



MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT (this "**Agreement**") is entered into as of _____, 2002, by and between TRANSPACIFIC TELECOM, INC, a Delaware corporation ("TPT"), and the other party below ("Other Party"), pursuant to the following recital and agreements:

A. The parties wish to make mutual disclosures and exchanges of their respective proprietary data to each other for the purpose of assessing the possibility of a business relationship, investment, or other business opportunity.

NOW, THEREFORE, in consideration of these premises, promises and agreements hereinafter set forth, the parties hereto agree as follows:

1. Definitions.

1.1 "**Discloser**" means the party disclosing data, some of which may be Proprietary Data.

1.2 "**Proprietary Data**" means information, knowledge or data of an intellectual, business, technical, economic, scientific or industrial nature in which Discloser claims a proprietary or ownership interest, or has a legal or contractual duty to protect. Without limiting the generality of the foregoing, Proprietary Data shall include financial data, cost data, pricing data, marketing data, technical data, drawings, photographs, specifications, standards, manuals, reports, formulae, processes, methods, information, lists, trade secrets, computer programs, computer software, computer databases and computer documentation. Proprietary Data may be disclosed either visually, orally or in writing. Proprietary data also includes all information and materials on VIVO™ software.

1.3 "**Recipient**" means the party receiving data, some of which may be Proprietary Data.

2. Protection of Proprietary Data. Recipient shall exercise at least the same standard of care to prevent the disclosure of such Proprietary Data as it exercises to prevent the disclosure of its own Proprietary Data. Recipient shall limit dissemination of such Proprietary Data to those persons within its organization who have a need to know such Proprietary Data to fulfill the purpose of this Agreement. Recipient acknowledges that it will be responsible for any breach of the terms of this Agreement by any of its employees or consultants who receive Proprietary Data.

3. Term. This Agreement shall be effective as of the earlier of the date on which the first disclosure between the parties occurred or the date of this Agreement and may be terminated upon mutual agreement of the parties at any time; provided that the requirements specified under the clauses "Protection of Proprietary Data" and "Limitation on Use of Proprietary Data" shall survive the termination of this Agreement.

4. Limitation on Use of Proprietary Data.

4.1 Recipient shall not directly or indirectly use or disclose Proprietary Data, except for its own internal evaluation pertaining to the foregoing premises, and shall not use or disclose such Proprietary Data unless and until expressly authorized in writing to do so by the CEO of Discloser, subject, however to the provisions of Section 4.3 below.

4.2 No license or conveyance of any rights to either party is granted or implied by the disclosure of Proprietary Data by Discloser except as provided herein. No right to use is warranted by Discloser by the furnishing of Proprietary Data to Recipient.

4.3 Notwithstanding that this Agreement shall have been terminated or shall expire, Recipients shall keep in confidence, not use for their own benefit, and prevent the disclosure to any person, firm or corporation or persons outside their organization or to any unauthorized person or persons, all Proprietary Data which is received by Recipient pursuant to this Agreement; provided, however, that Recipient shall not be liable for disclosure or use of any Proprietary Data that Recipient can prove through clear and convincing evidence: (a) was in the public domain at the time it was disclosed or falls within the public domain, except through a breach of this Agreement; or (b) was known to Recipient at the time of disclosure; or (c) was disclosed with the written approval of Discloser; or (d) becomes known to the Recipient from a

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Fax: 858-777-5375 Email: Info@t-p-t.net



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source other than Discloser without breach of this Agreement; or (e) was independently developed by the Recipient prior to the date of this Agreement without the benefit of Proprietary Data received from Discloser; or (f) is required to be disclosed by judicial order, but only to the extent required by such order; provided, however, that if only a portion of any Proprietary Data falls within any one of these exceptions, the remainder shall continue to be subject to this Agreement.

5. **Copying of Proprietary Data.** Proprietary Data shall not be copied or reproduced without the express written permission of Discloser, except for such copies as may be reasonably required for internal evaluation by Recipient.

6. **No Right to Make Commitments.** This Agreement shall not obligate either party to enter into other commitments and shall not grant to either party the right to make commitments on behalf of the other party.

7. **Return of Proprietary Data.** All Proprietary Data and copies and analyses thereof shall be returned to Discloser within thirty (30) days of receipt of a written request by Discloser for the return of such Proprietary Data.

8. **Superseding Effect; Construction.** This Agreement embodies all the understanding between the parties hereto concerning the subject matter hereof, and merges all prior discussions and writings, if any, between them as to the Proprietary Data to be disclosed. This Agreement shall not be amended or waived except by a writing and signed by both parties. This Agreement shall not be strictly construed against either party. This Agreement may be executed in original or faxed counterparts.

9. **Warranty.** Each party represents and warrants that its execution of this Agreement and its disclosures will not violate any laws or contractual obligations of such party.

10. **Governing Law; Remedies.** This Agreement is entered into in San Diego, California and shall be governed by the internal laws of the State of California. Any controversy or claim arising out of or relating to this Agreement shall be adjudicated in San Diego, California with the prevailing party being entitled to reasonable attorneys' fees, costs and expenses in addition to any other relief.

Recipient understands and agrees that, because of the unique nature of the Proprietary Data, Discloser will suffer irreparable harm if Recipient fails to comply with any of its obligations under this Agreement and monetary damages will be inadequate to compensate Discloser for such breach. Accordingly, Recipient agrees that Discloser shall, in addition to any other remedies available to it at law or in equity, be entitled to injunctive relief without posting a bond or other undertaking to enforce the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date set forth above.

TRANSPACIFIC TELECOM, INC
a Delaware corporation

By: _____
Name Printed: _____
Title: _____

Company

By: _____
Name Printed: _____
Title: _____
Return to Fax: _____
Telephone: _____

Please sign and return this Non-Disclosure Agreement to TPT by Fax. Thank you.