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# NDA (one-way disclosing)



[COMPANY NAME]

## NON-DISCLOSURE AGREEMENT

Effective as of the Effective Date (defined on the signature page below), [Company Name], a [Delaware [public benefit] corporation] (“Company”), and the individual or entity identified on the signature page below (“Recipient”) enter into this Non-Disclosure Agreement (the “Agreement”) and agree as follows:

1. **Purpose.** The Company and Recipient wish to explore a possible business opportunity of mutual interest (the “**Relationship**”) in connection with which the Company may have disclosed and may further disclose its Confidential Information (as defined below) to Recipient. This Agreement is intended to allow the parties to discuss or continue to discuss and evaluate the Relationship while protecting the Company’s Confidential Information (including Confidential Information that may have been previously disclosed to Recipient) against unauthorized use or disclosure.

2. **Definition of Confidential Information.** “**Confidential Information**” means any and all information and data disclosed by the Company to the Recipient, which includes, without limitation, information (tangible or intangible, written or oral) regarding the Company’s technology, patents, patent applications, developments, inventions, designs, drawings, techniques, research, know-how, specifications, products, product plans, services, pricing, customer information, marketing information, regulatory information, reports, user data, other data and analysis, software (including source and object code), computer systems configurations, biological materials, chemicals and formulas, agreements with third parties, current or future strategic information, current or future business plans, processes, policies or practices, employee information, and other business and technical information, which (i) is marked “confidential” or “proprietary” at the time of disclosure by the Company, or (ii) by its nature or content is reasonably distinguishable as confidential or proprietary to the party receiving the Confidential Information. Confidential Information may also include information of a third party that is in the Company’s possession under an obligation of confidentiality and is disclosed to the Recipient under this Agreement.

3. **Non-Use and Non-Disclosure of Confidential Information.**

(a) Recipient agrees not to use any Confidential Information disclosed to it by the Company for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Relationship. Recipient shall not disclose or permit disclosure of any Confidential Information of the Company to third parties or to employees of Recipient, other than directors, officers, employees, consultants and agents of Recipient who are required to have the information in order to carry out the discussions regarding the Relationship. Recipient has had or will have its directors, officers, employees, consultants and agents who have access to Confidential Information of the Company sign a non-use and non-disclosure agreement at least as protective of the Confidential Information of the Company as this Agreement, prior to any disclosure of Confidential Information to such persons. Recipient agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the Company in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, without limitation, taking the highest degree of care that Recipient utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care. Recipient further agrees to notify the Company in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of the Company’s Confidential Information which may come to Recipient’s attention.

(b) **Exceptions.** Notwithstanding the above, Recipient shall not have liability to the Company with regard to any Confidential Information which Recipient can prove:

(i) was publicly known at the time it was disclosed by the Company or has been made generally available through no fault of Recipient;

(ii) was known to Recipient, without restriction, at the time of disclosure, as demonstrated by written files and records in existence and kept in the ordinary course of business at the time of disclosure;

(iii) is disclosed with the prior written approval of the Company;

(iv) becomes known to Recipient, without restriction, from a source other than the Company without breach of this Agreement by Recipient and otherwise not in violation of the Company's rights; or

(v) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; *provided, however*, that Recipient shall provide prompt notice of such court order or requirement to the Company to enable the Company to seek a protective order or otherwise prevent or restrict such disclosure unless prohibited by such order or requirement or otherwise by applicable law; and *provided, further*, that if the Company fails to obtain a protective order or other appropriate remedy, Recipient will furnish only that portion of the Confidential Information that is legally required to be disclosed and any Confidential Information so disclosed shall maintain its confidentiality protection for all purposes other than such legally compelled disclosure.

4. **No Duplication; Return of Materials.** Recipient agrees, except as otherwise expressly authorized by the Company, not to make any copies or duplicates of any Confidential Information. Any materials or documents that have been furnished by the Company to Recipient in connection with the Relationship, along with all copies of the same, shall be promptly returned, deleted or destroyed (with certification of such deletion or destruction) by Recipient within ten (10) days after the earlier of (a) the Relationship has been rejected or concluded, or (b) the written request of the Company.

5. **No Rights Granted.** Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of the Company, nor shall this Agreement grant Recipient any rights in or to the Company's Confidential Information other than the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the Relationship. Recipient understands that nothing in this Agreement (a) requires the disclosure of any Confidential Information, which shall be disclosed, if at all, solely at the Company's option, or (b) requires the Company to proceed with the Relationship or any transaction in connection with which the Confidential Information may be disclosed.

6. **No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS." COMPANY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF ANY CONFIDENTIAL INFORMATION, OR WITH RESPECT TO NON-INFRINGEMENT OR OTHER VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY OR OF RECIPIENT.

7. **Term.** The rights and obligations of the parties under this Agreement shall survive any termination of the Relationship between the parties and shall continue for a period terminating on the later to occur of the date (a) five (5) years following the date of this Agreement, or (b) three (3) years from the date on which Confidential Information is last disclosed under this Agreement. Notwithstanding the foregoing, the obligations of Recipient regarding the use, protection and confidentiality of Confidential Information that constitute trade secrets of the Company pursuant to and in accordance with this Agreement shall survive the termination of this Agreement for so long as such Confidential Information remains a trade secret of the Company.

8. **Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties, *provided* that the

Company's Confidential Information may not be assigned without the prior written consent of the Company. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

9. **Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded, and (c) the balance of the Agreement shall be enforceable in accordance with its terms.

10. **Governing Law.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of [California], without giving effect to any conflict of laws principles that require the application of the law of a different jurisdiction.

11. **Remedies.** Recipient agrees that any violation or threatened violation of this Agreement will cause irreparable injury to the Company, entitling the Company to obtain injunctive relief in addition to all legal remedies without showing or proving any actual damage and without any bond being required to be posted.

12. **Recipient Information.** The Company does not wish to receive any confidential information from Recipient, and the Company assumes no obligation, either expressed or implied, with respect to any information disclosed by Recipient to the Company.

13. **No Publicity.** Recipient shall not, without the prior consent of the Company, disclose to any other person the fact that Confidential Information of the Company has been and/or may be disclosed under this Agreement, that discussions or negotiations are taking place between the Company and Recipient, or any of the terms, conditions, status or other facts with respect thereto, except as required by law and then only with prior notice as soon as possible to the other party.

14. **No Modification.** Recipient agrees that it shall not modify, reverse engineer, decompile, create other works from or disassemble any software programs contained in the Confidential Information of the Company unless permitted in writing by the Company.

15. **Compliance with Laws.** Recipient agrees to comply with all laws, statutes, regulations, rulings, or enactments of any governmental authority including, without limitation, export compliance regulations, applicable to its performance hereunder.

16. **Entire Agreement.** This Agreement is the product of both of the parties hereto and constitutes the entire agreement between such parties pertaining to the subject matter hereof and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled. Any term of this Agreement may be amended with the written consent of the Company and Recipient. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

17. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via email or other transmission method (including pdf or any electronic signature complying with applicable law) and any counterpart so delivered shall be deemed valid and effective for all purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date of the last signature set forth below (the “Effective Date”).

**COMPANY:**

**RECIPIENT:**

[COMPANY NAME]

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_