

MUTUAL NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT is made and entered into as of this ____ day of 20__ (“Effective Date”), between _____ with a principal place of business at _____ and _____ with a principal place of business at _____.

1. Purpose. The parties wish to explore a business opportunity of mutual interest and in connection with this opportunity, each party may disclose to the other certain confidential technical and business information which the disclosing party desires the receiving party to treat as confidential.
2. Confidential Information.

a. "Confidential Information" means any nonpublic information disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects including without limitation, software, documentation, formulas, know-how, methods, processes, business models, designs, prototypes, new products, samples, developmental work, marketing data, marketing plans, customer names, pricing strategies and terms, information received from third parties that the parties are obligated to treat as confidential, and other information relating to the parties not known to the general public. Confidential Information disclosed to one of the parties by the other party's subsidiaries, affiliates, related companies, and/or agents is covered by this Agreement.

b. Confidential Information shall not, however, include any information which (i) was publicly known and made generally available in the public domain prior to the time of disclosure by the disclosing party; (ii) becomes publicly known and made generally available after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party; (iii) is already in the possession of the receiving party at the time of disclosure by the disclosing party as shown by the receiving party's files and records immediately prior to the time of disclosure; (iv) is obtained by the receiving party from a third party without a breach of such third party's obligations of confidentiality; (v) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information, as shown by documents and other competent evidence in the receiving party's possession.

3. Judicial or Governmental Order. A party may disclose Confidential Information in accordance with judicial or other governmental order provided that such party shall give the other party reasonable notice prior to such disclosure and shall comply with any applicable protective order.

4. Non-use and Non-disclosure.

a. Each party agrees not to use any Confidential Information of the other party for any purpose except to evaluate and engage in discussions concerning a potential business relationship between the parties. Each party agrees not to disclose any Confidential Information of the other party to third parties or to such party's employees or consultants, except to those employees or consultants of the receiving party who are required to have the information in order to evaluate or engage in discussions concerning the contemplated business relationship.

b. Neither party shall reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody the other party's Confidential Information and which are provided to the party hereunder.

c. The parties shall not use any Confidential Information in any manner that would compete with the other party, or create or promote competition with the other party.

d. The parties shall not use, or permit the use of, any Confidential Information in the manner or for a purpose detrimental to the other party.

e. The parties shall not disclose any Confidential Information to third parties for five (5) years following the date of its disclosure by one party to the other, except as provided above.

5. Maintenance of Confidentiality. Each party agrees that it shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the other party. Without limiting the foregoing, each party shall protect the Confidential Information with the same care that it uses to protect its own confidential information, but in no event less than reasonable care; and shall ensure that its employees who have access to Confidential Information of the other party have signed a non-disclosure agreement in content similar to the provisions hereof, prior to any disclosure of Confidential Information to such employees. Neither party shall make any copies of the Confidential Information of the other party unless the same are previously approved in writing by the other party. Each party shall reproduce the other party's proprietary rights notices on any such approved copies, in the same manner in which such notices were set forth in or on the original.

6. No Obligation. Nothing herein shall obligate either party to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the business opportunity.

7. No Warranty. All confidential information is provided "as is". Each party makes no warranties, express, implied, or otherwise, including without limitation, any implied warranty of merchantability or fitness for a particular purpose, regarding its accuracy, completeness, or performance.

8. Limitations of Liability. The Parties will not be liable for any direct, incidental, or consequential damages arising from any cause under or related to this agreement.

9. Return of Materials. All documents and other tangible objects containing or representing Confidential Information which have been disclosed by either party to the other party, and all copies thereof which are in the possession of the other party, shall be and remain the property of the disclosing party and shall be promptly returned to the disclosing party upon the disclosing party's written request.

10. Ownership. All Confidential Information are and shall remain the property of the disclosing party. By disclosing information to the other party, a party does not grant any express rights, or imply any rights, to the other party, to or under the disclosing party's patents, copyrights, trademarks, trade secrets, or other proprietary rights.

11. Remedies. Each party agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the other party, entitling the other party to seek equitable remedies, including injunctive relief, in addition to all legal remedies.

12. Compliance with Laws. The parties agree to comply with all applicable international and United States laws that apply to any Confidential Information, or any product (or part thereof), process, or service that is the direct product of the Confidential Information, including the U.S. Export Administration Regulations, as well as end user, end use and destination restrictions issued by the United States and other governments.

13. Miscellaneous. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns. This Agreement shall be governed by the laws of the State of Maryland, without reference to conflict of laws principles. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect. This document contains the entire agreement between the parties with respect to the subject matter hereof, and neither party shall have any obligation, express or implied by law, with respect to trade secret or proprietary information of the other party except as set forth herein. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto. All obligations created by this Agreement shall survive any change or termination of the parties' business relationship.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement. This Agreement may be executed in counterparts and by facsimile, each of which when so executed, will be deemed an original, and all of which together shall constitute one and the same instrument.

Signed: _____
Name: _____
Phone: _____

Signed: _____
Name: _____
Phone: _____