NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this “**Agreement**”), dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Effective Date**”), is between [Customer’s Name] an \_\_\_\_\_\_\_\_\_\_\_\_with its principal place of business at [Customer Address] (“**Customer**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, an \_\_\_\_\_\_\_\_\_\_\_ with its principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Recipient**”) (Customer and Recipient are each, a “**Party**”, and collectively, the “**Parties**”).

Customer and/or its Affiliate(s) (as defined below) and Recipient wish to discuss the possibility of entering into a business relationship or transaction with each other. The Parties anticipate that during the course of their discussions, and during the term of any agreement that may result from the discussions, Recipient may have access to proprietary or confidential information of Customer and/or its Affiliate(s). Customer and/or its Affiliate(s) are willing to allow access to such information only on a confidential basis, and only for the purposes described in Section 2.1 below.

The Parties agree as follows:

# Definitions

* 1. “**Affiliates**” means any entity controlling or controlled by or under common control with a Party, where “**control**” is defined as the ownership of more than 50% of the equity or other voting interests of such entity or the power to direct or cause the direction of the management or policies of such entity, whether through ownership, voting securities, contract or otherwise.
  2. “**Confidential Information**” means all information relating to Customer's or its Affiliates' business, whether disclosed by Customer, its Affiliates and/or its or their Representatives, and whether disclosed before, on, or after the Effective Date, regardless of the form or medium on which the information is stored, recorded, conveyed, accessed, or communicated, and whether or not specifically identified as “Confidential” or “Proprietary,” including but not limited to: (a) the existence of this Agreement, or the fact that there was, is or may be a business relationship between the Parties or between Recipient and a Customer Affiliate; (b) cost, pricing, profit, production, forecast and other accounting, economic and financial data; (c) technical drawings, product designs, artistic and scientific data, product specifications, machine or equipment specifications, process flow documents and manufacturing know-how; (d) ideas for research and development; (e) source code and other computer software (including software that is proprietary to third parties); (f) results, records, text, photographs, materials, samples, prototypes, graphic representations and audiovisual works; (g) information that Customer or its Affiliate(s) must keep confidential as a result of obligations to third parties; (h) inventions, whether or not patentable; (i) information about the identity of Customer's or its Affiliates' customers and suppliers; (j) personnel and human resources data, files and information; (k) business and marketing plans, strategies, policy statements and forecasts; (l) information to which Recipient has access while on Customer's or its Affiliates' business premises; (m) customized goods or services to be furnished under an agreement between Recipient and Customer or its Affiliate(s); (n) trade secrets; and (o) summaries, excerpts, compilations and notes prepared by Recipient or others related to any of the preceding information. Notwithstanding the above, neither information nor material will be considered “Confidential Information” if Recipient can prove that the information or material was: (i) disclosed or became generally available to the public without breach of this Agreement and through no act or omission of Recipient or its Representatives; (ii) independently developed by Recipient as evidenced by Recipient's written records, without reference to the Confidential Information and before the date Recipient received the Confidential Information; or (iii) Received by Recipient, before Customer or its Affiliate(s) disclosed it to Recipient, from a third party that did not violate any agreement, duty or applicable law in disclosing the information to Recipient.
  3. “**Disclose**” (and the related term “**Disclosure**”) means to divulge, permit access to or convey, whether intentionally or inadvertently. Customer and each of Customer’s Affiliates disclosing Confidential Information is a “**Discloser**” with respect to its Confidential Information.
  4. “**Receive**” means to gain access to information, whether through intentional or inadvertent communication, transmission or other Disclosure.
  5. “**Representatives**” means a Party’s Affiliate(s), and a Party's or its Affiliate's directors, officers, employees, agents, consultants, advisors and other representatives (including legal counsel and accountants).

# Permitted Uses; Restrictions

## Recipient will not use any Confidential Information for its own benefit, to Customer's or its Affiliates' detriment, or for any purpose other than to (a) discuss or evaluate Customer's or its Affiliates' possible business relationship or transaction with Recipient or (b) perform its obligations under any agreement that may result from the discussions.

## Recipient will hold all Confidential Information in strict confidence and will not Disclose, or allow the Disclosure to a Representative, without Discloser’s prior written consent, any Confidential Information other than to Recipient's Representatives who (a) have a “need to know,” (b) have been advised of the confidential and proprietary nature of the Confidential Information, and (c) are bound by confidentiality and use restrictions that are at least as restrictive as those described in this Agreement. Recipient will be liable for any use or disclosure of Confidential Information by its Representatives that is not permitted pursuant to this Section 2 and will take any action, legal or otherwise, to cause its Representatives to comply with this Agreement (including all actions that Recipient would take to protect its own confidential information).

## Recipient will protect all Confidential Information by using the same degree of care that Recipient would exercise regarding its own confidential information, but not less than reasonable care.

## Recipient will not disassemble, reverse engineer or replicate in any way samples, products or prototypes embodying Confidential Information.

## Recipient will comply with all applicable laws, rules and regulations in connection with any use, transfer, communication, remote access or storage of Confidential Information.

## In the event that Recipient is an individual, nothing in this Section 2 or otherwise in this Agreement shall limit or restrict in any way Recipient's immunity from liability for disclosing Discloser’s trade secrets as specifically permitted by 18 U.S.C. § 1833(b)(1), which states: “An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.”

# Orders to Disclose

If Recipient or its Representatives are requested or ordered to Disclose Confidential Information in any judicial, administrative, or other legal or investigative process, including by subpoena or in a request to produce, Recipient will: (a) promptly notify Discloser of the terms and the circumstances surrounding the request or order so that Discloser may seek an appropriate protective order or take other efforts to limit the disclosure or protect the confidentiality of the Confidential Information; (b) consult in good faith with Discloser regarding the request or order and cooperate with Discloser's efforts to narrow the scope, obtain a protective order, or produce documents or information in a way that preserves the confidentiality of the Confidential Information; and (c) if Disclosure is required to prevent Recipient from being subject to contempt sanctions or other penalties, Disclose only the Confidential Information that is legally required to be Disclosed, consistent with a reasonable interpretation of the request or order.

# No License or Grant of Intellectual Property Rights

# Except for the limited rights to use Confidential Information as set forth herein, all Confidential Information Disclosed to Recipient by Discloser shall, as between Discloser and Recipient, remain the property of Discloser. By this agreement Discloser is not granting or extending to Recipient any rights of any kind under any patent, copyright, trademark, or other intellectual property right which Discloser may now have or may subsequently obtain with respect to the Confidential Information.

# Publicity Restrictions

Recipient will not (a) identify Customer or its Affiliates in any manner on a customer list or website (or on any other person's website that identifies Recipient) or in any metatags or key words for those websites; or (b) otherwise use the name, assumed business name, trade name, logo, trademark, or service mark, whether or not registered, of Customer or any of its Affiliates, in connection with publicity, advertisements, promotion or in any other manner; or (c) include a hyperlink from any website maintained by Recipient to any website of Customer or its Affiliates.

# No Representations or Warranties

Customer and its Affiliate(s) retain the right to determine, in their sole discretion, what information they make available to Recipient. Neither Customer nor any of its Representatives makes any representation or warranty (express or implied) concerning the completeness or accuracy of any Confidential Information it Discloses.

# No Obligation to Purchase

Nothing in this Agreement creates a legal obligation for either Party or any of its Affiliates to enter into a business relationship or to purchase, sell or license any products, services, or technology to or from the other.

# Return of Confidential Information

Within five business days after Discloser's request, Recipient will return to Discloser, or destroy and certify the destruction of, all copies of documents and other tangible material embodying or containing Confidential Information, including all Confidential Information in its Representatives' possession.

# Injunctive Relief; Remedies

Recipient acknowledges that its breach of this Agreement will irreparably harm Discloser and that the harm may not be susceptible to accurate measurement for the purpose of calculating money damages. Accordingly, Discloser will be entitled to an injunction or other equitable relief to prevent a breach or threatened breach of this Agreement, without the necessity of posting a bond or other security. All remedies are cumulative and in addition to any other remedies Discloser may have at law or in equity. Remedies may be exercised concurrently or separately, and no exercise of a remedy will constitute an election of that remedy to the exclusion of any other remedy.

# Amendment

The Parties may amend this Agreement only by a written instrument that (a) expresses an intent to amend this Agreement, (b) expressly refers to the amended provision(s) of this Agreement, (c) provides the full text of the amendment, and (d) is signed by an authorized representative of each Party.

# Competition

Nothing in this Agreement will prohibit Customer or any Customer Affiliate from entering into discussions or business relationships with any competitor of Recipient.

# Term; Survival

This Agreement will remain in effect from the Effective Date until terminated by either Party upon written notice to the other. As to Confidential Information Received before the termination date, Recipient's obligations under this Agreement will survive until such a time as the Confidential Information it Received no longer qualifies as Confidential Information.

# Choice of Law; Forum

This Agreement will be interpreted under, and any disputes arising out of this Agreement will be governed by, the laws of -\_\_\_\_\_\_\_\_\_\_, USA, without regard to its conflict of laws principles. Each Party irrevocably consents to the jurisdiction of the state and federal courts located in \_\_\_\_\_\_\_\_\_\_, USA, in connection with all actions arising out of or in connection with this Agreement, and waives any objections that such venue is an inconvenient forum.

# Assignment; Succession

Recipient may not assign any right or delegate any duty under this Agreement, whether by transfer, merger, operation of law, change in control or otherwise, without the prior written consent of an authorized Representative of Customer. This Agreement will bind and inure to the benefit of each of the Parties, Customer’s Affiliates, and each of the Parties’ and Customer Affiliates’ respective permitted successors, assigns, and delegates.

# Severability

If any provision of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision of this Agreement, and the rest of this Agreement will remain in full force and effect. Such invalidity, illegality or unenforceability also will not invalidate or render unenforceable such provision in any other jurisdiction.

# Counterparts and Delivery

This Agreement may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single Agreement. Facsimile and electronic signatures will be deemed original signatures for all purposes under this Agreement. This Agreement may be delivered by facsimile or electronically, and any such delivery will have the same effect as physical delivery of a signed original.

# Third Party Beneficiaries

Customer's Affiliates are intended third party beneficiaries of this Agreement.

# Waiver

Customer's or its Affiliate’s delay or failure to enforce or insist on strict compliance with any provision of this Agreement will not constitute a waiver or otherwise modify this Agreement. Customer's or its Affiliate’s waiver of any right granted under this Agreement on one occasion will not (a) waive any other right, (b) constitute a continuing waiver, or (c) waive that right on any other occasion.

# Integration

This Agreement is the entire agreement between the Parties concerning its subject matter and supersedes all prior and contemporaneous oral and written agreements, commitments and understandings concerning that subject matter. Notwithstanding the foregoing, this Agreement shall not supersede any pre-existing confidentiality or non-disclosure agreement between a Customer Affiliate and Recipient (“Legacy NDA”). If there is any conflict between the terms of a Legacy NDA and the terms of this Agreement, the terms of the Legacy NDA shall control for as long as the Legacy NDA remains in effect, but only with respect to such Customer Affiliate and Recipient.

# Attorney Fees

If a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted in connection with any controversy, interpretation, or enforcement of any rights under this Agreement, the Party or Customer Affiliate substantially prevailing will be entitled to recover its attorney, paralegal, accountant, and expert fees, and all other reasonable fees, costs, and expenses actually incurred in connection with that proceeding, as determined by the court, arbitrator, or arbitration panel at trial, or in any appeal or other post-judgment proceeding, in addition to all other amounts provided by law. The court, arbitrator, or arbitration panel hearing the matter will determine which Party is substantially prevailing, taking into account the number and importance of all claims and defenses, the outcomes of those claims, and any offers of settlement made by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the Effective Date.

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| --- | --- | --- | --- | --- |
| **[Customer]** | |  | **[Recipient]** | |
| By: | {{Sig\_es\_:signer1:signature }} |  | By: | {{Sig\_es\_:signer2:signature }} |
| Name: | {{N\_es\_:signer1:fullname }} |  | Name: | {{N\_es\_:signer2:fullname }} |
| Title: | {{\*Ttl\_es\_:signer1:title }} |  | Title: | {{\*Ttl\_es\_:signer2:title }} |
| Date: | {{Dte\_es\_:signer1:date }} |  | Date: | {{Dte\_es\_:signer2:date }} |