## **LETTER OF INTENT**

**[Company Name]**

**and**

**[insert customer name]**

This Letter of Intent (“LOI”) is entered into effective as of this \_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_ (the "Effective Date"), between [insert customer name] (“Customer”) a corporation with offices at [insert customer address] and [insert company name] ("Company") a corporation with offices at [insert company address].

WHEREAS, Customer and Company are engaged in preliminary discussions regarding a proposed agreement or agreements between them concerning [insert brief description of business deal]; and

WHEREAS, as a result of these preliminary discussions, the parties have concluded that further negotiations concerning a definitive agreement(s) (the "Definitive Agreement(s)") are appropriate and necessary for the non-binding Term Sheet as defined below;

**NOW THEREFORE,** the Parties agree as follows:

1. Non-Binding. The parties agree that, except for this Paragraph, Paragraphs 3 through 10, and Paragraphs 12 and 13 below ("Binding Commitments"), this LOI, including any attachments or exhibits, reflects only a statement of present intent by the parties to conduct further negotiations towards a Definitive Agreement and does not constitute a binding agreement. Any agreement resulting from this LOI shall be subject to negotiations, prior management approval of both parties and execution of the Definitive Agreement(s) embodying such terms and conditions, as may be agreed to by the parties, including material terms that are not mentioned below or that may differ from the terms described herein. The parties specifically acknowledge that the performance of the intentions embodied in the Term Sheet are subject to the parties’ mutual agreement with respect to their respective intellectual property rights and obligations.

2. Term Sheet. In order to facilitate further discussions, the parties have set forth in the non-binding Term Sheet attached hereto as Appendix A certain statements which are only intended as a limited statement of present intentions upon which to base further negotiations for the Definitive Agreement.

3. Confidentiality. Each party acknowledges that, during the course of this LOI, each party may be exposed to confidential information of the other party. Each party agrees that all such confidential information shall be subject to the terms and conditions of the Non-Disclosure Agreement attached hereto as Appendix B (the “NDA”).

4. Costs and Expense. During the Term of this LOI each party will bear its own costs and expenses with regard to all negotiations, performance of obligations, and activities relating to the subject matter of this LOI.

5. Limitation of Liability. Except for breach of the confidentiality obligations in Paragraph 3 above, neither party shall make a claim against, nor be liable to, the other party or its affiliates for any reason including, indirect, special, incidental, consequential or punitive damages, in connection with or arising out of this LOI or the termination thereof, under contract, tort or any other theory of law, including damages for lost profits or business opportunity, or injury to business reputation, resulting from the continuation or abandonment of negotiations, or a party's action or inaction taken in anticipation of execution of the Definitive Agreement, and regardless of the cause of action under which such damages may be sought in connection with this LOI.

6. Term and Termination. This LOI shall be effective as of the Effective Date and shall continue until the earlier of (i) receipt by a party of written notice given by the other party in its sole discretion of its intention to terminate or abandon further negotiations of the Term Sheet attached hereto as Appendix A based upon the inability to come to agreement relating to the implementation of the terms set out in the Term Sheet**,** or (ii) the execution of the Definitive Agreement(s) contemplated herein, or (iii) sixty (60) calendar days from the Effective Date of this LOI, unless extended by written, mutual agreement signed by authorized representatives of the parties. The Binding Commitments, as defined above, shall survive the termination or expiration of this LOI for any reason.

7. Choice of Law. This Agreement shall be deemed executed in the Province of Ontario, Canada, and is to be governed and construed by Ontario law, without regard to its choice of law provisions. The parties agree to irrevocably waive any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consent to service of process by mail or in any other manner permitted by applicable law and consents to the jurisdiction and venue for any action to enforce this Agreement are properly in the applicable courts of Ontario. The parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

8. Entire Agreement. This LOI, to the extent binding upon the parties, is the parties' entire agreement relating to its subject matter. No modifications to this LOI will be binding, unless in writing and signed by an authorized representative of each party.

9. No Agency. Nothing in this LOI shall create or imply any agency, venture, partnership, representative or employment relationship between the parties, it being expressly understood that the parties are independent entities that are working together to explore mutually beneficial business objectives. This LOI shall not be construed as authority for either party to act for the other party in any capacity, or to make commitments of any kind for the account of, or on behalf of, the other party.

10. Assignment. This LOI may not be assigned or otherwise transferred, without the prior written, mutual consent of each party. Any purported assignment in violation of this paragraph shall be null and void.

11. Notices. Any notices, reports or other communications required or permitted to be given under this Agreement shall be in writing and shall be sufficient if delivered by hand or sent by registered mail, courier or facsimile addressed to Company or Customer at their respective addresses appearing in this Agreement, or to such other address as one party advises the other party in writing. Any such notices, reports, or other communications shall be deemed to have been received by the party to whom they were addressed: (a) upon delivery by hand, (b) five (5) business days after being sent by registered mail, (c) upon delivery by courier, as evidenced by the courier receipt, or (d) upon successful receipt confirmation report after being sent by facsimile.

12. Publicity. During the Term of this LOI, neither party shall issue any news release or other publicity based on this LOI, or otherwise respecting the other party, without the prior written approval of the other party in writing.

13. Intellectual Property. Nothing herein shall be deemed to transfer ownership, right, title or interest in or to any intellectual property or any intellectual property rights from one party to the other, and nothing herein shall be construed to be a license of one party’s intellectual property to the other.

As indicated below, the parties have caused this LOI to be executed by their authorized representatives.

|  |  |  |
| --- | --- | --- |
| [insert Company name] |  | Customer |
| Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

# Appendix A

# Term Sheet

[insert business details]

**Appendix B**

**Non-Disclosure Agreement (“NDA”)**

In order to define each Party’s obligations respecting the treatment of certain disclosed information, **[insert your company's full legal name]**. (“**[insert short form of your company name]**”) and the Participant identified below agree to the following:

1. **Disclosing Party.** The Party disclosing the Confidential Information is **(check one only):**

**[insert short form of your company name]**  **Participant**  **Both Parties**

1. **Definitions.**
   1. **“Confidential Information”** means any information regardless of form or medium, whether tangible or intangible, including any copies or fixations made thereof, that is: (a) proprietary or confidential to Discloser or its affiliated companies or to their respective customers, suppliers or other business partners including, without limitation, information that specifies, concerns or is related to Discloser’s intellectual property, trade secrets, business operations, finances, customers, technical know-how, prototypes, designs, processes, products, services, or the development, testing or commercial exploitation of any of the foregoing; (b) either specifically identified as confidential prior to or at the time of its disclosure or that would reasonably be considered by a person knowledgeable in the industry to be proprietary or confidential in nature because of legends or other markings on the information, the circumstances of disclosure or the nature of the information itself; and (c) directly or indirectly disclosed or to which the Recipient is otherwise provided access by Discloser or on Discloser’s behalf.
   2. **“Discloser”** means the Party disclosing information.
   3. **“Recipient”** means the Party receiving the disclosed Confidential Information.
2. **Disclosure and Protection Periods.**
3. The terms of this NDA shall apply to Confidential Information that is disclosed between **[insert the date you want the NDA to start]** (the “Start Date”) and five (5) years after the Start Date or termination of this NDA, whichever is earlier.
4. Recipient will protect the Confidential Information in accordance with the terms of this NDA for a period of five (5) years from the date that the Confidential Information was disclosed to Recipient, unless Discloser specifies in writing a different protection period for specific Confidential Information, in which case, Recipient shall protect such specific Confidential Information for the specified period.
5. **Confidentiality Obligations.**
6. Recipient shall hold Confidential Information in confidence and use, reproduce and disclose the Confidential Information only to the extent reasonably required to fulfill the following purpose: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[insert any specific purpose for the NDA]** (the “Purpose”). If the foregoing is left blank, the Purpose shall be deemed to be supporting the business relationship between **[insert short form of your company name]** and Participant and fulfilling the objectives of any agreement between **[insert short form of your company name]** and Participant if this NDA is incorporated by reference in writing in such agreement.
7. Recipient shall protect the Confidential Information using the same degree of care that Recipient uses to protect its own confidential information of a similar nature in order to prevent the unauthorized use, reproduction or disclosure of the Confidential Information. Such care shall not be less than a reasonable degree of care. For clarification, this does not permit Recipient to allow third parties to whom it generally permits access to Recipient’s own confidential information, access to the Confidential Information. Recipient security measures shall include, where requested by Discloser, securing the Confidential Information by means appropriate to the Confidential Information, and segregating the Confidential Information from any Recipient or third party information.
8. Recipient shall not, directly or indirectly, disclose the Confidential Information to any employees, contractors, affiliates or third parties except to those employees or contractors who have a need to know the Confidential Information to fulfill the Purpose, provided that: (i) Recipient shall be vicariously liable for any act or omission of such employees or contractors respecting the Confidential Information, (ii) such employee or contractor has been advised of the confidentiality obligations contained in this NDA and has either agreed in writing to be bound by the obligations of this NDA, or has entered into a binding written obligation of confidentiality with the Recipient that affords substantially similar protection of the Confidential Information. Such employees and contractors may only use and reproduce the Confidential Information to the extent reasonably required to fulfill the Purpose.
9. Recipient agrees that it shall not alter, modify, adapt, create derivative works, translate, deface, decompile, disassemble, convert into human readable form, or reverse engineer all, or any part, of any materials to which it is provided access by Discloser.
10. Each Party will promptly advise the other in writing of any misappropriation or misuse by any person of such Confidential Information of which it may become aware.
11. **Exclusions.** Information that Recipient can establish: (a) was lawfully in Recipient's possession before receipt from Discloser without any confidentiality obligation attached thereto; or (b) is or becomes a matter of public knowledge through no fault of Recipient; or (c) was independently developed or discovered by Recipient without any reference to any Confidential Information obtained directly or indirectly from Discloser, shall not be considered Confidential Information under this NDA. Additionally, it shall not be considered a breach of this NDA if Recipient discloses Confidential Information if and only to the extent: (i) it is required to do so by law provided that Recipient gives Discloser sufficient notice to enable it to seek an order limiting or precluding such disclosure; or (ii) Discloser gives its prior written authorization to do so which is signed by an officer of the Discloser, provided that Recipient complies with the disclosure parameters set forth in such authorization.
12. **Return of Confidential Information.** At the Discloser’s request, the Recipient shall promptly return any or all Confidential Information received from the Discloser (including, without limitation, any summaries or copies or Confidential Information) or will certify through an officer of the Recipient that all Confidential Information received from the Discloser, and any summaries or copies thereof, have been destroyed. For greater certainty, failure of the Discloser to make such request of Recipient shall not entitle Recipient to make any further use of the Confidential Information or otherwise extend Recipient’s rights set forth herein after expiration or termination of this NDA and Recipient specifically agrees to cease any further use of Discloser’s Confidential Information in such event.
13. **Rights.** All right, title and interest in and to the Confidential Information is and shall remain with the Discloser, and no rights to the Confidential Information are granted under this NDA other than the rights expressly granted in Section 4. In particular, Recipient shall not acquire any ownership right, interest or title in or to the Confidential Information or any intellectual property rights therein or the right to obtain or apply for such rights under this NDA.
14. **Remedies.** Recipient acknowledges that the Confidential Information has been developed at significant cost and has significant commercial value to Discloser, and Recipient agrees that disclosure or inappropriate use of the Confidential Information could cause Discloser irreparable harm. Recipient agrees therefore that Discloser will have the right to seek, in addition to any of its other rights and remedies under law and equity, injunctive relief for any violation of this NDA without posting bond or by posting bond at the lowest amount required by law.
15. **No Warranty.** This NDA shall not obligate either Party to disclose any Confidential Information to the other Party or enter into any further agreement or business arrangement with the other Party. ANY INFORMATION EXCHANGED UNDER THIS NDA IS PROVIDED "AS IS". Discloser makes no representation, warranty or guarantee whatsoever about the Confidential Information.
16. **Governing Law.** Without regard to conflict of law provisions, this NDA is governed by and will be construed in accordance with the laws of Ontario and the Parties submit to the exclusive jurisdiction of the courts of Ontario in relation to all matters pertaining to or arising out of this NDA.
17. **Entire Agreement.** This NDA constitutes the entire agreement of the Parties with respect to the subject matter of this NDA and cancels and supersedes any prior discussions, correspondence, understandings, agreements, or communications of any nature relating to the subject matter of this NDA. For greater certainty, this NDA shall supersede any prior confidentiality agreements which have the same Purpose, but shall not supersede any confidentiality agreements with purposes that differ or are more specific than the Purpose.
18. **General Provisions.**
19. All additions or modifications to this NDA must be made in writing and must be signed by an officer of both Parties.
20. No waiver by either Party of a breach or omission by the other Party under this NDA shall be binding on the waiving Party unless it is expressly made in writing and signed by an officer of the waiving Party. Waiver by a Party of an individual breach or omission by the other Party shall not affect or impair the rights of the waiving Party in respect of any subsequent breach or omission of the same or different kind.
21. If a court of competent jurisdiction declares any provision in this NDA invalid or unenforceable, such invalidity or unenforceability shall have no effect on the remainder of the NDA which shall remain in full force.
22. Recipient may not export any Confidential Information unless Recipient complies with all applicable export laws.
23. This NDA does not create any agency or partnership relationship between the Parties.
24. Recipient may not assign this NDA without Discloser’s express prior written authorization. Subject to the foregoing, this NDA shall inure to the benefit of and be binding upon the Parties, their successors and assigns.
25. This NDA may be signed in two or more counterparts each of which together will be deemed to be an original and all of which together will constitute one and the same instrument. Signing of this NDA and transmission by facsimile document transfer will be acceptable and binding upon the Parties hereto.

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| --- | --- | --- |
| **[insert your company's full legal name]** |  | Participant: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  | Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |