**MUTUAL NON-DISCLOSURE AGREEMENT**

**THIS MUTUAL NON-DISCLOSURE AGREEMENT** (this “**Agreement**”) is entered into between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Company**”) and the other party named on the signature page hereto (“**Other Signatory**”) as of \_\_\_\_\_\_\_\_\_\_, 20\_\_ (the “**Effective Date”**), to protect the confidentiality of certain confidential information of Company or of Other Signatory to be disclosed under this Agreement solely for use in evaluating or pursuing a business relationship between the parties (the “**Permitted Use**”). Company and Other Signatory may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

# Confidential Information.

As used herein, the “Confidential Information” of a Party will mean any and all technical and non-technical information disclosed by such Party (the “Disclosing Party”) to the other Party (the “Receiving Party”), whether or not reduced to writing or other tangible medium of expression, and whether or not marked or identified as confidential or proprietary, which may include without limitation: (a) patent and patent applications; (b) trade secrets; (c) proprietary and confidential information, ideas, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the Parties, such as information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, pending projects and proposals, prospect lists, and marketing plans; and (d) all other information that the Receiving Party knew, or reasonably should have known, was the Confidential Information of the Disclosing Party.

1. **Obligations.**
   1. Subject to Section 3, the Receiving Party agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party any Confidential Information of the Disclosing Party, except as approved in writing by the Disclosing Party, and will use the Confidential Information of the Disclosing Party for no purpose other than the Permitted Use. The Receiving Party will also protect such Confidential Information with at least the same degree of care that the Receiving Party uses to protect its own Confidential Information, but in no case, less than reasonable care. The Receiving Party will limit access to the Confidential Information of the Disclosing Party to only those of the Receiving Party’s employees or authorized representatives having a need to know and who have signed confidentiality agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein.
   2. The Receiving Party will immediately notify the Disclosing Party upon discovery of any loss or unauthorized disclosure of the Confidential Information of the Disclosing Party
   3. The Receiving Party will not export, directly or indirectly, any U.S. technical data acquired pursuant to this Agreement, or any products utilizing such data, in violation of the United States export laws or regulations.
   4. The Parties each agree that they shall not reverse engineer the other Party’s Confidential Information, copy any such Confidential Information with the intent to retain such copies or to use such copies in a manner that is not authorized by this Agreement, or export or re-export any such Confidential Information.
   5. The Parties agree that Confidential Information disclosed hereunder, and any reports, analysis and commentary prepared by a party or on behalf of such party regarding or involving any Confidential Information (collectively, “Reports”), shall remain the property of the disclosing party.
   6. Upon termination or expiration of this Agreement, or upon written request of either Party, each Party will promptly return to the Disclosing Party or destroy all documents and other tangible materials representing the Disclosing Party’s Confidential Information and all copies thereof..
   7. The Parties agree that they shall not disclose that discussions between the Parties are taking place other than to their respective employees and/or advisors who have a “need to know” in order to accomplish the purposes of the discussions.
2. **Ownership.** 
   1. Confidential Information is and shall remain the sole property of the Disclosing Party. The Receiving Party recognizes and agrees that nothing contained in this Agreement will be construed as granting any property rights, by license or otherwise, to any Confidential Information of the Disclosing Party, 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. Neither Receiving Party will make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information of the Disclosing Party.
   2. The Receiving Party will not reproduce the Confidential Information of the Disclosing Party in any form except as required to accomplish the intent of this Agreement. Any reproduction by a Receiving Party of any Confidential Information of the Disclosing Party will remain the property of the Disclosing Party and will contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Disclosing Party.
3. **Competitive Work**.

Each Party acknowledges that either now or in the future the other party may be engaged in research, development, production, marketing, licensing, or sale of similar services or products to those being considered under this Agreement. Such services or products may be competitive with those of the other party and may display the same or similar functionality. Nothing in this Agreement is to be construed to prevent either party from engaging independently in such activities, except that Receiving Party may not use the Disclosing Party’s Confidential Information to do so.

# Exceptions.

The Receiving Party will not have any obligations under this Agreement with respect to a specific portion of the Confidential Information of the Disclosing Party if such Receiving Party can demonstrate with competent evidence that such portion of Confidential Information:

* 1. wasin the public domain at the time it was disclosed to the Receiving Party;
  2. entered the public domain subsequent to the time it was disclosed to the Receiving Party, through no fault of the Receiving Party;
  3. was in the Receiving Party’s possession free of any obligation of confidence at the time it was disclosed to the Receiving Party;
  4. was rightfully communicated to the Receiving Party free of any obligation of confidence subsequent to the time it was disclosed to the Receiving Party;
  5. was developed by employees or agents of the Receiving Party who had no access to any Confidential Information; or
  6. is disclosed by Receiving Party with Disclosing Party’s prior written approval.

Notwithstanding the above, the Receiving Party may disclose certain Confidential Information of the Disclosing Party, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, provided that the Receiving Party provides the Disclosing Party with reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist the Disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

# Term.

This Agreement will terminate five (5) year(s) after the Effective Date, or may be terminated by either Party at any time upon thirty (30) days written notice to the other Party. Each Party’s obligations under this Agreement will survive termination of this Agreement and will be binding upon such Party’s heirs, successors, and assigns. Each Party’s obligations with respect to all Confidential Information of the other Party will terminate only pursuant to Section 5.

# Disclaimer.

# THE DISCLOSING PARTY IS PROVIDING CONFIDENTIAL INFORMATION ON AN “AS IS” BASIS FOR USE BY THE RECEIVING PARTY AT ITS OWN RISK. THE DISCLOSING PARTY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. DISCLOSING PARTY SHALL NOT BE LIABLE TO RECEIVING PARTY RELATING TO RECEIVING PARTY’S USE OF ANY OF THE CONFIDENTIAL INFORMATION OR ANY ERRORS IN OR OMISSIONS FROM THE CONFIDENTIAL INFORMATION. Receiving Party assumes full responsibility for all conclusions derived from such information.

# Equitable Remedies.

Without affecting any other rights or remedies that any party may have, each party acknowledges and agrees that damages alone might not be an adequate remedy for any breach of this Agreement or the obligations and undertakings herein and that the Disclosing Party shall be entitled to seek the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Agreement and the undertakings under it and no proof of special damage shall be necessary for the enforcement of the said Agreement and the undertakings under it.

# Choice of Law.

This Agreement and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of Delaware, without giving effect to any conflicts of laws principles that require the application of the law of a different state. Any disputes under this Agreement may be brought in the state courts and the Federal courts for the county in which Company’s principal place of business is located, and the parties hereby consent to the personal jurisdiction and exclusive venue of these courts. This Agreement may not be amended except by a writing signed by both parties.

# Waiver.

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. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

# Third Party Obligation.

Neither Party will communicate any information to the other Party in violation of the proprietary rights of any third party.

# Assignment.

Neither Party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void, except that a Party may assign this Agreement without such consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets. The terms of this Agreement shall be binding upon assignees. Notwithstanding the foregoing, either Party may assign this Agreement or any rights or obligations under this Agreement to any of its subsidiaries or affiliates, or to any purchaser or successor to all or substantially all of the assets of the Company upon prompt written notice of such assignment.

# Notice.

All notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, facsimile transmission 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 at the end of this Agreement or such other address as either Party may specify in writing.

# Complete Agreement.

This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the Parties with respect to such matters. No modification of or amendment to this Agreement will be effective unless in writing and signed by the Party to be charged.

# No Other Obligation.

Neither this Agreement nor the disclosure of any Confidential Information hereunder shall result in any obligation on the part of either Party to enter into any further agreement with the other, license any products or services to the other, or to require either Party to disclose any particular Confidential Information. Nothing in this Agreement creates or shall be deemed to create any employment, joint venture, common undertaking, or agency between the Parties.

# Miscellaneous.

This Agreement imposes no obligation on either party to purchase, sell, license, transfer or otherwise dispose of any technology, services or products; does not create any agency or partnership relationship; may be added to or modified only in a writing signed by both parties; and may be signed in duplicate originals, or in separate counterparts, which are effective as if the parties signed a single original. A facsimile of an original signature transmitted to the other party is effective as if the original was sent to the other party.

[Company Name]

[Address]

# COMPANY

**OTHER SIGNATORY**

[Company Name]

[Address]

By:

[Authorized Signature] [Date]

[Printed Name] [Title]

By:

[Authorized Signature] [Date]

[Printed Name] [Title]