

# MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (this "Agreement") is entered into and made effective as of (the "Effective Date"), by and between **[FIRST PARTY NAME]**, a Corporation organized under the laws of the State of [STATE], with an address of [FIRST PARTY ADDRESS] ("Party A"), and **[SECOND PARTY NAME]**, a Individual organized under the laws of the State of [STATE], with an address of [SECOND PARTY ADDRESS] ("Party B"). Party A and Party B are each a "Party" and together the "Parties."

## Recitals

WHEREAS, the Parties wish to explore and engage in discussions concerning a potential business relationship, and in connection therewith each Party anticipates disclosing to the other certain confidential and proprietary information; and

WHEREAS, the Parties desire to protect the confidentiality of such information on a reciprocal basis pursuant to the terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

## 1. Purpose

The Parties intend to engage in discussions and related activities for the following purpose: **[BUSINESS PURPOSE]** (the "Purpose"). In connection with the Purpose, each Party expects to disclose to the other certain confidential and proprietary information which constitutes a valuable and competitive asset. Each Party desires to receive such information subject to the protections set forth in this Agreement.

## 2. Mutual Disclosure

This Agreement is **mutual** in nature: each Party anticipates disclosing Confidential Information to the other in connection with the Purpose, and each Party shall serve as both a "Disclosing Party" and a "Receiving Party" with respect to its own disclosures and receipts. All obligations of confidentiality, non-use, safeguarding, return or destruction, and remedies set forth in this Agreement apply reciprocally and with equal force to each Party. The obligations of each Party as a Receiving Party are independent of the obligations of the other Party; a Party's breach does not excuse the other Party's obligations with respect to Confidential Information it has received.

### 3. Definition of Confidential Information

"Confidential Information" means any and all non-public information disclosed by one Party (as "Disclosing Party") to the other Party (as "Receiving Party") in connection with the Purpose, whether disclosed in writing, orally, electronically, visually, or by observation, and whether or not specifically marked "Confidential."

Confidential Information includes, without limitation:

- Business plans, strategies, roadmaps, forecasts, and operational information;
- Financial information, projections, budgets, pricing, margins, and cost data;
- Trade secrets, proprietary processes, know-how, formulas, and methodologies;
- Customer and prospect lists, contact information, account data, usage data, and customer communications;
- Any other information that a reasonable person would understand to be confidential given its nature or the circumstances of disclosure; and
- All analyses, compilations, studies, notes, and other materials prepared by the receiving Party that contain, reflect, or are derived from the foregoing.

### 4. Exclusions

Confidential Information does **not** include information that the receiving Party can demonstrate by contemporaneous written records: (1) was generally available to the public at the time of disclosure or became generally available thereafter through no fault of the receiving Party; (2) was rightfully known by the receiving Party without any confidentiality obligation prior to disclosure; (3) was lawfully received from a third party that had no confidentiality obligation; (4) was independently developed by the receiving Party without reference to or use of the Confidential Information; or (5) is required to be disclosed pursuant to a valid order of a court or governmental authority, provided the receiving Party promptly notifies the disclosing Party, reasonably cooperates to seek a protective order, and discloses only the portion legally required.

### 5. Mutual Obligations

Each Party, as a Receiving Party, agrees that it shall: (a) hold all Confidential Information in strict confidence and protect it with at least the same degree of care it uses for its own confidential information of similar importance, and in any event no less than a reasonable degree of care; (b) use the Confidential Information solely for the Purpose; (c) not disclose Confidential Information to any third party without the prior written consent of the Disclosing Party; (d) limit internal disclosure to employees, directors, officers, agents, and professional advisors with a legitimate need to know and who are bound by confidentiality obligations at least as protective as those herein; (e) promptly notify the Disclosing Party of any

unauthorized use, disclosure, or loss; and (f) not copy, reproduce, reverse engineer, decompile, or disassemble any Confidential Information except as reasonably necessary for the Purpose. Each Party shall be responsible for any breach by its personnel or advisors.

## **6. No License; No Obligation; No Warranty**

**No license.** Nothing in this Agreement grants either Party any right, title, interest, or license — by implication, estoppel, or otherwise — in the other Party's Confidential Information or intellectual property, except the limited right to use Confidential Information for the Purpose.

**No obligation.** Neither Party is obligated to enter into any further agreement, purchase, or business relationship.

**No warranty.** All Confidential Information is provided "AS IS," without warranty of any kind, express or implied.

## **7. Term and Survival**

This Agreement shall commence on the Effective Date and continue for a period of 3rd (3) years thereafter (the "Term"). Confidentiality and non-use obligations shall survive expiration with respect to all Confidential Information disclosed before expiration, provided that, with respect to information that constitutes a trade secret under applicable law, such obligations shall continue for as long as the information retains trade-secret status, which may be indefinitely.

## **8. Return or Destruction**

Upon the earlier of (a) completion or abandonment of the Purpose, (b) expiration or termination, or (c) the Disclosing Party's written request, the receiving Party shall promptly return or destroy all Confidential Information, including all copies and derivative materials, in any medium (including cloud, email, and backup systems), and certify such return or destruction in writing within five (5) business days. Each Party may retain one archival copy as required by law or bona fide records-retention policy, subject to continuing obligations hereunder.

## **9. Remedies**

**Injunctive relief.** Each Party acknowledges that any breach or threatened breach may cause irreparable harm for which monetary damages would be inadequate. In addition to any other remedies, the non-breaching Party shall be entitled to seek immediate injunctive relief, specific performance, and other equitable remedies without the necessity of posting bond or proving actual damages.

**Cumulative remedies.** All remedies are cumulative and not exclusive.

**Attorney's fees.** In any action arising out of this Agreement, the prevailing Party shall be entitled to recover its reasonable attorney's fees and costs, to the extent permitted by law.

## 10. Required Disclosures and Protected Activity

**General whistleblower protection.** Nothing herein prohibits filing a charge with, or participating in an investigation or proceeding conducted by, the EEOC, NLRB, SEC, OSHA, or any other government agency; reporting any suspected violation of law; or exercising any right that cannot be waived by private agreement.

## 11. General Provisions

**Governing Law.** This Agreement is governed by the laws of the State of [STATE], without regard to conflict-of-laws principles.

**Venue.** Any action arising out of this Agreement shall be brought exclusively in the state or federal courts located in [VENUE CITY FOR COURT OR ARBITRATION], [STATE], and the Parties irrevocably submit to personal jurisdiction there.

**Assignment.** Neither Party may assign this Agreement without the prior written consent of the other, except as otherwise expressly permitted herein.

**Relationship of the Parties.** This Agreement does not create any employment, agency, partnership, or joint venture. Neither Party has authority to bind the other.

**Waiver; Severability.** No failure or delay in exercising any right is a waiver. If any provision is held invalid, the remainder continues in effect, and the invalid provision shall be modified to the minimum extent necessary.

**Entire Agreement.** This Agreement is the entire agreement between the Parties on its subject matter and supersedes all prior agreements. Amendments require a writing signed by both Parties.

**Counterparts; Electronic Signatures.** This Agreement may be executed in counterparts. Electronic signatures are valid under the federal E-SIGN Act (15 U.S.C. §7001) and applicable state law.

**Notices.** Notices shall be in writing and delivered to the addresses in the preamble by hand, overnight courier, certified mail, or email with acknowledgment.

## Signatures

The Parties have executed this Agreement as of the Effective Date.

## Party A

