

THIS MUTUAL NON-DISCLOSURE AGREEMENT (this “Agreement”) governs the disclosure of information by and between **MEMSQL INC.**, a Delaware corporation with its principal place of business at 534 4th Street, San Francisco, CA 94107 (“MemSQL”) and _____, a [_____] corporation with its principal place of business at _____ (“Company”) as of _____, 201__ (the “Effective Date”).

1. “Confidential Information” means information provided by one party (or its affiliates) (collectively, “Discloser”) to the other party (“Recipient”), including but not limited to (a) patent and patent applications, (b) trade secret, and (c) proprietary information, ideas, techniques, works of authorship, models, inventions, know-how, processes, algorithms, software programs and source documents, and formulae related to the current and proposed products and services of Discloser, and including, without limitation, information concerning development, design details and specifications, financial information, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, marketing plans, and information Discloser provides Recipient regarding third parties.
2. Recipient agrees that at all times and notwithstanding any termination of this Agreement, it will hold in strict confidence and not disclose to any third party Discloser’s Confidential Information, except as approved in writing by Discloser, and will use Discloser’s Confidential Information for no purpose other than evaluating or pursuing a business relationship Discloser. Notwithstanding the above, Recipient will not be in violation of this Section 2 with regard to a disclosure that was in response to a valid order by a court or other governmental body, provided that Recipient provides Discloser with prior written notice of such disclosure in order to permit Discloser to seek confidential treatment of such information. Recipient will only permit access to Discloser’s Confidential Information to those of Recipient’s employees or authorized representatives having a need to know and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein.
3. Recipient’s obligations under this Agreement with respect to any portion of Discloser’s Confidential Information will terminate when Recipient can document that: (a) it was in the public domain at the time it was communicated to Recipient; (b) it entered the public domain subsequent to the time it was communicated to Recipient by Discloser through no fault of Recipient; (c) it was in Recipient’s possession free of any obligation of confidence at the time it was communicated to Recipient; (d) it was rightfully communicated to Recipient free of any obligation of confidence subsequent to the time it was communicated to Recipient by Discloser; (e) it was developed by employees or agents of Recipient independently of and without reference to any information communicated to Recipient; or (f) it was communicated by Discloser to an unaffiliated third party free of any obligation of confidence.
4. Upon termination of this Agreement, or upon Discloser’s written request, Recipient will promptly return to Discloser (or destroy) all documents and other tangible materials representing Discloser’s Confidential Information and all copies thereof. Recipient may retain a copy of Discloser’s Confidential Information solely for archival purposes as required by either applicable laws or Recipient’s internal record retention policy; provided, however, that Recipient will comply with the preceding sentence as soon as permitted under applicable laws or Recipient’s internal record retention policy.

5. Nothing contained herein will be construed as granting Recipient any property or license rights to Discloser's Confidential Information, 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. Recipient will not make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Discloser Confidential Information.
6. Confidential Information will not be reproduced by Recipient in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information by Recipient will remain Discloser's property and will contain any and all confidential or proprietary notices or legends which appear on the original, unless otherwise authorized in writing by Discloser.
7. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. Recipient's obligations under this Agreement will survive termination of the Agreement between the parties and will be binding upon Recipient's heirs, successors, and assigns. Recipient's obligations hereunder as to any Confidential Information will continue in full force and effect until such information falls within one of the exclusions in Section 3.
8. This Agreement will be governed by and construed in accordance with the laws of California without reference to conflict of laws principles that would require the application of the laws of another state. Any disputes under this Agreement must be brought in the state courts and the federal courts located in San Francisco County, California, and the parties hereby consent to the personal jurisdiction and venue of these courts. This Agreement may not be amended except by a writing signed by both parties hereto.
9. Recipient acknowledges that its breach of this Agreement will cause irreparable damage and hereby agrees that Discloser 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.
10. If any provision of this Agreement is found by a proper authority 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 so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions.
11. Neither party will communicate any information in violation of any third party's proprietary rights.
12. Neither party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party, except that either party may, upon written notice (but without the requirement of obtaining consent) assign this Agreement in connection with a merger, acquisition, or sale of all or substantially all of such party's business or assets. Any attempted assignment in violation of the foregoing is null and void.
13. Recipient will not export, directly or indirectly, any technical data acquired from Discloser pursuant to this Agreement or any product utilizing any such data, to any country for which the U.S. Government or any agency thereof requires an export license or other governmental approval, without first obtaining such license or approval.

14. All notices under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices will be sent to the addresses set forth in the preamble of this Agreement or such other address as either party may specify in writing.
15. Each party’s software programs, if any, contain valuable Confidential Information. Recipient agrees it will not modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in Discloser’s Confidential Information without Discloser’s prior written consent.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

MEMSQL, INC. (“MEMSQL”)

[OTHER PARTY] (“COMPANY”)

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____