

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (the “**Agreement**”) is made and entered into, as of [] (“**Effective Date**”), by and between [] (“**Company**”), having a principal place of business at [] and [], having a principal place of business at [] (“**Other Party**”).

1. Definition of Confidential Information. “**Confidential Information**” means (a) any financial, technical and non-technical information related to a party’s business and current, future and proposed products and services of each of the parties, including for example and without limitation, each party’s respective information concerning research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information and marketing plans and (b) any information a party has received from a third party that may be disclosed and which that party has an obligation to the third party to treat as confidential or proprietary, except that information disclosed by Discloser (defined below) will be considered Confidential Information of Discloser by Recipient (defined below), only if the information (a) is provided as information fixed in tangible form or in writing (e.g., paper, disk or electronic mail), is conspicuously designated as “Confidential” (or with some other similar legend) or (b) if provided orally or visually, is identified as confidential at the time of disclosure and confirmed in writing within thirty (30) days of disclosure. For purposes of this Agreement, “**Discloser**” means the party disclosing its Confidential Information to the other party, who shall be referred to in this Agreement as “**Recipient**”.

2. Nondisclosure and Nonuse Obligations. Recipient will not use any Confidential Information except to the extent necessary for the purpose described below the signatures to this Agreement (the “**Purpose**”) and Recipient will not disseminate or in any way disclose any Confidential Information to any third party, except as such disclosure is expressly permitted in this Agreement. Furthermore, neither party may disclose the existence of any negotiations, discussions or consultations in progress between the parties to any third party or make any public announcement of such negotiations, discussions or consultations without the prior written approval of the other party. Recipient shall treat all of Discloser’s Confidential Information with the same degree of care as Recipient accords to Recipient’s own Confidential Information, but not less than reasonable care. Recipient shall disclose Discloser’s Confidential Information only to those of Recipient’s employees, consultants and contractors who need to know the information to assist Recipient with respect to the Purpose. Recipient certifies that each of its employees, consultants and contractors will have agreed, either as a condition of employment or in order to obtain Discloser’s Confidential Information, to be bound by terms and conditions substantially similar to those terms and conditions applicable to Recipient under this Agreement.

3. Exclusions from Nondisclosure and Nonuse Obligations. Recipient’s obligations under Section 2 (Nondisclosure and Nonuse Obligations) do not apply to any information that Recipient can demonstrate: (a) is publicly available at or subsequent to the time the Confidential Information was communicated to Recipient by Discloser

through no fault of Recipient; (b) is rightfully in Recipient's possession free of any obligation of confidence at or subsequent to the time the Confidential Information was communicated to Recipient by Discloser; (c) is developed by employees or agents of Recipient independently of and without use of or reference to any of Discloser's Confidential Information; or (d) is communicated by Discloser to an unaffiliated third party free of any obligation of confidence. A disclosure by Recipient of any of Discloser's Confidential Information (1) in response to a valid order by a court or other governmental body; (2) as otherwise required by law; or (3) necessary to establish the rights of either party under this Agreement shall not be considered to be a breach of this Agreement by Recipient; provided, however, that Recipient provides prompt prior written notice thereof to Discloser to enable Discloser to seek a protective order or otherwise prevent the disclosure. Notwithstanding the foregoing, to the extent that Recipient receives any personal information or personal data, that information and data shall remain subject to the non-disclosure and non-use obligations of this Agreement even if that information would otherwise fall under one of the foregoing exceptions.

4. Ownership and Return of Confidential Information and Other Materials. All of Discloser's Confidential Information and Evaluation Material are the property of Discloser and no license or other rights to Discloser's Confidential Information or Evaluation Material is granted or implied hereby. "**Evaluation Material**" means all reports, studies, analyses, interpretations, compilations, memoranda, notes and any other written or electronic materials prepared by Recipient or any of its Representatives which contain, reflect or are derived or based, in whole or in part, upon any Confidential Information

of Discloser. "**Representatives**" means and includes a party's directors, officers and other employees, as well as their financial advisors, legal counsel, accountants, consultants and other advisors, agents and representatives. All materials (including, without limitation, documents, drawings, papers, storage media, tapes, models, apparatus, sketches, designs and lists) furnished by Discloser to Recipient (whether or not they contain or disclose Discloser's Confidential Information) are the property of Discloser. Within five (5) days after any request by Discloser, Recipient shall, to the extent reasonably possible, destroy (including delete) or deliver to Discloser, at Discloser's option, (a) all Discloser-furnished materials and (b) all materials in Recipient's possession or control (even if not Discloser-furnished) that contain or disclose any of Discloser's Confidential Information or Evaluation Material, [except that Recipient may keep a copy of Discloser's Confidential Information if required for its records to establish its compliance with this Agreement]¹ OR [provided, however, that notwithstanding the foregoing, (i) Recipient and its Representatives may retain a single copy of any Confidential Information and Evaluation material, provided that with respect to Recipient, such Confidential Information and Evaluation Material is retained solely in segregated legal department files and not used for any purpose other than potential or actual litigation or compliance with applicable laws or regulations, (ii) neither Recipient nor any of its Representatives will be required to destroy any electronic copy of any Confidential Information or Evaluation Material which is retained pursuant to such person's standard electronic backup and archival procedures if (x) personnel whose functions are not primarily information technology in nature do not have access to

¹ NTD: option 1 provides basic provisions

such retained copies and (y) personnel whose functions are primarily information technology in nature have access to such copies only as reasonably necessary for the performance of their information technology duties (e.g., for purposes of system recovers) and (iii) if a legal proceeding has been instituted to seek disclosure of any Confidential Information or Evaluation Material, or that may otherwise implicate any such Confidential Information and Evaluation Material, such Confidential Information and Evaluation Material may be retained and need not be destroyed unless and until such legal proceeding is settled or a final judgment with respect thereto is rendered. Regardless of the delivery or destruction of any Confidential Information and Evaluation Material required by this Section 4, any and all duties and obligations existing under this letter agreement with respect thereto will remain in full force and effect.]² Upon request, Recipient will provide Discloser a written certification of Recipient's compliance with Recipient's obligations under this Section.

5. Independent Development. Recipient may currently or in the future be developing information internally, or receiving information from other parties that may be similar to Discloser's Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or inference that Recipient will not develop or have developed products or services, that, without violation of this Agreement, might compete with the products or systems contemplated by Discloser's Confidential Information.

6. Disclosure of Third Party Information. Neither party shall communicate any information to the other in

violation of the proprietary rights of any third party.

7. No Warranty. All Confidential Information is provided by Discloser "AS IS" and without any warranty, express, implied or otherwise, regarding the Confidential Information's completeness, accuracy or performance.

8. No Export. Recipient will obtain any licenses or approvals the U.S. government or any agency thereof requires prior to exporting, directly or indirectly, any technical data acquired from Discloser pursuant to this Agreement or any product utilizing that data.

9. Term. This Agreement shall govern all communications between the parties that are made from the Effective Date to the date on which either party receives from the other written notice that subsequent communications shall not be so governed; provided, however, that Recipient's obligations under Section 2 (Nondisclosure and Nonuse Obligations) will continue in perpetuity with respect to Discloser's Confidential Information that Recipient has previously received until the obligations no longer apply pursuant to Section 3 (Exclusions from Nondisclosure and Nonuse Obligations).

10. No Assignment. Neither party will assign or transfer any rights or delegate any performance under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any assignment of rights or delegation of performance in violation of this Section is void.

11. Injunctive Relief. A breach by Recipient of this Agreement will cause irreparable and continuing damage to Discloser for which money damages are

² NTD: option 2 provides detailed provisions

insufficient, and Discloser shall be entitled to seek injunctive relief and/or a decree for specific performance, and other relief as may be proper (including money damages if appropriate).

12. Defend Trade Secrets Act. Pursuant to the Defend Trade Secrets Act of 2016, if Other Party is an individual, Other Party acknowledges that he/she shall not have criminal or civil liability under any Federal or State trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. In addition, if Other Party files a lawsuit for retaliation by the Company for reporting a suspected violation of law, Other Party may disclose the trade secret to Other Party's attorney and may use the trade secret information in the court proceeding, if Other Party (X) files any document containing the trade secret under seal and (Y) does not disclose the trade secret, except pursuant to court order.

13. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when actually delivered; (b) by overnight courier, upon written verification of receipt; (c) by facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or to such other address as either party may provide in writing.

14. Governing Law; Forum. The laws of the United States of America and the state of California govern all matters arising out of or relating to this Agreement without giving effect to any conflict of law principles. Each of the parties irrevocably consents to the exclusive personal jurisdiction of the federal and state courts located in the county where the Company's headquarters are located in the state of California, as applicable, for any matter arising out of or relating to this Agreement, except that in actions seeking to enforce any order or any judgment of the federal or state courts located in the county where the Company's headquarters are located in the state of California, such personal jurisdiction will be non-exclusive. Additionally, notwithstanding anything in the foregoing to the contrary, a claim for equitable relief arising out of or related to this Agreement may be brought in any court of competent jurisdiction. If a proceeding is commenced to resolve any dispute that arises between the parties with respect to the matters covered by this Agreement, the prevailing party in that proceeding is entitled to receive its reasonable attorneys' fees, expert witness fees and out-of-pocket costs, in addition to any other relief to which that prevailing party may be entitled.

15. Severability. If a court of law holds any provision of this Agreement to be illegal, invalid or unenforceable, (a) that provision shall be deemed amended to achieve an economic effect that is as near as possible to that provided by the original provision and (b) the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

16. Waiver; Modification. If a party waives any term, provision or a party's breach of this Agreement, such waiver shall not be effective unless it is in writing and signed by the party against whom such

waiver is asserted. No waiver by a party of a breach of this Agreement by the other party shall constitute a waiver of any other or subsequent breach by such other party. This Agreement may be modified only if authorized representatives of both parties consent in writing.

exclusive agreement between the parties with respect to the treatment of Confidential Information disclosed hereunder. It supersedes all agreements, whether prior or contemporaneous, written or oral, concerning the subject matter of this Agreement.

17. Entire Agreement. This Agreement constitutes the final and

IN WITNESS WHEREOF, the parties are signing this Agreement as of the Effective Date.

“Company”
[_____]

“Other Party”
[_____]

By: _____
[Name]
[Title]

By: _____
[Name]
[Title]

Purpose: [_____]