



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 only one party to a potential collaboration or project is going to be transmitting confidential or proprietary information to the other party.

[COMPANY NAME], INC.
CONFIDENTIAL NON-DISCLOSURE AGREEMENT

Effective Date: _____

In order to induce [COMPANY NAME: This should be the same name as above], Inc. and its partners and affiliates (collectively, "**Discloser**") to disclose certain Confidential Information (as described below) and to protect such Confidential Information, the party set forth below ("**Recipient**") hereby agrees as follows:

1. Description of Confidential Information:

For purposes of this Agreement, "**Confidential Information**" means any information which is disclosed during the Disclosure Period (as defined below) which is or should be reasonably understood to be confidential or proprietary to Discloser (which such information may include without limitation information concerning Discloser's business, products, services, content, finances, users, tools, source code, protocols, product designs and plans, customer lists, intellectual property and other marketing and technical information, the terms and existence of this Agreement and the Transaction (as defined below) and any other unpublished information).

2. Use of Confidential Information:

Recipient shall make use of the Confidential Information only for the purpose of its evaluation and/or implementation of a business relationship (the "**Transaction**"). Except where the following prohibition is not allowed under applicable law, the Recipient will not decompile, disassemble, reverse engineer or otherwise modify any software or other product, system or process disclosed to it under this Agreement.

3. Confidentiality Period: This Agreement and Recipient's duty to hold Confidential Information in confidence shall expire five (5) years after the end of the Disclosure Period (as defined below); except that any technical designs, customer data, source code and protocols (including documents and other

embodiments of such information) shall be deemed and treated as Confidential Information under this Agreement for as long as such information continues to be protectible as trade secret information under United States law.

4. Disclosure Period: Unless otherwise terminated by either party, this Agreement pertains to Confidential Information that is disclosed during the period commencing with the Effective Date and ending one (1) year¹ after the Effective Date, unless otherwise extended by mutual written agreement (the "**Disclosure Period**").

5. Standard of Care: (a) Recipient shall not use Confidential Information for any purpose other than the intended use set forth in paragraph 2 above, and shall not disclose, use, disseminate or otherwise publish or communicate Confidential Information received hereunder to any person, firm, corporation or other third party without the prior written consent of Discloser, except to Recipient's agents or advisors who have a need to know for the purpose of assisting in the Transaction, who have been informed of Recipient's obligations hereunder, and who have agreed in writing or are otherwise required by law not to disclose Confidential Information for a period not shorter than the confidentiality period provided in paragraph 3 above.

¹ The one-year disclosure period is adjustable or can be deleted entirely where appropriate.

(b) Recipient agrees to use the same degree of care that it uses to protect its own highly confidential information from unauthorized disclosure, but in no event less than a reasonable degree of care. Recipient shall notify Discloser in writing immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement, and will cooperate with Discloser in every reasonable way to regain possession of Confidential Information and prevent any further unauthorized use.

6. **Exclusions:** This Agreement imposes no obligation upon Recipient with respect to information that Recipient can demonstrate with written records: (i) was in Recipient's possession before receipt from Discloser; (ii) is or becomes a matter of public knowledge through no fault of Recipient; (iii) is rightfully received by Recipient from a third party without a duty of confidentiality; (iv) is independently developed by employees of Recipient who have not had access to Confidential Information; (v) is disclosed under operation of law, except that Recipient will disclose only such information as is legally required and will use reasonable efforts to obtain confidential treatment for any Confidential Information that is so disclosed and will provide Discloser notice of such possible disclosure prior to disclosure in order to give Discloser an opportunity to contest such disclosure; or (vi) is disclosed by Recipient with Discloser's prior written approval.

7. **Warranty:** NO WARRANTIES ARE MADE BY DISCLOSER UNDER THIS AGREEMENT. ANY INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED "AS IS," AND WITHOUT ANY WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING ITS ACCURACY, COMPLETENESS, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR PERFORMANCE.

8. **Other Business Activities:** (a) This Agreement does not create any agency or partnership relationship. Recipient acknowledges that Discloser may be currently discussing transactions similar to the Transaction with other parties, including competitors of Recipient. This Agreement does not require Discloser to make any payment of any kind to Recipient, nor does it bind Discloser to enter into any further agreement or arrangement with Recipient.

(b) Recipient shall adhere to all applicable laws, regulations, and rules relating to the export of technical data, and shall not export or re-export any technical data, any products received from Discloser, or the direct product of such technical data to any proscribed country listed in such applicable laws, regulations and rules unless properly authorized.

9. **Ownership and Other Rights:** Recipient acquires no intellectual property rights or licenses under this Agreement and all such rights regarding the Confidential Information shall remain with the Discloser.

10. **Return or Destruction of Confidential Information:** Recipient will, at Discloser's option, return or destroy (and so certify in writing to Discloser) all material embodying Confidential Information (in any form or medium and including, without limitation, all summaries, copies (including electronic copies) and excerpts of Confidential Information) at any such time as Discloser may so request.

11. **Injunctive Relief:** Recipient acknowledges that disclosure or use of Confidential Information in violation of the Agreement could cause irreparable harm to Discloser for which monetary damages may be difficult to ascertain or an inadequate remedy. Recipient therefore agrees that Discloser 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 the event that Discloser is the prevailing party in enforcing any rights relating to or arising of this Agreement, Discloser is entitled to recover the reasonable costs incurred in enforcing its rights, including without limitation, court costs and in-house and outside attorneys' fees.

12. **Nonwaiver:** Any failure by Discloser to enforce Recipient's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

13. **Miscellaneous:** (a) All additions or modifications to this Agreement must be made in writing and signed by an authorized representative of each party.

(b) This Agreement is made under, and shall be construed according to, the laws of the Commonwealth of Massachusetts² except for its

² Choice of law is adjustable based on company location.

conflicts of laws principles. Recipient hereby irrevocably consents to the jurisdiction of the federal and/or local courts located in Boston, Massachusetts³ in connection with any action violating this Agreement.

(c) This Agreement may be delivered by facsimile transmission, which shall be deemed and constitute an original.

(d) Recipient shall not assign or transfer any rights or obligations under this Agreement without the prior written consent of Discloser. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the Parties, their successors and assigns.

(e) If any provision of this Agreement shall be held by a court of competent jurisdiction to be unenforceable, the remaining provisions shall remain in full force and effect and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

ACKNOWLEDGED AND AGREED:

[ADD RECIPIENT COMPANY NAME]⁴

By: _____
(Sign here)

Print Name: _____

Title: _____

³ Venue for disputes is adjustable based on company location.

⁴ Insert the name of the company (or individual) receiving the confidential information.

