



This sample document was drafted for Pillar's startup community by Company Counsel, LLC. This document is intended to serve as a starting point only, and should be tailored to meet your specific requirements. This document should not be construed as legal advice for any particular facts or circumstances.

Use this form when both parties to a potential collaboration or project are going to be transmitting confidential or proprietary information to the other party.

MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (the "**Agreement**") is made as of the Effective Date set forth below by and between the parties set forth on the signature line below. The parties desire to exchange or have already exchanged certain Confidential Information in connection with [ADJUST AS NEEDED: their evaluation and/or implementation of a business relationship] (the "**Purpose**"), and hereby agree as follows:

1. "**Confidential Information**" means any and all technical and non-technical information disclosed by one party ("**Disclosing Party**") to the other ("**Receiving Party**") under this Agreement and related to the past, present or future business or technology of the Disclosing Party, including without limitation information constituting or concerning research, development, processes, methodologies and other intellectual property; designs and specifications; software; product, marketing, sales and business development plans and strategies; competitive analyses; financial analyses and forecasts; cost and pricing data; procurement requirements and vendor information; customers and prospects; licensing and distribution arrangements; the identity, skills and compensation of employees, contractors and consultants; and third party information that the Disclosing Party is obligated to maintain in confidence. Confidential Information includes information disclosed prior to or after the date hereof. The relationship between the parties and the fact and substance of this Agreement shall also be Confidential Information. The Disclosing Party will mark all Confidential Information in tangible form "confidential" or "proprietary" or with words of similar import, and will identify as confidential at the time of disclosure any Confidential Information disclosed orally or in another intangible form. Regardless of whether so marked or identified, any information that the Receiving Party knew or should have known was considered confidential or proprietary by the Disclosing Party, including without limitation information learned by the Receiving Party upon visual inspection of the Disclosing Party's premises, will be considered Confidential Information of the Disclosing Party under this Agreement.

2. A Receiving Party will use Confidential Information of the Disclosing Party only for the Purpose and not otherwise for its own benefit or that of any third party and will maintain such information in confidence using the same degree of care to protect the information from unauthorized

use, access or disclosure that it uses to protect its own confidential information of a similar nature, but not less than reasonable care. A Receiving Party shall promptly notify the Disclosing Party of any misappropriation of Confidential Information disclosed to it hereunder. Except where the following prohibition is not allowed under applicable law, a Receiving Party will not decompile, disassemble, reverse engineer or otherwise modify any software or other product, system or process disclosed to it under this Agreement.

3. A Receiving Party's obligations under Section 2 above will terminate with respect to any part of the Disclosing Party's Confidential Information when such party can demonstrate that such information: (i) was at the time of disclosure or thereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known or available to the public; (ii) was at the time of disclosure in the Receiving Party's possession free of any obligation of confidentiality; (iii) following disclosure by the Disclosing Party is rightfully furnished to the Receiving Party by a third party free of any obligation of confidentiality; or (iv) is independently developed by the Receiving Party without use of or reference to Confidential Information of the Disclosing Party.

4. A Receiving Party may disclose Confidential Information of the Disclosing Party to its employees, individual independent contractors and the employees and individual independent contractors of its majority-owned subsidiaries, provided such individuals need to know the information in order to accomplish the Purpose, are informed of the confidential nature of the information, and are bound in writing or by law by obligations of confidentiality with respect to such information at least as protective as those set forth herein.

5. The Receiving Party may disclose the Confidential Information of the Disclosing Party to the extent required by applicable law or a governmental authority of competent jurisdiction, provided the Receiving Party gives the

Disclosing Party prompt notice of such requirement and a reasonable opportunity to contest or limit such disclosure and reasonably cooperates with the Disclosing Party in any such effort.

6. As between the parties, all Confidential Information is and shall remain the property of the Disclosing Party. Nothing in this Agreement is intended or shall be construed as a grant of a license or other right to a Receiving Party other than as expressly set forth herein. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS" WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED. Neither party shall be under any obligation to enter into a business relationship, or to purchase the products or services of the other, under this Agreement.

7. Each Receiving Party acknowledges the Disclosing Party has taken significant steps to protect the secrecy of all Confidential Information, that said Confidential Information is of critical importance to the Disclosing Party and an actual or threatened breach of this Agreement would cause irreparable harm for which monetary damages are an inadequate remedy. Receiving Party therefore agrees that Disclosing Party will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any violation of this Agreement. In any action to enforce this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees.

8. This Agreement shall apply to any Confidential Information disclosed to a Receiving Party after the Effective Date and to Confidential Information disclosed earlier to the extent the parties began discussions concerning the Purpose prior to the Effective Date. This Agreement will remain in effect until the earlier of the first anniversary of the Effective Date, or the date a party receives written notice of termination from the other, provided, however, that the obligations of the parties set forth in Section 2 shall survive and continue in full force

and effect until the earlier of five (5) years from the date of disclosure or until terminated pursuant to Section 3.

9. Upon a Disclosing Party's written request, the Receiving Party shall promptly cease any and all use of the Confidential Information and return or certify in writing to the Disclosing Party the destruction of all Confidential Information of the Disclosing Party in its possession or under its control, including all copies, notes, summaries, analyses, compilations and excerpts containing such Confidential Information.

10. Each party agrees to comply with all applicable export laws, regulations and decrees of the United States, any foreign government, or any agency of either.

11. This Agreement shall be governed by, and interpreted in accordance with [ADJUSTABLE BASED ON LOCATION: Massachusetts] state law without giving effect to choice of law principles that would require application of the laws of a different state. Any action or proceeding arising out of or relating to this Agreement may be brought in a court of competent jurisdiction, federal or state, located in [ADJUSTABLE BASED ON LOCATION: Massachusetts]. The parties hereby irrevocably consent to personal jurisdiction and venue in, and agree to service of process issued or authorized by, any such court.

12. This Agreement is the complete and exclusive understanding of the parties regarding Confidential Information, and supersedes all prior and contemporaneous communications between them, whether oral or written, concerning the subject matter hereof. This Agreement may not be waived or modified without the written consent of both parties. This Agreement may be executed in counterparts, each of which shall be deemed an original and delivered by imaged copy or facsimile transmission.

IN WITNESS THEREOF, the Parties have executed this Agreement under seal as of the Effective Date.

Party: _____

By: _____

(Signature)

Print Name: _____

Title: _____

Effective Date: _____

Party: _____

By: _____

(Signature)

Print Name: _____

Title: _____

