

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (“Agreement”) is entered into and made effective as of the date set forth below, by and between [COMPANY NAME] (the “Company”), and the Participant, as identified below (the “Participant”). Unless otherwise stated here, this Agreement is deemed to apply to the entirety of each company, whether “Company” or “Participant”.

This NDA applies to both parties equally. It will be considered a mutual Non-Disclosure Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. **Confidential Information.** The confidential, proprietary and trade secret information of the disclosing party ("Confidential Information") to be disclosed hereunder includes (i) materials and information of the disclosing party that constitutes trade secret, confidential and/or proprietary information of, including without limitation, descriptions of the disclosing party’s products and services, proposed products and services, business plans, Employee compensation plans, the identities of suppliers, customers and prospective customers, identities of Employees and prospective Employees, prices and pricing policies, financial information, computer programs and software and any other information identified as confidential at the time of its disclosure or that, by its nature, would be considered confidential or proprietary, and (ii) discussions relating to that information whether those discussions occur prior to, concurrent with, or following disclosure of the information. Specifically, for example:

2. **Obligations of Receiving Party.** The receiving party will maintain the confidentiality of the Confidential Information of the disclosing party with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances. The receiving party will not disclose any of the disclosing party’s Confidential Information to any employees or to any third parties except to the receiving party’s employees, parent company and majority-owned subsidiaries who have a need to know that Confidential Information in order to perform their duties to the receiving party and who agree to abide by nondisclosure terms at least as comprehensive as those set forth herein; provided that the receiving party will be liable for breach by any such entity. For the purposes of this Agreement, the term "employees" shall include independent contractors of each party. The receiving party will not make any copies of the Confidential Information received from the disclosing party except as necessary for its use of that Confidential Information as intended. Any copies which are made will be identified as belonging to the disclosing party and marked "confidential", "proprietary" or with a similar legend.

3. **Term.** The disclosing party will not assert any claims of breach of this Agreement or misappropriation of trade secrets against the receiving party arising from the receiving party’s disclosure of the disclosing party’s Confidential Information made more than two (2) years from the date of the disclosure. After that term, unless at least one of the exceptions set forth in Section 4 below has occurred, the receiving party will continue to treat such Confidential Information as the confidential information of the disclosing party and only disclose any such Confidential Information to third parties under the terms of a non-disclosure agreement.

4. **Termination of Obligation of Confidentiality.** The receiving party will not be liable for the disclosure of any Confidential Information which is:
 - (a) rightfully in the public domain other than by a breach of a duty to the disclosing party;
 - (b) rightfully received from a third party without any obligation of confidentiality;
 - (c) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party;
 - (d) independently developed by employees of the receiving party; or
 - (e) generally made available to third parties by the disclosing party without restriction on disclosure.

5. **Title.** Title or the right to possess Confidential Information as between the parties will remain in the disclosing party.

6. **No Obligation of Disclosure; Termination.** Neither party has any obligation to disclose Confidential Information to the other. Either party may terminate this Agreement at any time without cause upon written notice to the other party; provided that each party's obligations with respect to Confidential Information disclosed during the term of this Agreement will survive any such termination. Either party may, at any time: (a) cease giving Confidential Information to the other party without any liability, and/or (b) request in writing the return or destruction of all or part of its Confidential Information previously disclosed, and all copies thereof, and the receiving party will promptly comply with such request, and certify in writing its compliance.

7. **General.**

- (a) This Agreement is neither intended to nor will it be construed as creating a joint venture, partnership or other form of business association between the parties, nor an obligation to buy or sell products using or incorporating the Confidential Information.
- (b) Both parties understand and acknowledge that no license under any patents, copyrights, trademarks, or maskworks is granted to or conferred upon either party in this Agreement or by the disclosure of any Confidential Information by one party to the other party as contemplated hereunder, either expressly, by implication, inducement, estoppel or otherwise, and that any license under such intellectual property rights must be express and in writing.
- (c) The failure of either party to enforce any right resulting from breach of any provision of this Agreement by the other party will not be deemed a waiver of any right relating to a subsequent breach of such provision or of any other right hereunder.
- (d) This Agreement will be governed by the laws of the State of [INSERT STATE] without reference to conflict of laws principles, if any. Any action arising out of this Agreement or the relationship between the parties established by this Agreement shall be brought only in the courts in the State of [INSERT STATE] located in [County] County, [STATE], and Participant hereby submits to the jurisdiction of such court.
- (e) This Agreement constitutes the sole and entire agreement between the parties with respect to the Confidential Information and all restrictions thereon; it supersedes any and all prior or contemporaneous oral or written agreements, negotiations, communications, understandings and terms, whether express or implied regarding the Confidential Information, and may not be amended except in a writing signed by a duly authorized representative of the respective parties. Any other agreements between the parties, including non-disclosure agreements, will not be affected by this Agreement.
- (f) The disclosing party disclaims all warranties regarding all Confidential Information disclosed pursuant to this Agreement, including all warranties as to the accuracy or utility of such Confidential Information. The receiving party is solely responsible for the results of its use of Confidential Information.
- (g) A party that violates this Agreement will reimburse to the other party all costs of enforcing this Agreement, including without limitation, court costs and attorney fees.

Signatures:

[COMPANY NAME]

<div style="border-bottom: 1px solid black; width: 80%; margin-left: 5px;"></div>
<p>Member/Manager Signature</p>

PARTICIPANT (Company or Individual):

<p>(Your Company Name, Division/Sub, if applicable)</p>
<p>(Street Address)</p>
<p>(City) (State/Country) (Postal Code)</p>
<p>Signature of Authorized Representative (e.g. President, CEO, or yourself, if this is for an individual)</p>
<p>Printed Name & Title of Signer Above</p>