

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT (NDA)

This Non-Disclosure Agreement, hereinafter known as the "Agreement", is made and entered into as of _____ ("Effective Date"), by and between _____, hereinafter known as "**the Disclosing Party**", and _____, hereinafter known as "**Receiving Party**", and collectively known as the "Parties".

WHEREAS, this Agreement is created for the purpose of preventing the unauthorized disclosure of **confidential** and **proprietary** information.

TYPE OF NON-DISCLOSURE AGREEMENT:

☐ - **Unilateral.** This non-disclosure agreement is considered unilateral or one way. The disclosing party (signatory #1) has complete control and sole ownership of the confidential information that is being passed to the receiving party (signatory #2). The recipient is barred from sharing or in any way disclosing confidential information that the disclosing party shall release.

☐ - **Mutual.** This non-disclosure agreement is considered mutual or binding for all parties thereby preventing any party from sharing or otherwise disclosing the confidential information that they shall share between one another.

The Parties agree as follows:

For the purposes of this Agreement, the term "**Confidential Information**" shall include, but not be limited to, documents, records, information and data (whether verbal, electronic or written), drawings, models, apparatus, sketches, designs, schedules, product plans, marketing plans, technical procedures, manufacturing processes, analyses, compilations, studies, software, prototypes, samples, formulas, methodologies, formulations, product developments, patent applications, know-how, experimental results, specifications and other business information, relating to the Party's business, assets, operations or contracts, furnished to the other Party and/or the other Party's affiliates, employees, officers, owners, agents, consultants or representatives, in the course of their work contemplated in this Agreement, regardless of whether such Confidential Information has been expressly designated as confidential or proprietary.

Confidential Information also includes any and all, work products, studies and other material prepared by or in the possession or control of the other Party, which contain, include, refer to or otherwise reflect or are generated from any Confidential Information.

However, Confidential Information does not include:

Information generally available to the public; widely used programming practices or algorithms; information rightfully in the possession of the Parties prior to signing this Agreement, and information independently developed without the use of any of the provided Confidential Information.

All Confidential Information disclosed to the Recipient will be used solely for the Business Purpose and for no other purpose whatsoever. The Recipient agrees to keep the Disclosing Party's Confidential Information confidential and to protect the confidentiality of such Confidential Information with the

same degree of care with which it protects the confidentiality of its own confidential information, but in no event with less than a reasonable degree of care.

Recipient may disclose Confidential Information only to its employees, agents, consultants and contractors on a need-to-know basis, and only if such employees, agents, consultants and contractors have executed appropriate written agreements with Recipient sufficient to enable Recipient to enforce all the provisions of this Agreement.

Recipient himself also only agrees to access confidential information on a need to access basis, limited to emergencies or serious problem resolution. Recipient shall not make any copies of Disclosing Party's Confidential Information except as needed for the Business Purpose. At the request of Disclosing Party, Recipient shall return to Disclosing Party all Confidential Information of Disclosing Party (including any copies thereof) or certify the destruction thereof.

This section will not apply to the disclosing party if the agreement is marked as unilateral above.

DURATION. The party(ies) bound by The Agreement have a duty to keep the Confidential Information safe from any third party until the Confidential Information is no longer considered or no longer qualifies as a trade secret. In lieu of this, a written notice may be issued to release the bound parties from the terms contained within this agreement.

OWNERSHIP. All of the title, interest, and ownership of the Confidential Information will, at all times, remain with the party disclosing the Confidential Information. This agreement does not contain the language or the intention to grant the recipient of Confidential Information any rights under any patents, trademarks, copyrights, or trade secrets of the disclosing party. It is noted that all Confidential Information is provided on an AS IS basis and the party disclosing the Confidential Information makes no warranties, express, implied, or otherwise of accuracy, completeness, or non-infringement of any third party.

EXCEPTIONS. The limitations and obligations contained in this agreement as relates to Confidential Information apply under certain conditions. It does not apply to information presented as confidential if the aforementioned information is:

- In the public domain or has been in the public domain – except if it was distributed to the public domain as a result of a breach of confidentiality by the recipient of the confidential information.
- Received rightfully and legally received by a third party that has right to the Confidential Information and shares or otherwise transmits it to the recipient without demanding an obligation of confidentiality.

BREACH. If the recipient of the confidential information breaches the terms of this agreement or it appears that a breach will occur shortly, the party that disclosed the confidential information has have the right to pursue any and all equitable remedies afforded by law. The disclosing party is also entitled to recover all costs and attorneys' fees reasonable incurred why seeking equitable remedies associated with the breach of confidentiality. If Confidential Information is requested or otherwise sought by a third party, even if it is being sought by due court processes, the recipient of the Confidential Information will inform the party disclosing the Confidential Information within a reasonable time so they have the opportunity to object to and, if the situation demands, seek intervention of the courts to prevent the disclosure.

The validity, construction and enforceability of this Agreement shall be governed in all respects by the law of the United States of America. This agreement shall not be amended by any party alone. Only when both parties or their duly appointed and authorized representatives put the amendment in writing and sign shall this agreement be altered. This agreement shall be considered the control between all relevant parties in respect to the subject matter contained herein in the case of a dispute.

COMPLETE AGREEMENT. This Agreement expresses the complete understanding of the Parties with respect to the subject matter contained herein and supersedes all prior proposals, agreements, representations, and understandings.

SEVERABILITY. In the event that a court of competent jurisdiction finds any individual clause or provision of this agreement to be invalid or unenforceable, the rest of this agreement will be interpreted in such a way as to carry out the original intent of the parties.

ENFORCEMENT. It is acknowledged and agreed upon by the parties that because of the nature of the unique and sensitive Confidential Information, a breach of the terms contained in this agreement would cause irreparable harm and, as such, damages and/or equitable relief may be reasonably sought. The party that has been harmed by the breach, as per this agreement, is entitled to any and all remedies afforded them by law.

This Agreement shall be governed under the laws in the State of _____.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date written below.

Signatory #1 signature

Signatory #1 Full Name

Date

Signatory #2 signature

Signatory #2 Full Name

Date