



Mutual Nondisclosure Agreement

THIS AGREEMENT (the Agreement), effective on _____ 2001, between EZ Telcom Network Services, a California sole proprietorship, for itself and its affiliates (EZ TNS) and _____ (Company), is to protect confidential information disclosed by either party to the other.

The parties agree as follows:

1. Confidential Information. For purposes of this Agreement, the party disclosing Confidential Information is the Discloser, and the party receiving Confidential Information is the Recipient. Confidential Information means all information concerning the parties business including, but not limited to, all tangible, intangible, visual, electronic, present, or future information such as: **(a)** trade secrets; **(b)** financial information, including pricing; **(c)** technical information, including research, development, procedures, algorithms, data, designs, and know-how **(d)** business information, including operations, planning, marketing interests, and products; and **(e)** the terms of any agreement between EZ TNS and Company and the discussions, negotiations and proposals related to that agreement. Confidential Information disclosed to the other party must be clearly identified. Written Confidential Information must be clearly marked in a conspicuous place with an appropriate legend identifying the information as confidential. Confidential Information that is not written must be identified as Confidential Information at the time of disclosure and confirmed in writing delivered to the Recipient within 15 days following its disclosure. The protections of this Agreement will apply during those 15 days.

2. Confidential Information Exceptions. The Recipient does not have an obligation to protect Confidential Information that is: **(a)** in the public domain through no fault of the Recipient; **(b)** within the legitimate possession of the Recipient, with no confidentiality obligations to a third party; **(c)** lawfully received from a third party having rights in the information without restriction, and without notice of any restriction against its further disclosure; **(d)** independently developed by the Recipient without breaching this Agreement or by parties who have not had, either directly or indirectly, access to or knowledge of the Confidential Information; or **(e)** disclosed with the prior written consent of the Discloser. If Confidential Information is required to be produced by law, court order, or governmental authority, the Recipient must immediately notify the Discloser of that obligation. The Discloser may move the ordering court or authority for a protective order or other appropriate relief.

3. Term. The term of this Agreement is 3 years from the effective date (Term). Either party may terminate the Agreement at any time on 60 days written notice, unless another agreement between the parties provides differently. The parties obligations not to disclose or improperly use Confidential Information received during the Term will continue for 2 years after this

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Agreement expires or is terminated. Early termination of this Agreement does not relieve the Recipient of its obligations for Confidential Information exchanged before the effective date of termination.

4. Use of and Duty of Care to Protect Confidential Information. The Recipient will use the Confidential Information only to further the relationship between the parties. Confidential Information may not be disclosed to any third party without the written consent of the Discloser. Each party agrees that the other may disclose Confidential Information it receives to its subsidiaries or affiliates (or agents who have a need to know and have a non-disclosure obligation at least as restrictive as this Agreement), subject to the terms of this Agreement, to any entity authorized to sell EZ TNS products or services under the EZ TNS brand name. The Recipient must provide at least the same reasonable care to avoid disclosure in breach of this Agreement or unauthorized use of the Confidential Information as it provides to protect its own similar confidential information. The Recipient will not reproduce Confidential Information except to accomplish the purpose of this Agreement.

5. Ownership. Confidential Information remains the property of the Discloser. No rights, licenses, trademarks, inventions, copyrights, patents, or other intellectual property rights are implied or granted under this Agreement, except to use the Confidential Information as provided in this Agreement. On termination of this Agreement or at the Discloser's request, all written, recorded, graphical, or other tangible Confidential Information, including copies, must be returned to the Discloser or destroyed by the Recipient. At the request of the Discloser, the Recipient will furnish a certificate, signed by an officer of the Recipient, certifying that any Confidential Information not returned to the Discloser has been destroyed.

6. Indemnity. Each party warrants that it has the right to disclose all Confidential Information that it discloses to the other party. Each party will indemnify and defend the other from all third-party claims resulting from the negligent or wrongful disclosure by the indemnifying party of a third-party's confidential information. Otherwise, neither party makes any representation or warranty about the Confidential information. Neither party will be liable for indirect, incidental, punitive, or consequential damages for any cause of action, whether in contract, tort, or otherwise, arising out of a breach of this Agreement.

7. Breach of Agreement. Any claim a party has for breach of this Agreement must be filed **(a)** within 1 year of Discloser's first knowledge of the breach, and **(b)** no later than 1 year after the expiration of the period that the Recipient has a duty to protect the Confidential Information.

8. Right to Enjoin Disclosure. The parties acknowledge that a Recipient's unauthorized disclosure or use of Confidential Information may result in irreparable harm. If there is a breach or threatened breach of this Agreement the Discloser may seek a temporary restraining order and injunction to protect its Confidential Information. This provision does not alter any other remedies available to either party. The party who has breached or threatened to breach this Agreement will not raise the defense of an adequate remedy at law.

9. No Partnership or Joint Venture Formed. The exchange of Confidential Information between the parties is not and does not create a partnership, joint venture, or other form of

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legal entity or business enterprise. Any business relationship between the parties will be governed by a separate agreement.

10. Export Compliance. Each party will comply with the applicable United States export laws and regulations for any technical data exchanged under this Agreement.

11. Miscellaneous. Each party acknowledges that the other party may be performing the same or similar services for others in the same industry and that a party may use the same personnel to provide those services to others in the same industry and to develop new products and services. These personnel must continue to abide by the terms of this Agreement.

12. General. This Agreement: **(a)** is governed by applicable federal law and regulations and the law of California, without regard for its choice of law provisions; **(b)** represents the parties entire understanding regarding Confidential Information, and supersedes any prior agreements or discussions, written or oral, regarding Confidential Information; **(c)** may be modified only by written amendment signed by the parties officers or authorized designees; **(d)** is to be considered severable, and if any provisions of this Agreement is illegal or unenforceable, the unaffected provisions will remain in effect; **(e)** contains headings for reference only; these headings have no effect on any provision s meaning; and **(f)** does not extend to any third-party beneficiaries. If either party fails to enforce any right or remedy under this Agreement, that failure is not a waiver of the right or remedy for any other breach or failure by the other party.

By signing below, the parties agree to this Agreement s terms effective on the date written above.

EZ Telcom Network Services _____

By: _____ **By:** _____
Authorized Signature Authorized Signature

Date: _____ **Date:** _____

Name and Title (please type or print)
print)

Name and Title (please type or

Address:

Address:

