MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (this “Agreement”) is made as of DATE, by and between COMPANY NAME, a STATE corporation or limited liability company(the “Company”), and COMPANY NAME a STATE corporation or limited liability company (“Counterparty”). Each party has disclosed and/or may further disclose its Confidential Information (as defined below) to the other in connection with the Relationship (as defined below) pursuant to the terms and conditions of this Agreement. The term “Discloser” will refer to the Company whenever the context refers to the Company’s Confidential Information being disclosed to Counterparty, which is referred to as “Recipient” in that context. Conversely, the term “Discloser” will refer to Counterparty whenever the context refers to Counterparty’s Confidential Information being disclosed to the Company, which is referred to as “Recipient” in that context.

Recitals

The parties wish to explore a possible business opportunity **or** are entering a business opportunity of mutual interestregarding DESCRIBE (the “Relationship”) in connection with which Discloser has disclosed and/or may further disclose its Confidential Information (as defined below) to Recipient. This Agreement is intended to protect Discloser’s Confidential Information (including Confidential Information previously disclosed to Recipient) against unauthorized use or disclosure.

Agreement

In consideration of the premises and mutual covenants, the parties agree as follows:

1. **Definition of Confidential Information.** “Confidential Information” means information and physical material not generally known or available outside Discloser and information and physical material entrusted to Discloser in confidence by third parties. Confidential Information includes, without limitation: technical data, trade secrets, know-how, research, product or service ideas or plans, software codes and designs, algorithms, developments, inventions, patent applications, laboratory notebooks, processes, formulas, techniques, mask works, engineering designs and drawings, hardware configuration information, agreements with third parties, lists of, or information relating to, employees and consultants of the Discloser (including, but not limited to, the names, contact information, jobs, compensation, and expertise of such employees and consultants), lists of, or information relating to, suppliers and customers, price lists, pricing methodologies, cost data, market share data, marketing plans, licenses, contract information, business plans, financial forecasts, historical financial data, budgets or other business information disclosed by Discloser (whether by oral, written, graphic or machine-readable format).
2. **Nondisclosure of Confidential Information.** Recipient will not use any Confidential Information disclosed to it by Discloser for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Relationship. Recipient will not disclose or permit disclosure of any Confidential Information of Discloser 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 Relationship. Recipient will take reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of Discloser 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 the information. These measures will include the degree of care that Recipient utilizes to protect its own Confidential Information of a similar nature. Recipient will notify Discloser of any misuse, misappropriation or unauthorized disclosure of Confidential Information of Discloser which may come to Recipient’s attention.
3. **Exceptions.** Notwithstanding the above, Recipient will not have liability to Discloser with regard to any Confidential Information that the Recipient can prove:
   1. was in the public domain at the time it was disclosed or has entered the public domain through no fault of Recipient;
   2. was known to Recipient, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure;
   3. was independently developed by Recipient without any use of the Confidential Information, as demonstrated by files created at the time of such independent development;
   4. is disclosed generally to third parties by Discloser without restrictions similar to those contained in this Agreement;
   5. becomes known to Recipient, without restriction, from a source other than Discloser without breach of this Agreement by Recipient and otherwise not in violation of Discloser’s rights;
   6. is disclosed with the prior written approval of Discloser; or
   7. is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that Recipient will provide prompt notice of such court order or requirement to Discloser to enable Discloser to seek a protective order or otherwise prevent or restrict such disclosure.
4. **Return of Materials.** Recipient will, except as otherwise expressly authorized by Discloser, not make any copies or duplicates of any Confidential Information. Any materials or documents that have been furnished by Discloser to Recipient in connection with the Relationship will be promptly returned by Recipient, accompanied by all copies of documentation, within ten (10) days after (a) the Relationship has been rejected or concluded or (b) the written request of Discloser.
5. **No Rights Granted.** Nothing in this Agreement will be construed as granting any rights under any patent, copyright or other intellectual property right of Discloser, nor will this Agreement grant Recipient any rights in or to Discloser’s Confidential Information other than the limited right to review such Confidential Information solely for the purpose of carrying out the Relationship. Nothing in this Agreement requires the disclosure of any Confidential Information, which will be disclosed, if at all, solely at Discloser’s option. Nothing in this Agreement requires the Discloser to proceed with the Relationship or any transaction in connection with which the Confidential Information may be disclosed.
6. **No Representations Made.** Recipient acknowledges that neither Discloser, nor any of its representatives, in the course of providing the Confidential Information is making any representation or warranty (express or implied) as to the accuracy or completeness of the information, and Recipient assumes full responsibility for all conclusions derived from the information. Recipient will be entitled to, and will, rely solely on representations and warranties made in a definitive agreement, if any, relating to the Relationship.
7. **No Reverse Engineering.** Recipient will not modify, reverse engineer, decompile, create other works from or disassemble any software programs contained in the Confidential Information of Discloser unless permitted in writing by Discloser.
8. **Notice of Compelled Disclosure.** In the event that Recipient or any person to whom they or their representatives transmit or have transmitted Confidential Information become legally compelled (by oral questions, interrogatories, requests for information or documents, subpoenas, civil investigative demands or otherwise) to disclose any Confidential Information, the Recipient will provide the Discloser with prompt written notice so that the Discloser may seek a protective order or other appropriate remedy, or both, or waive compliance with the provisions of this Agreement. In the event that the Discloser is unable to obtain a protective order or other appropriate remedy, or if it so directs the Recipient, the Recipient will furnish only that portion of the Confidential Information that the Recipient is advised by written opinion of its counsel is legally required to be furnished by it and will exercise its reasonable best efforts to obtain reliable assurance that confidential treatment will be accorded such Confidential Information.
9. **Common Interest Agreement.** To the extent that any Confidential Information provided or made available may include material subject to the attorney-client privilege, work product doctrine or any other applicable privilege concerning pending or threatened legal proceedings or governmental investigations, Recipient and Discloser understand and agree that they have a commonality of interest with respect to such matters. It is their desire and mutual understanding that the sharing of material is not intended to, and will not, waive or diminish in any way the confidentiality of the material or its continued protection under the attorney-client privilege, work product doctrine or other applicable privilege. All Confidential Information provided or made available by Discloser that is entitled to protection under the attorney-client privilege, work product doctrine or other applicable privilege will remain entitled to that protection under these privileges, this Agreement, and under the joint defense doctrine. Nothing in this Agreement obligates Discloser to reveal material subject to the attorney-client privilege, work product doctrine or any other applicable privilege.
10. **Term.** The foregoing commitments of each party will survive any termination of the Relationship between the parties, and will continue for a period terminating five (5) years from the date on which Confidential Information is last disclosed under this Agreement.
11. **Independent Contractors.** The parties are independent contractors, and nothing contained in this Agreement will be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking.
12. **Remedies.** Each party’s obligations set forth in this Agreement are necessary and reasonable in order to protect Discloser and its business. Due to the unique nature of Discloser’s Confidential Information, monetary damages may be inadequate to compensate Discloser for any breach by Recipient of its covenants and agreements set forth in this Agreement. Accordingly, the parties each agree and acknowledge that any violation or threatened violation may cause irreparable injury to Discloser. In addition to any other remedies that may be available, in law, in equity or otherwise, Discloser will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any breach by Recipient.
13. **Miscellaneous.**
    1. **Governing Law.** This Agreement is governed and interpreted in accordance with STATE law notwithstanding applicable choice of law principles. Any action brought to enforce this Agreement will be brought in the courts of the City/County/State and each party submits itself to personal jurisdiction in that court.
    2. **Entire Agreement.** This Agreement contains the complete Agreement of the parties regarding relating to the subject matter and supersedes all prior or contemporaneous discussions, understandings and agreements, whether oral or written. This Agreement may be modified only in writing signed by both parties.
    3. **Non-Waiver and Binding Affect.** Failure to enforce any provision of this Agreement does not waive the provision or a party’s right to enforce each and every provision of this Agreement. This Agreement is binding upon and is for the benefit of the parties, their heirs, beneficiaries, successors and assigns.
    4. **Non-assignment.** Except as otherwise provided in this Agreement, neither party may assign its rights or delegate its duties under the Agreement without the other party’s prior written consent.
    5. **Notices.** Any notice, demand or request required or permitted to be given under this Agreement will be in writing and will be deemed sufficient when delivered personally or by overnight courier or sent by email, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at the party’s address as set forth on the signature page, as subsequently modified by written notice, or if no address is specified on the signature page, at the most recent address set forth in the Company’s books and records.
    6. **Severability.** The provisions of this Agreement are severable. If any provision is found illegal, void or unenforceable by an authority with proper jurisdiction, that provision may be modified or eliminated to the minimum extent necessary to effect the intent of the parties. The Agreement will otherwise remain in full force and effect.
    7. **Construction.** This Agreement is the result of negotiations between and has been reviewed by each of the parties and their respective counsel, if any; accordingly, this Agreement will be deemed to be the product of all of the parties, and no ambiguity will be construed in favor of or against any one of the parties.
    8. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered will be deemed an original, and all of which together will constitute one and the same agreement.

*[Signature Page Follows]*

The parties have executed this Mutual Nondisclosure Agreement as of the date first above written.

COMPANY COUNTERPARTY

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| --- | --- | --- | --- |
| By: |  | By: |  |
| Printed: |  | Printed: |  |
| Title: |  | Title: |  |
| Date: |  | Date: |  |