

Quark Global Non-Disclosure Agreement

The purpose of this Quark Global Non-Disclosure Agreement, made as of this _____ day of _____, _____, is to set forth the terms under which you (“Confidant”), with principal place of business/principal residence at _____ agree to hold in strict confidence the Confidential Information (as defined below) disclosed to you by Quark. If Confidant is a person with principal residence in the Americas (meaning North, South and Central America), or an entity with principal place of business in the Americas, “Quark” shall mean Quark, Inc., a corporation organized under the laws of Colorado, with principal offices at 1800 Grant Street, Denver, Colorado 80203. If the Confidant is a person with principal residence outside of the Americas, or an entity with principal place of business outside of the Americas, “Quark” shall mean Quark Media House Sàrl, a company organized under the laws of Switzerland, with principal offices at Monruz 2, 2000 Neuchâtel, Switzerland. If the Confidant is an entity, the person signing this Agreement acknowledges that he or she is binding the entire entity, and represents that he or she has the authority to do so, or in the event he or she does not have the authority, he or she is personally liable for any damages resulting from a breach of this Agreement. “Principal place of business” shall mean the address specified by the Confidant and which the Confidant represents is the location of its principal operations, or principal residence if the Confidant is an individual, as set forth above.

In consideration of the mutual promises contained herein, Quark and Confidant agree as follows:

1. DEFINITIONS:

- 1.1.1 “Confidential Information” means nonpublic information or material proprietary to Quark, or designated as “Confidential Information” by Quark, whether or not owned or developed by Quark. Confidential Information includes, but is not limited to source and object code, information relating to released or unreleased Quark software products, the marketing or promotion of any Quark product, financial information, Quark’s business policies or practices, and information received from others that Quark is obligated to treat as confidential. References to Quark in this paragraph shall include the Quark Affiliated Companies.
- 1.2 “Quark Affiliated Companies” shall mean any person, branch or entity controlled, directly or indirectly, by Quark Holdings, Inc., whether now existing or formed in the future, together with any person, branch or entity that may acquire such status in the future.
2. Confidant agrees to hold the Confidential Information in strict confidence and not to disclose, provide, transfer or otherwise make available all or any part of the Confidential Information to third parties, unless Quark authorizes such disclosure in writing. Confidant may disclose the Confidential Information on a need-to-know basis, in furtherance of Confidant’s business relationship with Quark, to its employees, affiliates, consultants and independent contractors who are under a contractual obligation not to use or disclose such information. Confidant agrees not to reverse engineer, decompile or disassemble the Confidential Information. Confidant agrees to protect the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent unauthorized use, dissemination or publication of the Confidential Information as used to protect its own confidential information.
3. This Agreement imposes no obligation upon Confidant with respect to information that (a) is already known by Confidant at the time that it is disclosed; (b) is or becomes publicly known through no wrongful act of Confidant; (c) has been lawfully received from a third party who rightfully disclosed such information to Confidant without restriction; (d) has been independently and legally derived or developed by Confidant; (e) has been approved for release in writing by Quark; or (f) is required to be disclosed under legal process, provided Quark is given prior notice and Confidant takes all steps available to protect the Confidential Information in the context of the proceeding.
4. In the event of discovery by Confidant of disclosure of the Confidential Information or other breach of this Agreement, Confidant shall immediately notify Quark of the breach and shall cooperate in every reasonable way with the retrieval of the disclosed Confidential Information.

5. Confidant hereby acknowledges that all Confidential Information is owned solely by Quark, the Quark Affiliated Companies and their licensors, and that unauthorized disclosure or use of such Confidential Information could cause irreparable harm and significant injury which is difficult to ascertain. Accordingly, Confidant agrees that Quark shall be entitled, in addition to any other rights and remedies it may have, to such injunctive relief as is necessary to restrain any continuing or further breach of this Agreement without showing or proving any actual damages sustained by Quark and without requirement of bond. Any use contrary to this Agreement, or modification of the Confidential Information, without the express written consent of Quark is strictly prohibited. All modifications or derivative works shall be owned by Quark and Confidant shall take all necessary actions, including execution of appropriate documents, to confirm Quark's ownership.
6. Confidant understands that the Confidential Information provided to Confidant may include programs, manuals, documentation and other materials that have not been tested. All such programs, manuals, materials and Confidential Information are provided to Confidant "As Is" and Quark makes no warranty, either express or implied, concerning the materials and/or the Confidential Information contained therein. QUARK DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES RELATED TO THE MATERIALS AND THE CONFIDENTIAL INFORMATION, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTY OF MERCHANTABILITY AND THE IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL QUARK BE LIABLE TO CONFIDANT FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM THE USE OF THE CONFIDENTIAL INFORMATION, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY. Some states do not allow limitations on implied warranties so the above limitation may not apply to Confidant. References to Quark in this paragraph shall include the Quark Affiliated Companies.
7. Upon Quark's written request Confidant shall return all tangible property representing the disclosed Confidential Information and erase or destroy any and all notes, documents and physical or electronic copies thereof or derived from the Confidential Information. Upon Quark's request, an authorized representative of Confidant shall certify in writing that all Confidential Information has been returned or destroyed.
8. Confidant agrees not to export or transmit, directly or indirectly, any technical data or products received from Quark, except in full compliance with all applicable U.S. Export Administration Regulations and the laws, regulations and rules of any other country. Confidant shall comply with all applicable import/export regulations and any other laws, regulations, and rules that may apply to such activity.
9. Quark and Confidant recognize and agree that nothing contained in this Agreement shall be construed as granting any rights, by license or otherwise, to any Confidential Information disclosed pursuant to this Agreement.
10. This Agreement shall remain in effect for a period of five (5) years from the later of (1) the date that appears above, or (2) disclosure of Confidential Information, excepting source code, algorithms and libraries, as to which the parties' obligation of confidentiality shall not be limited in time. This provision shall survive the termination of this Agreement.
11. Each of the parties acknowledge and agree that in furtherance of their mutual business purpose, it may be necessary to disclose or otherwise provide to the other personal data received from third parties and that such personal data constitutes Confidential Information as defined herein. Any personal data received by either party shall only be used to perform its obligations pursuant or related to this Agreement and shall only be disclosed on a need-to-know basis, in furtherance of the mutual business purpose herein, and only to its respective employees, affiliates, consultants and independent contractors who are under a contractual obligation not to use or disclose Confidential Information. In collecting, processing, recording, storing, registering, disclosing, transferring and using personal data and records, each party shall comply fully with any privacy protection regulations, data protection regulations and other applicable laws in effect in the Territory as well as in the jurisdiction of the relevant third parties. This section shall survive the expiration or termination of the Agreement.

12. GOVERNING LAW/JURISDICTION/DISPUTES:

12.1 If Confidant is a person with principal residence in the Americas, or an entity whose principal place of business is in the Americas, this Agreement shall be governed in all respects by the laws of the United States of America and the State of Colorado, U.S.A., without regard to conflict of laws principles. As to such persons or entities, the District Court for the City and County of Denver, State of Colorado, and the United States District Court for the District of Colorado shall have sole and exclusive jurisdiction and venue over any dispute arising out of or in connection with this Agreement, and the parties hereby submit themselves to the jurisdiction of said courts NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY, QUARK, THE QUARK AFFILIATED COMPANIES AND/OR THEIR LICENSORS SHALL NOT BE PREVENTED FROM ENFORCING THEIR RESPECTIVE OR COLLECTIVE INTELLECTUAL PROPERTY RIGHTS IN ANY APPROPRIATE JURISDICTION.

12.2 If Confidant is a person with principal residence outside the Americas, or an entity whose principal place of business is outside the Americas, any dispute, controversy or claim arising under, out of or relating to this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO (World Intellectual Property Organization) Expedited Arbitration Rules (hereafter, "the Rules") in force at the time of the opening of the proceedings by one arbitrator appointed in accordance with the Rules. The place of the arbitration shall be Neuchâtel in Switzerland. The language to be used in the arbitral proceedings shall be English. The dispute, controversy or claim shall be decided in accordance with the law of Switzerland. The above arbitration clause does not limit the right of the parties to request temporary and/or provisional measures before any court of competent jurisdiction.

12.3 If there is any confusion or dispute as to whether Paragraph 12.1 or 12.2 applies, the parties acknowledge and agree that Paragraph 12.2 regarding arbitration in Neuchâtel, Switzerland under the WIPO Expedited Arbitration Rules shall apply and bind the parties.

13. This Agreement is intended to be interpreted in such a manner as to render it enforceable. In the event that any court, arbitration panel, or other competent authority determines that any provision of this Agreement is not enforceable, such provision may be modified or limited in its effect to the extent necessary to cause it to be enforceable. If any provision cannot be so modified or limited, then such provision shall be severed, and the remainder of this Agreement shall remain in full force and effect.

14. This Agreement does not create a joint venture or any agency or partnership relationship.

15. No waiver or modification of this Agreement is valid or enforceable unless reduced to writing and signed by both parties to this Agreement. Neither party shall assign or otherwise transfer any rights conferred by this Agreement without prior written consent by the other party.

16. This Agreement is prepared and executed in the English language. The English language version shall govern the parties' relationship. Any translation of this Agreement into any other languages shall be for convenience of reference only and shall have no legal effect.

QUARK:

Signature: _____

Print name: _____

Title: _____

Date: _____

CONFIDANT:

Company name: _____

Signature: _____

Print name: _____

Title: _____

Date: _____