

Mutual Non-Disclosure Agreement

This **Mutual Non-Disclosure Agreement** (this “Agreement”) is made and entered into on _____, 20____, (the “Effective Date”) by and between [entity] (“COMPANY X”) having offices located at [address], and [entity] (“COMPANY Y”) having offices located at [address]. COMPANY X and COMPANY Y may be referred to individually as a “Party,” or collectively as the “Parties.” Each Party may disclose information (and in that case be a “Discloser”) and receive information (and in that case be a “Recipient”) under this Agreement.

Recital:

COMPANY X and **COMPANY Y** wish to pursue a working relationship. In the course of exploring and in connection with such relationship, it may be necessary for each Party to disclose or make available certain Confidential Information as that term is defined below.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES MADE HEREIN, ALONG WITH OTHER GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. **Purpose.** This Agreement is made for the purpose of [insert purpose] (the “Purpose”).
2. **Confidential Information.**
 - a. “Confidential Information” shall mean all confidential, proprietary and trade secret information and materials, whether in written, oral, visually, electronic or another format (including, for example, demonstrations, models or prototypes, software, computer tapes, audio or video tapes or recordings, other media), and whether intentionally disclosed or observed inadvertently, including, but not limited to, the following: [insert specific description if possible]; research, product plans or other information regarding the Discloser’s products or services and markets therefor, customer lists and customers, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information; information of a confidential, sensitive, non-public, or personal nature, including information belonging to a third party or for which the Company owes a duty of confidentiality; any other Company proprietary or confidential information, including but not limited to any materials or any oral and written communications between the parties marked “confidential,” “proprietary” or similarly marked; or any materials which a reasonable person



would recognize from the surrounding facts and circumstances to be proprietary or confidential.

- b. The Confidential Information that must be protected under this Agreement includes (i) tangible information (such as written materials, models, and/or specimens) identified as being Confidential Information by an appropriate, conspicuous legend (such as “Confidential” or “Proprietary”); (ii) information in oral or visual form that is identified as being Confidential Information at the time of disclosure and confirmed in writing as Confidential Information within fourteen (14) days after the disclosure; or (iii) information that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered to be Confidential Information

3. Limitations. Confidential Information shall not include information that:

- a. is or becomes known publicly through no fault of the Recipient; or
- b. is learned by the Recipient from a third party not under an obligation of confidence to the Discloser and who has legitimate and legal possession of the information; or
- c. is already known to the Recipient before receipt from the Discloser as can be proven by written records; or
- d. is independently developed by employees or consultants of the Recipient who did not have access to any Confidential Information received;
- e. is free of confidentiality restrictions by written agreement of the Discloser.

4. Nondisclosure. Except as described elsewhere in this Agreement, the Recipient and those of its employees, officers, agents and affiliates permitted access hereunder will hold the Confidential Information in confidence and will take all necessary steps to preserve the confidential and proprietary nature of the Confidential Information. Without limiting the foregoing, the Recipient (1) will not disclose any Confidential Information to persons within its organization who do not have a need to know in order for the Recipient to engage in the Purpose; (2) will not disclose any Confidential Information to any person outside of its organization unless such person has a need to know in order for the Recipient to engage in the Purpose, and such person is bound by fiduciary or contractual duties of confidentiality to the Recipient that are at least as stringent as those contained in this Agreement; (3) will, if reasonably required, cause each of the Recipient’s employees, officers, agents, affiliates and attorneys who have access to the Confidential Information to sign a confidentiality and non-disclosure agreement, for the benefit of the Discloser, containing terms at least as stringent as those contained in this Agreement, and, in any event, advise all of its employees, officers, agents, and affiliates of the confidential and proprietary nature of the Confidential Information; and (4) in all instances, exercise at least the same degree of care to maintain the secrecy of the Confidential Information as the Recipient exercises to protect its own most valuable trade secrets, but in no case less than reasonable care.

5. Exception. If the Recipient is required by order of any court or other government or regulatory agency to disclose any Confidential Information belonging to any Discloser, it shall provide all Parties with prompt written notice within 3 business days of any such requirement so that the Parties whose Confidential Information is at risk may seek a protective order or take other appropriate action. Upon the request and at the expense of the requesting Party, the other Parties will reasonably cooperate with the requesting Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information. Subject to the foregoing requirements, it shall not be a breach of this Agreement for a Recipient to disclose Confidential Information if such disclosure is: (a) in response to a valid order of a court or governmental body of the United States or any political subdivision thereof; (b) otherwise required by law; or (c) necessary to establish the Discloser’s rights under this Agreement.

6. Term. This Agreement applies to any Confidential Information that may have been provided by either Party before or after the Effective Date, and will continue to govern all disclosures of Confidential Information, until terminated on thirty (30) days written notice by either Party to the other, except that each Party's obligations relating to Confidential Information disclosed prior to termination will continue for so long as the Confidential Information remains confidential and proprietary.

7. No Transfer. All Confidential Information disclosed by any Party shall remain the property of the Discloser. This Agreement does not confer any license, right, interest, or title in or to Confidential Information other than as expressly set forth in this Agreement. Further, the Parties agree that the Recipient shall use any and all Confidential Information received from the Discloser solely for the Purpose and no other use may be made without the Discloser's prior written consent, which shall be granted or withheld in its sole discretion.

8. Protection. Each Party agrees to protect Confidential Information provided to it by the Discloser with at least the same degree of care as it protects its own confidential, proprietary, and/or trade secret information and shall promptly advise the Discloser, in writing, of any misappropriation or misuse, of which it becomes aware, of Confidential Information by any person.

9. Personnel. Each Party may use the same personnel who receive Confidential Information under this Agreement on other projects similar to the Purpose so long as such Party does not breach the confidentiality of this Agreement.

10. Return of Information. Upon the written request of the Discloser, the Recipient shall either destroy or return to the Discloser any and all Confidential Information in the Recipient's possession, except for one copy, which copy may be retained for archival purposes in a secure file. All copies of Confidential Information forwarded in error by any Discloser shall be destroyed in their entirety without the Recipient retaining an archival copy.

11. Warranty. Each Party warrants that it has the right to disclose all of the Confidential Information it discloses, but does not otherwise make any representation as to the accuracy, suitability, or completeness of such Confidential Information. The Discloser will not be liable to the Recipient for any damage resulting from any use of the Confidential Information by the Recipient. All Confidential Information of the Discloser shall remain the exclusive and sole property of such Party. This Agreement grants no rights of ownership, licenses, and/or any other intellectual property rights, nor does it create any agency, partnership, joint venture or any other relationship not expressly stated herein.

12. No Assignment. Neither Party shall transfer or assign any rights or delegate any obligations herein, in whole or in part, whether voluntarily or by operation of law, without the prior written consent of the other Party, which shall not be unreasonably withheld. Notwithstanding the above, either Party shall have the right to assign this Agreement and the obligations hereunder to any successor-in-interest by way of a merger, acquisition, or sale of all or substantially all of that Party's assets on condition that the assignee of this Agreement will assume all obligations and liability of the assignor under or in connection with this Agreement and agrees to be bound by the terms and conditions of this Agreement.

13. Savings. If any provision or covenant of the Agreement should be held by any court to be invalid, illegal or unenforceable, either in whole or in part, the validity, legality or enforceability of the remaining provisions or covenants of this Agreement shall be unaffected.

14. Entire Agreement. This Agreement contains the entire understanding between the Parties with respect to this subject matter, is valid if signed within forty-five (45) days after the Effective Date, and supersedes all prior understandings whether written or oral. Further modifications may be made if in writing and signed by authorized representatives of both Parties.

15. Injunctive Relief. Each Party agrees that the wrongful disclosure of Confidential Information may cause irreparable injury that is inadequately compensable by monetary damages. As such, either Party may seek injunctive relief in any court of competent jurisdiction for the breach and/or the threatened breach of this Agreement in addition to any other remedies it may seek at law or equity, and the Recipient will not raise the defense of an adequate remedy at law.

16. Indemnification. Each Party shall fully indemnify the other against any and all actions, claims, liability, costs, damages, charges and expenses suffered or incurred in connection with or arising out of any breach by a Party of any of the provisions of this Agreement, or by any unauthorized disclosure or use of Confidential Information by a third party or by any employee of any Party to whom Confidential Information has been disclosed or who has been allowed access thereto. Each Party acknowledges and confirms that a breach of its obligations hereunder cannot be compensated adequately solely by an award of damages or indemnity or other pecuniary remedy, and that the non-breaching Party shall also be entitled in the event of any such breach to the remedies of injunction, specific performance, and/or other equitable relief in respect of any such breach. Nothing herein shall be construed as a waiver by either Party of any of its rights including rights to damages or indemnity or other pecuniary remedy.

17. Attorneys' Fees. In any action to enforce, arising under, and/or relating to this Agreement, the prevailing party as determined by the court or other body with jurisdiction by agreement of the Parties, shall be entitled to recover from the other Party, in addition to all other awards and remedies to which it is entitled, its reasonable attorneys' fees and costs incurred in connection with such action.

18. Governing Law. This Agreement shall be construed in accordance with the laws of the State of [state] without regard to any conflict of law principles.

19. Counterparts. This Agreement may be executed in counterparts, and constitutes the entire agreement of the Parties as to the Confidential Information being disclosed and supersedes all prior or contemporaneous agreements, whether oral or written, between the parties. If any Confidential Information is made available by accessing either Party's Web site, this Agreement shall govern such Confidential Information without regard to any terms of use, "click wrap" agreement, or any similar agreement contained thereon.

NOW, THEREFORE, intending to be bound hereby, the Parties have executed or have caused this Agreement to be executed by their duly authorized officers.

ACCEPTED AND AGREED:

[COMPANY X]

By: _____

Name: _____

Title: _____

[COMPANY Y]

By: _____

Name: _____

Title: _____