**NON-Disclosure Agreement**

**Between**

**«our\_company\_name»**

Domiciled in **«our\_company\_address»**,

And,

**«other\_company\_name»**

Domiciled in **«other\_company\_address»**.

**«our\_company\_name»** and **«other\_company\_name»** (individually a “**Party**” and together, the “**Parties**”) desire to engage in commercial negotiations and transactions (the “**Business Purpose**”); In connection with such discussions, the Parties recognize that there is a need for them to disclose certain confidential information to be used only for the Business Purpose and to protect such confidential information from unauthorized use and disclosure.

**1 Disclosure.**

This Agreement shall apply to all information, regardless of its nature, in any form or medium (verbal, written, recorded or of any other kind) disclosed during the Business Purpose by a Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”), that (a) relates to the Disclosing Party's technology, intellectual property assets, financial or business plans and affairs, financial statements and forecasts, internal management tools and systems, products and product development plans, marketing plans, data, processes, techniques, employees, consultants and independent subcontractors, customers, suppliers, and contracts, (b) is designated by the Disclosing Party as confidential either orally or by means of appropriate markings, (c) that a reasonable person would understand to be confidential or proprietary under the circumstances of disclosure, or (d) is generated of the basis of any information described in (a)-(c) above (collectively “**Confidential Information**”). Confidential Information will not include information or data that:

a) is now or thereafter becomes generally known or available to the public, through no act or omission on the part of the Receiving Party and/or its Agents;

b) was rightfully known by the Receiving Party prior to receiving such information from the Disclosing Party and without restriction as to use or disclosure and without breach of this Agreement;

c) is or becomes rightfully available to the Receiving Party from a third party who has the right to disclose the information without restriction as to use or disclosure; or

d) is independently developed by the Receiving Party without access to any Confidential Information of the Disclosing Party; provided, however, that the burden of proof of such independent development shall be upon the Receiving Party; or

e) has been approved for release by prior written authorization of the Disclosing Party.

**2 Ownership/Property Rights.**

All Confidential Information remains the sole and exclusive property of the Disclosing Party. Each party acknowledges and agrees that nothing in this Agreement will be construed as granting any rights to the Receiving Party, by license or otherwise, in or to any Confidential Information of the Disclosing Party, or any patent, copyright, trade secret or other intellectual property or proprietary rights of the Disclosing Party, except as specified in this Agreement.

**3 Restrictions on Use and Disclosure.**

The Receiving Party agrees:

a) it will not copy or reproduce any of the Disclosing Party’s Confidential Information without the prior written consent of the Disclosing Party;

b) will not disclose any of the Disclosing Party’s Confidential Information to any third party, other than to those directors, officers, employees, consultants, attorneys, accountants and other advisors of the Receiving Party (“**Agents**”) who have a need to know such Confidential Information for the Business Purpose;

c) it will hold and use Confidential Information in confidence, and take all necessary and reasonable precautions to prevent disclosure of such Confidential Information, including, without limitation, use of the same care and discretion to avoid disclosure, publication, or dissemination of Disclosing Party’s Confidential Information as the Receiving Party employs with respect to similar information of its own but in no case less than reasonable care;

d) it will inform any Agents to whom it discloses Confidential Information of the confidentiality provisions of this Agreement and obtain a written agreement from such Agents to abide by such provisions, except where such obligation already exists by a prior agreement or relationship (and such prior agreement or relationship is at least as protective of the Confidential Information as are the terms and conditions of this Agreement);

e) it will not make any public statement or comment on the existence or provisions of this Agreement, or the existence or content of the Business Purpose, without the prior written consent of the other party, except as may be required in the reasonable opinion of its legal counsel;

f) it will not use any Confidential Information of the other Disclosing Party except for the sole purpose of participating in the Business Purpose;

g) it will immediately return or destroy all or any part of the Disclosing Party’s Confidential Information as requested by the Disclosing Party at any time (including electronic copies), and provide the Disclosing Party with a statement certifying such return and/or destruction; and

h) it will notify the Disclosing Party immediately upon discovery of any un-authorized use or disclosure of Confidential Information or any other breach of this Agreement by Receiving Party and reasonably assist the Disclosing Party in its efforts to regain possession of the Confidential Information and to prevent its further unauthorized use.

**4 Disclosure Pursuant to Court or Governmental Order.**

Notwithstanding the provisions of Section 3 above, the Receiving Party may disclose Confidential Information of the Disclosing Party pursuant to a request or order made pursuant to applicable law, regulation or legal process, provided that (i) the Receiving Party gives the Disclosing Party prompt notice of such request or order so that the Disclosing Party has an opportunity to seek a protective order, confidential treatment, or other appropriate remedy to such request or order, (ii) the Receiving Party provides the Disclosing Party with all reasonable assistance (at the Disclosing Party’s expense) in opposing such required disclosure or seeking a protective order or confidential treatment for all or part of such Confidential Information, and (iii) the Receiving Party discloses only such portion of the Confidential Information as is either permitted by the Disclosing Party or required by the court, tribunal, governmental agency or other authority, subject to any protective order or confidential treatment obtained by the Disclosing Party.

**5 Warranty/Disclaimer of Warranty.**

The Disclosing Party warrants that it has the lawful right to transmit, exchange or otherwise dispose of the information that it supplies under this Agreement. The Receiving Party understands that the Disclosing party makes no representation or warranty as to the accuracy, completeness, performance, merchantability, fitness for use, or non-infringement of any intellectual property rights or any rights of third persons or other attributes of any information furnished by it hereunder.

**6 Feedback.**

In the course of Company’s evaluation and performance of the Business Purpose, Company may provide «our\_company\_name» comments or suggestions regarding, or proposed improvements to, «our\_company\_name»'s products or services (“**Feedback**”). Feedback is not considered Company Confidential Information hereunder. All Feedback is and will be given entirely voluntarily, and «our\_company\_name» will, on a non-exclusive basis, be free to use, disclose, reproduce, license or otherwise distribute, and exploit the Feedback provided to it as it sees fit, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise.

**7 Remedies.**

Each party acknowledges that the unauthorized use or disclosure of the Disclosing Party’s Confidential Information by the Receiving Party and/or any of its Agents would cause the Disclosing Party to incur irreparable harm and significant damages, the degree of which may be difficult to ascertain and that the Disclosing Party shall be entitled to obtain injunctive relief against a threatened breach or continuation of any such breach and, in the event of such breach, an award of actual and exemplary damages from any court of competent jurisdiction.

**8 No Obligation to Proceed.**

Neither party has an obligation under this Agreement to purchase or offer for sale any item or proceed with any proposed transaction.

**9 Term.**

This Agreement will commence on the Effective Date and will remain in effect for two (2) years unless terminated earlier by either party upon written notice; provided that the obligations and restrictions of this Agreement with respect to any Confidential Information disclosed hereunder will continue for three (3) years following any such expiration or termination.

**10 General Provisions.**

This Agreement is the complete and exclusive statement regarding the subject matter of this Agreement and supersedes all prior and contemporaneous agreements, understandings and communications, oral or written, between the parties regarding the subject matter of this Agreement. Should any provision of this Agreement be or become invalid, ineffective or unenforceable, the remaining provisions shall remain valid. The Parties undertake to replace the invalid, ineffective or unenforceable provision by a valid, effective and enforceable provision which comes as close as possible to the economic interests of the Parties. This shall also apply in the event of a contractual gap. This Agreement may be modified only by a written amendment executed by both parties and made a part hereto by incorporation. No waiver of any provision of this Agreement shall constitute a waiver of any other provision or of the same provision on another occasion. Neither party may assign this Agreement, in whole nor in part, without the other party’s prior written consent. Any attempted assignment without such consent will be void.

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| **«our\_company\_name»**  Signature**:**  Name:  Date: | **«other\_company\_name»**  Signature**:**  Name: :  Date: |