CONFIDENTIAL

# NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this “Agreement”) is entered into on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Effective Date”), by and between Global Intellectual Strategies a Canadian corporation with a principle place of business at 120 Iber Rd., Stittsville, Ontario, K2S 1E9, Canada (“GIS”) and [Company name and address] (hereinafter “Company”), (individually a “Party” and collectively the “Parties”):

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| --- | --- |
| **“Purpose”** | A Party (“Disclosing Party”) may disclose Confidential Information to the other Party (“Receiving Party) for the purpose of the discussion of a possible assignment of certain U.S. patents and related foreign counterparts. |
| **“Identified Patents”** | A list of specific U.S. patents and related foreign counterparts including but not limited to the related patent numbers that is disclosed by GIS for the Purpose. |
| **“Term”** | From the effective date of this Agreement to the date of the last of the Identified Patents to expire. |

# Definition

* 1. "**Confidential Information**" means all information which is: (a) disclosed for the Purpose by the Disclosing Party to the Receiving Party in written or other tangible form, and conspicuously marked by the Disclosing Party as confidential or proprietary at the time of disclosure; or (b) disclosed for the Purpose orally, by demonstration or in other intangible form by the Disclosing Party to the Receiving Party, specifically designated as confidential or proprietary by the Disclosing Party at the time of disclosure, and summarized in a writing delivered to the Receiving Party within thirty (30) days after such disclosure. Any Confidential Information received or transferred electronically shall be deemed disclosed in tangible form.
  2. “**Affiliate**” with respect to a Party means and includes any company or enterprise controlled directly or indirectly by such Party through ownership or control of fifty percent (50%) or more of voting stock or other voting interests; provided, however, that in any country where such

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Party is not permitted by law to own fifty percent (50%) or more of the shares of a local company, then such local company shall be deemed an Affiliate for purposes of this Agreement if its business activities are substantially controlled by such Party. A company or enterprise shall be deemed an Affiliate only during the time in which it is controlled by a Party, not during any time before such control is acquired and not during any time after such control is relinquished.

1. **Disclosure:** Each Party may disclose to the other Party the Confidential Information, at its sole discretion.

# Scope of Disclosure andUse:

* 1. A Party may disclose the Confidential Information of the other Party only to its own officers, directors, employees, temporary employees, attorneys, advisors, consultants and those of its Affiliates who have a need to know the Confidential Information in order to accomplish the Purpose (each, a “Representative”), provided that any such Representative shall have agreed to be bound by the terms of this Agreement. The receiving Party agrees to be responsible for any breach of the terms of this agreement by its Representatives. .
  2. GIS, on behalf of itself and its Affiliates, acknowledges and agrees that (a) in the course of confidential discussions between the Parties with respect to the Purpose, certain of Company’s acts relating to the Confidential Information are reasonably necessary to evaluate the value of the Identified Patents in order for Company to determine whether it desires to acquire the Identified Patents, including, but not limited to, researching, investigating, and analyzing the Confidential Information disclosed by GIS; (b) neither GIS nor its Affiliates shall make any references to or provide evidence of the existence of such acts, this Agreement, or communications between the parties relating to this agreement in any actions, lawsuits or other proceedings brought any third party against Company under Identified Patents; and (c) possession of the Confidential Information itself will not constitute notice for the purposes of indirect or willful infringement nor serve as proof that Company was notified of any action of patent infringement. In no event shall the abovementioned acts be construed as evidence of Company’s current or future infringement of any Identified Patents provided the above acts are done for the purpose of evaluating the value of the Identified Patents in order to acquire the Identified Patents. Company agrees not to initiate a Declaratory Judgment action against the owner (incl. its Affiliates) of the Identified Patents in respect of any of the Identified Patents for the Term of this agreement.

1. **Termination and Extension:** During the Term, this Agreement may be terminated by either Party at any time for any or no reason by giving written notice to the other Party, or may be extended by mutual written agreement of the Parties. Section 3.2 (b) (c) will survive termination of this Agreement.
2. **Confidentiality:** During the Term, the Receiving Party (a) shall keep in confidence the Confidential Information of the other Party, using at least the same degree of care in keeping such Confidential Information in confidence as it uses for its own confidential information of a similar nature, but in no event less than reasonable care; (b) except as permitted herein, shall not disclose to any third party such Confidential Information unless otherwise expressly permitted in writing by the Disclosing Party; and (c) shall not make any use of the Confidential Information of the other Party other than for the Purpose.
3. **Exceptions:** Notwithstanding any other provision in this Agreement, the following information shall not be deemed to be Confidential Information: (a) information generally known or available to the public at large other than as a result of the Receiving Party’s breach of this Agreement; (b) information already owned or possessed by the Receiving Party at the time of disclosure or legally obtained by the Receiving Party without breach of this Agreement; (c) information developed by the Receiving Party independently, without reference to, or use of, Disclosing Party’s Confidential Information, as evidenced by written records; and (d) information furnished to the Receiving Party without obligation of confidentiality by a third party.
4. **Mandatory Disclosure:** If the Receiving Party is legally required to disclose the Confidential Information of the Disclosing Party by law or pursuant to the order of a court or a governmental agency, it shall, unless legally prohibited, promptly notify the Disclosing Party to that effect, in order to give the Disclosing Party the opportunity to seek such protection for its Confidential Information as it deems appropriate. The Receiving Party shall also cooperate in the Disclosing Party’s efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded the Confidential Information. If, in the absence of a protective order, the Receiving Party is advised by counsel that it is compelled as a matter of law to disclose the Confidential Information, it shall disclose to the party compelling disclosure only the part of the Confidential Information that such party is advised by counsel is required by law to be disclosed; provided that the Receiving Party shall exercise its reasonable efforts to obtain an order or reasonable assurance that confidential treatment shall be accorded such Confidential Information. Such required disclosure shall not be construed as a breach of this Agreement.
5. **Return:** Promptly upon the expiration or termination of this Agreement or upon the Disclosing Party’s written request, the Receiving Party shall return to the Disclosing Party or destroy all Confidential Information received under this Agreement and all copies of such Confidential Information, if any, and shall destroy all notes and analyses created from information contained in the Confidential Information. Further, the Receiving Party shall provide the Disclosing Party with a written statement certifying that all of such Confidential Information has been returned or destroyed, as applicable.
6. **Warranty:** Each Party represents and warrants that it has the right to make the disclosures

under this Agreement.

1. **No Warranty:** NOTWITHSTANDING SECTION 9, NEITHER PARTY MAKES ANY REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF ITS CONFIDENTIAL INFORMATION. CONFIDENTIAL INFORMATION IS PROVIDED ON AN “AS IS” BASIS. EACH PARTY DISCLAIMS ANY WARRANTY, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO ITS CONFIDENTIAL INFORMATION, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.
2. **No Other Right or Obligation:** Nothing in this Agreement will be construed to (a) grant to either Party any right in the Confidential Information of the other Party, except for the limited right to use such Confidential Information for the Purpose; (b) oblige either Party to enter into any agreement or transaction; or (c) preclude either Party from independently developing or acquiring, without reference to, or use of, Disclosing Party’s Confidential Information, from a third party products, services or technology competing with the other Party’s products, services or technology. All Confidential Information shall remain the property of the Disclosing Party. Neither Party shall use any trade name, service mark, or trademark of the other party or refer to the other Party in any promotional activity or material without first obtaining the prior written consent of such other Party.
3. **Export Control:** Each Party to this Agreement shall comply with all laws, rules and regulations applicable to the export of the Confidential Information, and shall not export or re- export such Confidential Information without any applicable approval or license required under such laws, rules and regulations. The Receiving Party covenants that no Confidential Information received from the Disclosing Party will be used, directly or indirectly, for the Military Purposes (defined below). For the purpose of this Agreement, “Military Purposes” means the design, development, manufacture or use of any weapons, including, without limitation, nuclear weapons, chemical weapons, biological weapons and missiles.
4. **Equitable Relief:** The parties acknowledge that the Confidential Information is unique and valuable and that disclosure in breach of this Agreement may result in irreparable injury to the Disclosing Party for which monetary damages alone would not be an adequate remedy. Therefore, the parties agree that in the event of a breach of confidentiality, the Disclosing Party shall be entitled to seek injunctive or other equitable relief as a remedy for any such breach or anticipated breach. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.
5. **Non-Assignment:** Neither this Agreement nor any rights or obligations under this Agreement shall be assignable or otherwise transferable by either Party to this Agreement to any third party, including any Affiliate, without obtaining the prior written consent of the other Party to this

Agreement. Any attempted assignment or transfer made in contravention of this Section shall be null and void.

1. **Community of interest**: To facilitate their due diligence pursuant to this Agreement, the Parties may share certain information that is protected by the attorney-client privilege, the attorney work product doctrine, and/or other applicable privileges and immunities, including (but not limited to) information regarding their respective analyses of the Identified Patents and the potential exploitation thereof (collectively, the “Common Interest Materials”). The Parties acknowledge and agree that they have a joint and common legal and commercial interest in sharing the Common Interest Materials in connection with the Purpose. In furtherance thereof, the Parties agree that such sharing and exchange of Common Interest Materials will be subject to the attorney-client privilege, the work product privilege, and the so-called “Common Interest Doctrine” to the maximum extent possible. This Agreement memorializes the understanding of the Parties that their exchange of the Common Interest Materials is not intended to, and is not understood to, void, waive or compromise in any respect any applicable privilege, protection, immunity, or other legal protection applicable to such information prior to this Agreement and prior to the mutual exchange of information contemplated hereby.
2. **Assertion of Common Interest Doctrine:** If any other person or entity requests or demands, by subpoena or otherwise, any document or other communication received by a Party or its counsel pursuant to this Agreement, the requested Party will (a) promptly notify the other Parties, and (b) assert all applicable privileges, including (without limitation) the Common Interest Doctrine, unless attorney-client privilege and all other privileges have previously been waived in writing by the other Parties. The requested Party further agrees to take all steps reasonable and necessary (including, without limitation, making all appropriate objections and motions) to permit the assertion of all applicable rights and privileges with respect to said Common Interest Materials, and shall cooperate fully in any judicial proceeding relating to the disclosure of the Common Interest Materials.
3. **No Relationship:** Each Party understands and agrees that no contract or agreement providing for a business relationship shall be deemed to exist between the Parties unless and until a definitive agreement provided for such relationship has been executed and delivered by each Party.
4. **Governing Law:** This Agreement shall be governed by and construed under and in accordance with the laws of the State of California, without regard to its choice of law provisions.
5. **Entire Agreement:** This Agreement represents the entire agreement between the parties to this Agreement and supersedes and cancels all prior communications and agreements concerning its subject matter. No modification, alteration, or waiver of any of the provisions of this Agreement shall be binding on the parties to this Agreement unless signed in writing by duly authorized

representatives of each of the parties. This Agreement shall be binding on the parties and their successors and assigns. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original.

[The remainder of this page has been intentionally left blank. Signature page follows]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed in duplicate by its duly authorized representative.

On behalf of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company name

By:

Name:

Title:

Date:

On behalf of Global Intellectual Strategies

By:

Name:

Title:

Date: