY PORTION OF THE CONFIDENTIAL INFORMATION. Hypermean does not represent or warrant that any product or business plans disclosed to _____ will be marketed or carried out as disclosed, or at all. Any actions taken by _____ in response to the disclosure of the Confidential Information shall be solely at the risk of _____.

VI. LIMITED LICENSE TO USE. _____ shall not acquire any intellectual property rights under this Agreement except the limited right to use set out above. _____ acknowledges that, as between Hypermean and _____, the Confidential Information and all related copyrights and other intellectual property rights, are (and at all times will be) the property of Hypermean, even if suggestions, comments, and/or ideas made by _____ are incorporated into the Confidential Information or related materials during the period of this Agreement.

VII. GENERAL PROVISIONS. This Agreement sets forth the entire understanding of the parties regarding confidentiality. Any amendments must be in writing and signed by both parties. This agreement shall be construed under the laws of the State of New Mexico and the prevailing party entitled to attorney's fees. This Agreement shall not be assignable by either party, and neither party may delegate its duties under this Agreement, without the prior written consent of the other party. The confidentiality provisions of this Agreement shall remain in full force and effect 5 years after the effective date of this Agreement.

In Witness Whereof, Consultant and Client have caused this Agreement to be signed by their respective duly authorized officers as of the day and year below written.

Information Owner:

Daniel Cooke, for Hypermean

By: _____ / _____
Daniel Cooke date

Recipient:

By: _____ / _____
date