

# Mutual Non-Disclosure Agreement

This Mutual Non-Disclosure Agreement (the “**Agreement**”), effective as of [DATE] (the “**Effective Date**”), is entered into by and between [YOUR COMPANY], a [STATE AND TYPE OF ENTITY] with principal place of business at [ADDRESS], and [ENTITY NAME OF THE OTHER PARTY], a [STATE/COUNTRY OF ORGANIZATION] [ENTITY TYPE] with principal place of business at [ADDRESS] (collectively as the “**Parties**,” and each a “**Party**”).

The Parties wish to explore a business opportunity of mutual interest and benefit, specifically concerning [BRIEF DESCRIPTION OF PURPOSE] (the “**Permitted Use**”) and, in connection with the Permitted Use, may disclose to each other certain confidential technical and business information that the Disclosing Party desires the Receiving Party to treat as confidential.

The Parties therefore agree as follows:

Confidential Information. “**Confidential Information**” means any technical or non-technical information disclosed by a Party (the “**Disclosing Party**”) to the other Party (the “**Receiving Party**”) or its affiliates, or to any of such Receiving Party's or its affiliates' employees, officers, directors, partners, shareholders, agents, attorneys, accountants, or advisors (collectively, “**Representatives**”), which may include without limitation: Proprietary and confidential information, ideas, media, drawings, works of authorship, inventions, know-how, processes, algorithms, software programs and software source documents related to the current, future, and proposed products and services of each of the Parties, such as information concerning research, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, and marketing plans.

1. Exclusions from Confidential Information. Except as required by applicable federal, state, or local law or regulation, Confidential Information shall not include information that:
  - a. was or becomes generally known to the public other than as a result of a disclosure by the Receiving Party in violation of this agreement;
  - b. was known, without restriction as to use or disclosure, by the Receiving Party prior to receiving such information from the Disclosing Party;
  - c. is rightfully acquired by the Receiving Party from a third party who has the right to disclose it and who provides it 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.
2. Obligation to Maintain Confidentiality. The Receiving Party shall keep the Confidential Information confidential. Except as otherwise required by law, the Receiving Party shall not:

- a. disclose any Confidential Information to any person or entity other than a Receiving Party's Representatives, who needs to know the Confidential Information for the Permitted Use, provided such Representative is bound to confidentiality obligations no less protective than this agreement and the Receiving Party remains responsible for compliance by any such Representative with the terms of this Agreement;
  - b. disclose any Confidential Information to a third party without the Disclosing Party's prior written authorization; or
  - c. use the Confidential Information other than the Permitted Use.
3. Required Disclosure. If the Receiving Party is required to disclose Confidential Information under applicable law or by a valid order of a court or governmental body of competent jurisdiction ("**Legal Order**"), the Receiving Party, unless prohibited by force of law, shall provide the Disclosing Party with:
  - a. prompt written notice of such requirement so that the Disclosing Party may seek a protective order or other remedy; and
  - b. reasonable assistance in obtaining a protective order preventing or limiting the disclosure and/or requiring that Confidential Information so disclosed be used only for the purposes for which the applicable law or valid order requires.
4. Loss or Unauthorized Disclosure. The Receiving Party shall immediately notify the Disclosing Party upon discovery of any loss or unauthorized disclosure of the Confidential Information of the Disclosing Party.
5. Return or Destruction of Confidential Information. Immediately after the completion of the Parties' Permitted Use, or at any time upon request of the Disclosing Party, the Receiving Party and its Representatives shall promptly return to the Disclosing Party all copies, whether in written, electronic, or other form or media, of the Disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the Disclosing Party that such Confidential Information has been destroyed. Notwithstanding any other provision of this Agreement, Receiving Party shall have the right, at any time during or after the term of this Agreement, to disclose, publish, disseminate, and use general ideas, concepts, know-how, and techniques contained in or derived from Disclosing Party's Confidential Information that are acquired and retained solely in, and Receiving Party first reduces to tangible form solely from, the unaided memories of Receiving Party's representatives who have had access to the Disclosing Party's Confidential Information under this Agreement ("Residual Information"), subject to Receiving Party's obligation of nondisclosure under this Agreement. Nothing in this Section grants to the Receiving Party any right or license to or under Disclosing Party's trade secrets or other intellectual property or valid rights in any patents, trade secrets, copyrights, or trademarks.
6. Term and Termination. The term of this Agreement shall commence on the Effective Date and shall expire two (2) years from the Effective Date, provided that either Party may terminate this Agreement at any time by providing written notice to the other Party. Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive indefinitely or until all Confidential Information disclosed to the Receiving Party becomes publicly

known and made generally available through no action or inaction of the Receiving Party or its Representatives.

7. No Representations or Warranties. Neither the Disclosing Party nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to the Receiving Party hereunder. Neither the Disclosing Party nor any of its Representatives shall be liable to the Receiving Party or any of its Representatives relating to or resulting from the Receiving Party's use of any of the Confidential Information or any errors therein or omissions therefrom.
8. No Transfer of Rights, Title, or Interest. Each Party hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to the Receiving Party or any of its Representatives.
9. No Other Obligation. The Parties agree that neither Party shall be under any legal obligation of any kind whatsoever, or otherwise be obligated to enter into any business or contractual relationship, investment, or transaction, by virtue of this Agreement, except for the matters specifically agreed to herein. Either Party may at any time, at its sole discretion with or without cause, terminate discussions and negotiations with the other Party, in connection with the Permitted Use or otherwise.
10. Remedies. Each Party acknowledges and agrees that money damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by such Party or its Representatives. Therefore, in addition to all other remedies available at law (which neither Party waives by the exercise of any rights hereunder), the non-breaching Party shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Parties hereby waive any requirement for the securing or posting of any bond or the showing of actual monetary damages in connection with such claim.
11. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed by and construed in accordance with the laws of California without reference to conflict of laws principles. Any dispute under this Agreement may only be brought in the state courts and Federal courts located in San Francisco, California, and the Parties hereby consent to the exclusive personal jurisdiction and venue of these courts.
12. Entire Agreement. This Agreement constitutes the sole and entire agreement of the Parties regarding the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Party hereto.
13. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

14. Assignment. Neither Party may assign any of its rights hereunder without the prior written consent of the other Party. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning Party of any of its obligations hereunder. This Agreement is for the sole benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer on any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

15. Waivers. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set out in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach, or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

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

**[COMPANY]**

**[ENTITY NAME OF OTHER PARTY]**

Signature:

Signature:

Name:

Name:

Position:

Position:

Date:

Date: