**MUTUAL NON-DISCLOSURE AGREEMENT**

This Mutual Non-Disclosure Agreement (the “**Agreement**”), effective as of [DATE] (the “**Effective Date**”), is made by and between [NAME OF PARTY A], a [ENTITY TYPE] formed under the laws of [PLACE OF ORGANIZATION], with its principal office at [ADDRESS], and [NAME OF PARTY B], a [ENTITY TYPE] established under the laws of [PLACE OF ORGANIZATION], with its principal office at [ADDRESS] (collectively, the “**Parties**,” and individually, a “**Party**”).

**WHEREAS**, in connection with [DESCRIPTION OF PURPOSE] (the “**Purpose**”), the Parties intend to exchange certain confidential, proprietary, or non-public information.

**WHEREAS**, the Parties are committed to maintaining the confidentiality and safeguarding the sensitive nature of such information.

**NOW, THEREFORE**, in consideration of the mutual promises, terms, and conditions set forth herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **CONFIDENTIAL INFORMATION**
	1. Except as provided in Section 2, “**Confidential Information**” refers to all non-public, confidential, or proprietary information disclosed on, before, or after the Effective Date by either Party (the “**Disclosing Party**”) to the other Party (the “**Recipient”**), or to any of the Recipient's [or its Affiliates'] employees, officers, directors, partners, shareholders, agents, legal counsel, accountants, or advisors (collectively, “**Representatives**”), regardless of whether the information is shared orally or in written, electronic, or other formats, and irrespective of whether it is marked or identified as “confidential.” [“**Affiliate**” refers to any person or entity that directly or indirectly Controls, is Controlled by, or is under common Control with a Party. “**Control**” or “**Controlled**” refers to the direct or indirect ability to direct the management or policies of such person or entity, whether through ownership of voting shares, contract, or otherwise.]
	2. Confidential Information includes, but is not limited to:
		1. any details regarding the past, present, and future business activities of the Disclosing Party, its affiliates, customers, suppliers, and other third parties, including but not limited to financial data, customer and supplier information, products, services, internal practices, organizational structure, sales and financial results, records, budgets, forecasts, and business, marketing, development, sales, and commercial strategies;
		2. the Disclosing Party’s unpatented inventions, ideas, methodologies, trade secrets, know-how, unpublished patent applications, and other confidential intellectual property;
		3. all designs, specifications, documentation, software (including source code and object code), images, icons, audiovisual elements, schematics, drawings, protocols, and other visual representations, in whole or in part, of the aforementioned;
		4. any confidential information from third parties that is included or incorporated into information provided by the Disclosing Party to the Recipient or its Representatives; and
		5. [any portion of] notes, analyses, reports, forecasts, studies, data, statistics, summaries, interpretations, and other materials (collectively, “**Notes**”) created by or for the Recipient or its Representatives that contain, reflect, or are based upon, in whole or in part, any of the above.
2. **EXCLUSIONS FROM CONFIDENTIAL INFORMATION**
	1. Unless required by applicable federal, state, or local law or regulation, the term "**Confidential Information**" as defined in this Agreement does not include information that:
		1. at the time of disclosure is, or subsequently becomes, publicly available or generally known, except when such availability is the result of a breach of this Agreement by the Recipient or its Representatives, either directly or indirectly;
		2. is made available to the Recipient on a non-confidential basis by a third party[, with documentary evidence], provided that such third party is not, to the Recipient's knowledge[, following reasonable inquiry], under any legal, fiduciary, or contractual obligation to the Disclosing Party to maintain the confidentiality of the information;
		3. was already in the possession of the Recipient or its Representatives prior to being disclosed by or on behalf of the Disclosing Party under this Agreement[, as evidenced by documentation]; or
		4. was independently developed by the Recipient[, with documentary evidence], without relying on or using any of the Disclosing Party’s Confidential Information.
3. **RECIPIENT OBLIGATIONS**
	1. The Recipient agrees to:
		1. protect and maintain the confidentiality of all Confidential Information using at least the same level of care it uses to safeguard its own confidential information, but in no case less than a commercially reasonable standard of care;
		2. refrain from using the Disclosing Party’s Confidential Information, or allowing it to be accessed or used, for any purpose other than the Purpose [or related transactions between the Parties], or in any way that could harm the Disclosing Party, including, but not limited to, reverse engineering, disassembling, decompiling, or circumventing the Disclosing Party’s proprietary services, products, or confidential intellectual property;
		3. not disclose any Confidential Information to any individual or entity, except to its Representatives who:
			1. need access to the Confidential Information to assist the Recipient or act on its behalf in connection with the Purpose or to exercise the Recipient's rights under this Agreement;
			2. are informed by the Recipient of the confidential nature of the information; and
			3. are bound by confidentiality obligations to the Recipient that are at least as stringent as the terms of this Agreement.
	2. The Recipient is responsible for any breach of this Agreement caused by any of its Representatives.
4. **ADDITIONAL CONFIDENTIALITY OBLIGATIONS**
	1. Except as required by applicable federal, state, or local law or regulation[, or as mutually agreed in writing by the Parties], neither Party shall not, nor shall it permit its Representatives to, disclose to any third party:
		1. that the Confidential Information has been made available to them or their Representatives, or that they have reviewed any portion of the Confidential Information;
		2. that any discussions or negotiations related to the Confidential Information or the Purpose are ongoing or may take place, including any details on the status of such discussions or negotiations; or
		3. any terms, conditions, or arrangements being discussed or negotiated in connection with the Confidential Information or the Purpose.
5. **REQUIRED DISCLOSURE**
	1. If the Recipient or its Representatives are required to disclose any of the Disclosing Party's Confidential Information under applicable federal, state, or local law, regulation, or pursuant to a valid order from a court or governmental authority of competent jurisdiction (a "**Legal Order**") or any other request from a legal, regulatory, governmental, or supervisory body (a "**Legal Request**"), such disclosure shall be governed by this Section 5. Before making any such disclosure, the Recipient shall, to the extent reasonably possible:
		1. to the extent legally permitted, promptly notify the Disclosing Party in writing of the Legal Order or Legal Request, allowing the Disclosing Party, at its own expense, to seek a protective order or other appropriate remedy; and
		2. provide reasonable assistance, at the Disclosing Party’s cost, in contesting the disclosure or obtaining a protective order or other limitations on the disclosure.
	2. If, after providing such notice and assistance, the Recipient is still legally compelled to disclose any Confidential Information, the Recipient or its Representatives or any person directed by the Legal Order or Legal Request shall disclose only the portion of the Confidential Information that, in the opinion of legal counsel, is required by the Legal Order or Legal Request. Upon the Disclosing Party's request and at its own expense, the Recipient shall use commercially reasonable efforts to secure confidential treatment of the disclosed information from the relevant court or agency.
6. **RETURN OR DESTRUCTION OF CONFIDENTIAL INFORMATION**
	1. Upon the Disclosing Party’s written request, at any time during or after the term of this Agreement, the Recipient and its Representatives shall promptly return all copies, in any form or media, of the Disclosing Party’s Confidential Information, or destroy such copies and certify in writing that the Confidential Information has been destroyed. Additionally, the Recipient shall destroy all copies of any Notes created by the Recipient or its Representatives and certify that such Notes have been destroyed. However, the following exceptions apply:
		1. The Recipient and its Representatives are not required to destroy electronic copies of Confidential Information created as part of standard backup and archival processes, provided that:
			1. personnel not primarily involved in information technology do not have access to such retained copies; and
			2. information technology personnel only access such copies as necessary to perform regular IT functions (e.g., system recovery).
	2. The Recipient and its Representatives may retain:
		1. one copy of the Confidential Information as necessary to defend or maintain any litigation related to this Agreement or the Confidential Information, or to comply with established document retention policies; and
		2. copies of the Confidential Information as required by applicable law, regulation, or rule, or as necessary to comply with any request or requirement of a legal, regulatory, governmental, or supervisory authority,

provided that the Recipient and its Representatives remain bound by the terms of this Agreement concerning any retained Confidential Information.

1. **TERM AND TERMINATION**
	1. This Agreement shall commence on the Effective Date and remain in effect for [NUMBER] year[s] from the Effective Date, unless either Party terminates the Agreement earlier by providing written notice to the other Party. Notwithstanding the foregoing:
		1. the Recipient’s obligations under this Agreement shall survive any expiration or termination for a period of [NUMBER] year[s] following such expiration or termination, even after the Recipient has returned or destroyed the Confidential Information;
		2. with respect to any Confidential Information that qualifies as a trade secret under applicable law, the rights and obligations regarding that information shall continue to survive until such time, if ever, that the information no longer qualifies as a trade secret, except where the loss of trade secret status is due to an action or omission by the Recipient or its Representatives.
2. **NO REPRESENTATIONS OR WARRANTIES**

The Disclosing Party and its Representatives make no express or implied representations or warranties regarding the accuracy or completeness of the Confidential Information shared with the Recipient under this Agreement. The Disclosing Party and its Representatives shall not be liable to the Recipient or its Representatives for any use of the Confidential Information or for any inaccuracies, errors, or omissions within such information.

1. **NO TRANSFER OF RIGHTS, TITLE OR INTEREST**

Each Party retains full ownership, including all intellectual property rights, to its Confidential Information. Disclosure of such information under this Agreement shall not be interpreted as a transfer, assignment, license, or grant of any rights, title, or interest to the Recipient or its Representatives.

1. **NO OTHER OBLIGATION**

The Parties acknowledge that nothing in this Agreement obligates either Party to disclose any Confidential Information or to enter into any business, contractual, investment, or transactional relationship. Either Party may, at any time and at its sole discretion, terminate discussions or negotiations related to the Purpose or otherwise, with or without cause.

1. **REMEDIES**

Each Party acknowledges that monetary damages may be insufficient to remedy any breach or potential breach of this Agreement by that Party or its Representatives. Accordingly, in addition to any legal remedies available (which are not waived by the exercise of any rights under this Agreement), the non-breaching Party shall have the right to seek specific performance, injunctive relief, and other equitable remedies for any such breach or threatened breach[, without the need for posting a bond or proving actual monetary damages].

1. **GOVERNING LAW AND JURISDICTION**

This Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Vermont, without regard to any principles of conflict of laws. Any legal action, suit, or proceeding arising out of or related to this Agreement shall be brought exclusively in the courts of the State of Vermont, and each Party irrevocably consents to the exclusive jurisdiction of such courts. The Parties waive any objections related to improper venue or the doctrine of forum non conveniens.

1. **NOTICES**
	1. Any notice or other communication given under or in connection with this Agreement will be in writing, in the English Language (or any other language expressly agreed between the Parties), marked for the attention of the specified representative of the Party to be given notice, and must be: (i) sent to that Party’s address by pre-paid mail delivery service providing guaranteed next Business Day delivery and proof of delivery; or (ii) sent by email to that Party’s email address. For the purposes of this Agreement, “**Business Day**” means a day that is not a Saturday, Sunday or public or bank holiday in [INSERT].
	2. The address, email address and representative for each Party are set out below and may be changed by that Party giving at least thirty (30) calendar days’ notice in accordance with this Section 13:

|  |  |
| --- | --- |
|  **For [INSERT PARTY]:** |  |
|  Address: | [INSERT] |
|  Email addresses: | [INSERT] |
|  For the attention of: | [INSERT] |
|  |  |
|  **For [INSERT PARTY]:** |  |
|  Address: | [INSERT] |
|  Email address: | [INSERT] |
|  For the attention of:  | [INSERT] |

* 1. Any notice given in accordance with Section 13.1 will be deemed to have been served: (i) if given as set out in Section 13.1(i), at 9.00am on the second Business Day after the date of posing; and (ii) if given as set out in Section 13.1(ii), at the time of sending the email (except that if an automatic electronic notification is received by the sender within four (4) hours after sending the email informing the sender that the email has not been delivered to the recipient or that the recipient is out of the office, the email will be deemed not to have been served), provided that if notice is served before 9.00am on a Business Day, it will be deemed to be served at 9.00am on that Business Day and if it is served on a day which is not a Business Day or after 5.00pm on a Business Day, it will be deemed to be served at 9.00am on the immediately following Business Day.
	2. For the purposes of this Section 13, references to time of day are to the time of day at the address of the recipient Party as referred to in Section 13.2 and references to Business Days are to normal working days in the territory in which such address is situated.
	3. To provide service of a notice it will be sufficient to prove that the provisions of this Section 13 were complied with.
1. **ENTIRE AGREEMENT**

This Agreement represents the entire understanding between the Parties concerning its subject matter and supersedes all prior and contemporaneous agreements, representations, and warranties, whether written or oral.

1. **AMENDMENT**

Any modification, amendment, or supplementation to this Agreement must be in writing and signed by both Parties.

1. **COSTS**

Except where otherwise specified in this Agreement or agreed in writing by the Parties, each Party shall bear its own costs, fees, and expenses related to the negotiation, preparation, and execution of this Agreement.

1. **SEVERABILITY**

If any provision of this Agreement is found to be invalid, illegal, or unenforceable in any jurisdiction, such invalidity shall not affect any other provision of the Agreement, nor shall it invalidate or render unenforceable that provision in any other jurisdiction.

1. **COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be considered an original, and all of which together shall constitute one and the same document.

1. **ASSIGNMENT AND SUBCONTRACTING**

Neither Party shall transfer, assign, novate, subcontract or otherwise dispose any or all its rights and/or obligations under this Agreement without the prior written consent of the other Party.

1. **WAIVERS**

No waiver of any provision of this Agreement shall be effective unless made in writing and signed by the waiving Party. Any waiver shall not be deemed a waiver of any other failure, breach, or default not expressly identified. A Party's failure to exercise, or delay in exercising, any right under this Agreement does not constitute a waiver of that right, nor does any partial exercise of a right preclude further exercise of that right or any other rights.

1. **LANGUAGE**

In the event this Agreement is translated into a language other than [LANGUAGE], the [LANGUAGE] version shall prevail.

[SIGNATURE PAGE FOLLOWS]

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

 [NAME OF PARTY A]

 By:

 Name:

 Title:

[NAME OF PARTY B]

 By:

 Name:

 Title: