

Network Box USA, Inc.  
MUTUAL NON-DISCLOSURE AGREEMENT  
Instructions

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# Network Box USA, Inc.

## MUTUAL NON-DISCLOSURE AGREEMENT

This Agreement made and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2004 between

**Network Box USA, Inc.**, a Texas corporation having a place of business at 2825 Wilcrest, Suite 620, Houston, Texas, TX 77042-3001 (“Network Box”), on behalf of itself; and

\_\_\_\_\_, a \_\_\_\_\_ corporation having a place of business at \_\_\_\_\_ (Voice: \_\_\_\_ - \_\_\_\_ - \_\_\_\_; Fax: \_\_\_\_ - \_\_\_\_ - \_\_\_\_) (“\_\_\_\_\_”).

Network Box and \_\_\_\_\_ are referred to herein as the “Party(ies)”.

The Parties agree as follows:

1. **DEFINITIONS:** As used herein, unless otherwise defined:

“Purpose” shall mean discussions between Network Box and \_\_\_\_\_ with respect to the possible acquisition for use or resale of Network Box Products.

“Confidential Information” shall mean information or material that is confidential and proprietary to the disclosing Party, whether disclosed in writing or orally. Confidential Information includes, but is not limited to, the following types of information and other information of a similar nature: integrated circuit schematics, circuit design analysis, software (in various stages of development), designs, drawings, specifications, models, source code, object code, documentation, diagrams, flow charts, marketing and development plans, business plans, financial information, customer lists, and other similar information that is proprietary to and confidential information of the disclosing Party.

2. **DISCLOSURE AND USE RESTRICTIONS:** The receiving Party will not use or disclose any Confidential Information without the disclosing Party’s prior written consent, except to the receiving Party’s employees or consultants on a need-to-know basis, provided that such employees or consultants have executed written agreements restricting use or disclosure of such Confidential Information that are at least as restrictive as the receiving Party’s obligations hereunder. In addition to the foregoing nondisclosure obligations, the receiving Party agrees to use at least the same care and precaution in protecting such Confidential Information as the receiving Party uses to protect the receiving Party’s own confidential and proprietary information and trade secrets, and in no event less than reasonable care. The receiving Party shall return all Confidential Information promptly upon the request of the disclosing Party or upon termination of this Agreement. Confidential Information received by a Party under this Agreement shall no be copied without the prior written consent of the disclosing Party.

3. **RETURN OF CONFIDENTIAL INFORMATION:** Upon request from the disclosing Party, the receiving Party shall immediately return to the disclosing Party all Confidential Information and copies thereof, or if directed by disclosing Party, shall immediately destroy or de-install such Confidential Information and all copies, and shall furnish proof of their destruction to the disclosing Party.

4. **EXEMPTING PROVISIONS:** Neither Party shall be bound by the obligations restricting disclosure and use set forth in this Agreement with respect to Confidential Information, or any part thereof, which: (a) was known by the receiving Party prior to disclosure, as evidenced by its business records; (b) was lawfully in the public domain prior to its disclosure, or becomes publicly available other than through a breach of this Agreement; (c) was disclosed to the receiving Party by a third party provided such third party or any other party from whom such third party receives such information is not in breach of any confidentiality obligation in respect of such information; (d) is independently developed by the receiving Party, as evidenced by its business records; or (e) is disclosed when such disclosure is compelled pursuant to legal, judicial, or administrative proceeding, or otherwise required by law, subject to the receiving Party giving all reasonable prior notice to the disclosing Party to allow it to seek protective or other court orders.

5. **PROPRIETARY RIGHTS:** No license of any patent right, copyright, or any other right in respect of the Confidential Information, other than as necessary to ensure the rights specifically granted herein, is granted to the receiving Party under this Agreement by implication or otherwise. This Agreement shall not constitute any representation, warranty, or guarantee to the receiving Party by the disclosing Party that Confidential Information does not infringe patents, copyrights, or any other rights of third parties.

6. **NO OTHER BUSINESS RELATIONSHIP:** This Agreement does not represent, and in no way implies: (a) a partnership, joint venture or other commercial relationship between the Parties; (b) an authorization for either Party to act as the agent or representative of the other; (c) an agreement or commitment by either Party to purchase, acquire, develop, or use the products or services of the other Party; or (d) an encouragement to either Party to expend funds or other resources in the development of products or services.

7. **LIABILITY AND REMEDIES:** THE DISCLOSING PARTY MAKES NO REPRESENTATIONS, DOES NOT WARRANT, AND SHALL HAVE NO LIABILITY WHATSOEVER IN RESPECT OF ANY INFORMATION DISCLOSED BY IT PURSUANT TO THIS AGREEMENT.

8. **DURATION:** This Agreement shall apply in respect of discussions and disclosures of information occurring during the period of one (1) year following the date of execution of this Agreement. The period of confidentiality and restricted use of each disclosure of Confidential Information shall be one (1) year from the date of termination of this Agreement.

9. **EQUITABLE REMEDY.** Each Party acknowledges that due to the unique nature of the other Party's Confidential Information, the disclosing Party will not have an adequate remedy in money or damages in the event of any unauthorized use or disclosure of its Confidential Information. In addition to any other remedies that may be available in law, in equity or otherwise, the disclosing Party shall be entitled to seek injunctive relief to prevent such unauthorized use or disclosure.

10. **GENERAL:** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and the federal laws of the United States of America applicable herein.

The failure of a Party to enforce at any time or for any period of time any of the provisions of this Agreement shall not constitute a waiver of such provisions or the right of that Party to enforce each and every provision. A waiver of a failure to comply hereunder shall be effected only in writing, signed by the waiving Party and shall not constitute a waiver of any other failures to comply hereunder.

This Agreement may not be assigned in whole or in part by either Party with respect of the subject matter hereof except that either Party may transfer this agreement to a subsidiary, or in the event of a merger or acquisition, to the surviving entity. This Agreement supersedes any prior or collateral understandings, agreements, or discussions with the exception of any agreement regarding confidentiality.

**EXECUTED BY** the Parties as of the day and year set out on the first page hereof.

**Network Box USA, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title