#### **Proprietary Information** **Non-Disclosure and Confidentiality Agreement**

This Proprietary Information Non-Disclosure and Confidentiality Agreement (the “**Agreement**”) is entered into as of the ­­­­­\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 20\_\_\_ (the “**Effective Date**”) by and between \_\_\_\_\_\_\_\_\_\_\_, [company name] a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [state of company formation] \_\_\_\_\_\_\_\_\_\_\_\_\_ [type of company: corporation/limited liability company/partnership/limited partnership/limited liability partnership] (the “**Company**”), and \_\_\_\_\_\_\_\_\_\_\_, [inventor’s name] an Individual (“**Inventor**”). The above parties may be referred to singularly as a “**Party**” or collectively as the “**Parties**”.

**The** Company wishes to engage in discussions with Inventor to evaluate Inventor’s ideas, discoveries, inventions, innovations, trade secrets and proprietary information contemplated or developed by Inventor for possible use, license or acquisition by the Company, including without limitation, designs, concepts, research, methodologies, development, technology, formulas, drawings, engineering, software source or object code, firmware, hardware configuration, media, tools, processes, know-how, techniques, specifications, prototypes, samples, circuits, mask works, algorithms, equations, marketing and advertising information, licenses, experiments, clinical results, financial or analytical data, budgets, construction methods, tooling, assembly knowledge or other business information, documentation or other tangible or intangible information in any media, now known or later developed, whether or not protected, and all versions, modifications, enhancements and derivative works thereof (the “**Inventions**”). In connection with discussions with Inventor and evaluation of the Inventions, the Company may disclose proprietary information unique and valuable to its ongoing business operations to Inventor. In consideration of Company’s willingness to evaluate the Inventions and the covenants and mutual promises contained herein, the Parties agree as follows:

1. **Confidential Information.** The term “**Confidential Information**” as used in this Agreement shall mean any data, information, or knowledge disclosed by the Company to Inventor and not generally known to the public, including but not limited to: [customize as needed]

1. the Inventions or any discussions or disclosures related to the composition, function or workings thereof;
2. the Company’s business or operational plans or activities, existing or contemplated markets, advertising initiatives, methods of operation, products or services;
3. the Company’s suppliers, logistics data; customer or supplier lists, cost of goods or services, profits and losses, budgeting, past or future sales or financial information;
4. the Company’s schematics, designs, software source or object code, compressed or uncompressed binaries, inventions, patents or patent applications or illustrations;
5. the Company’s existing or contemplated designs, models or platforms, formulas, research, notes or analytical data;
6. the Company’s management, board of directors, affiliates, suppliers, customers, employees or third-party contractors;
7. the Company’s history, entity structure, accounts or goodwill;
8. the Company’s copyrights, trademarks, trade secrets, patents, trade names, moral rights and any other tangible or intangible rights, whether registered or unregistered;
9. the Company’s technical systems, processes, methods, algorithms, computational schemas, know-how or trade secrets;
10. the Company’s employees, salaries, job related functions, duties or responsibilities;
11. the Company’s written, auditory or electronic communications;
12. information that if disclosed, whether true or untrue, could harm the goodwill or reputation of the Company or the Company’s management, board of directors, affiliates, suppliers, customers, employees, third-party contractors, methods of operation, products or services; or
13. any information of whatever kind and nature that Company desires to maintain confidential.

2. **Exclusions to Confidential Information.** The obligation of confidentiality with respect to Confidential Information will not apply to any information:

1. If the information is or becomes publicly known and available other than as a result of prior unauthorized disclosure by Inventor;
2. If the information is or was received by Inventor from a third-party source which, to the best knowledge of Inventor, is or was not under a confidentiality obligation to the Company with regard to such information;
3. If the information is disclosed by Inventor with the Company’s prior written permission and approval;
4. If the information is independently developed by Inventor prior to disclosure by the Company and without the use and benefit of any of the Company’s Confidential Information; or
5. If Inventor is legally compelled by applicable law, by any court, governmental agency, or regulatory authority or subpoena or discovery request in pending litigation, but only if, to the extent lawful, Inventor gives prompt written notice of that fact to the Company prior to disclosure so that the Company may request a protective order or other remedy, Inventor may disclose only such portion of the Confidential Information which it is legally obligated to disclose.

3. **Obligation to Maintain Confidentiality.** With respect to Confidential Information:

1. Inventor agrees to retain the Confidential Information in strict confidence, to protect the security, integrity, and confidentiality of such information and to not permit unauthorized access to or unauthorized use, disclosure, publication, or dissemination of Confidential Information except in conformity with this Agreement.
2. Confidential Information is and will remain the sole and exclusive property of the Company and will not be disclosed or revealed by Inventor under any circumstances.
3. Inventor agrees that, in the event Inventor must download, access, process, transfer or otherwise communicate Confidential Information, Inventor will comply with all laws and regulations applicable to exports and re-exports of data and information and will not, directly or indirectly, export or re-export any Confidential Information in violation of such laws and regulations, including without limitation, those prohibiting export or re-export to restricted countries or without governmental authorization.
4. Inventor agrees that Confidential Information are intended for civil purposes only and will not, directly or indirectly, download, access, process, transfer or otherwise communicate Confidential Information or any part thereof to military, paramilitary or civil entities, “institutes,” “academies” nor any country subject to United States, United Nations or Organizations for Security and Co-Operation in Europe sanctions for any military or violent purpose, such as use in nuclear, biological or chemical weapons.
5. At the end of the Company’s discussions with the Inventor, Inventor will return all Confidential Information to the Company and, if Inventor is not selected for employment with the Company for any reason, Inventor will ensure that all Confidential Information and all documents, memoranda, notes and other writings or electronic records prepared by Inventor that include or reflect any Confidential Information in Inventor’s actual or constructive possession are returned to the Company within \_\_\_\_\_\_\_\_\_ [length of time: e.g. 24 hours, one business day, two business days].
6. [The obligation not to disclose Confidential Information shall survive the termination of this Agreement, and at no time will Inventor be permitted to disclose Confidential Information, except to the extent that such Confidential Information is excluded from the obligations of confidentiality under this Agreement pursuant to Paragraph 2 above.] [The obligation not to disclose Confidential Information shall remain in effect until \_\_\_\_\_\_\_\_\_\_\_\_\_ [length of time: e.g. one year, two years, five years] following the end of discussion with Inventor, except to the extent that such Confidential Information is excluded from the obligations of confidentiality under this Agreement pursuant to Paragraph 2 above.]

4. **Disclaimer**. There is no representation or warranty, express or implied, made by the Company as to the accuracy or completeness of any of its Confidential Information.

5. **Remedies.** Inventor acknowledges that use or disclosure of any confidential and proprietary information in a manner inconsistent with this Agreement will give rise to irreparable injury for which damages would not be an adequate remedy. Accordingly, in addition to any other legal remedies which may be available at law or in equity, the Company shall be entitled to equitable or injunctive relief against the unauthorized use or disclosure of confidential and proprietary information. The Company shall be entitled to pursue any other legally permissible remedy available as a result of such breach, including but not limited to damages, both direct and consequential. In any action brought by the Company under this Section, the Company shall be entitled to recover its attorney’s fees and costs from Inventor.

6. **Notices.** All notices given under this Agreement must be in writing. A notice is effective upon receipt and shall be sent via one of the following methods: delivery in person, overnight courier service, certified or registered mail, postage prepaid, return receipt requested, addressed to the Party to be notified at the below address or by facsimile at the below facsimile number or in the case of either Party, to such other party, address or facsimile number as such Party may designate upon reasonable notice to the other Party.

[Company]

[Name of Contact Person and Title]

[Street Address]

[City, State, Zip Code]

[Telephone Number]

[Facsimile Number]

[Inventor]

[Street Address]

[City, State, Zip Code]

[Telephone Number]

[Facsimile Number]

7. **Termination.** This Agreement will terminate on the earlier of: (a) the written agreement of the Parties to terminate this Agreement or (b) \_\_\_\_\_\_\_\_\_\_ [period of time: e.g. six months, one year, two years] from the date hereof.

8. **Amendment.** This Agreement may be amended or modified only by a written agreement signed by both of the Parties.

9. **Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of \_\_\_\_\_\_\_\_\_\_, without regard to the principles of conflict of laws. Any dispute arising from this Agreement shall be resolved [in the courts of the State of \_\_\_\_\_/through binding arbitration conducted in accordance with the rules of the American Arbitration Association/through mediation].

10. **No Offer or Sale.** Nothing in this Agreement will be deemed a sale or offer for sale of Confidential Information nor obligate the Company to grant Inventor a license or any rights, by statute, common law theory of estoppel or otherwise, to Confidential Information.

11. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, regarding the subject matter hereof.

12. **Miscellaneous.** No joint venture, partnership or agency relationship exists between Inventor, the Company or any third-party as a result of this Agreement. This Agreement will inure to the benefit of and be binding on the respective successors and permitted assigns of the parties. Neither Party may assign its rights or delegate its duties under this Agreement without the other Party’s prior written consent. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement. Neither Party will be charged with any waiver of any provision of this Agreement, unless such waiver is evidenced by a writing signed by the Party and any such waiver will be limited to the terms of such writing.

**IN WITNESS WHEREOF**, the Parties have signed this Agreement and agree to be bound by its terms as of the Effective Date.

##### INVENTOR

##### [Name of Inventor]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

##### COMPANY

##### [Name of Company]

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_