

# Non-Disclosure Agreement (NDA)

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## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this "Agreement") is entered into as of [EFFECTIVE DATE] (the "Effective Date") by and between [DISCLOSING PARTY NAME], with a principal place of business at [DISCLOSING PARTY ADDRESS], [DISCLOSING PARTY CITY], [STATE] ("Disclosing Party"), and [RECEIVING PARTY NAME], with a principal place of business at [RECEIVING PARTY ADDRESS], [RECEIVING PARTY CITY], [STATE] ("Receiving Party"). Disclosing Party and Receiving Party may be referred to individually as a "Party" and collectively as the "Parties."

### 1. Definitions

1.1 "Confidential Information" means all non-public, proprietary, or confidential information disclosed by Disclosing Party to Receiving Party, whether disclosed orally, visually, in writing, or in any other tangible or intangible form, including but not limited to business plans, financial data, customer lists, trade secrets, technical data, designs, prototypes, software, source code, formulas, processes, know-how, marketing strategies, and other information that a reasonable person would understand to be confidential under the circumstances. Confidential Information includes information of third parties that Disclosing Party is obligated to treat as confidential.

1.2 Confidential Information does not include information that Receiving Party can demonstrate by competent written evidence: (a) is or becomes publicly known through no act or omission of Receiving Party; (b) was rightfully known to Receiving Party prior to disclosure by Disclosing Party without restriction on disclosure; (c) is received from a third party free to disclose such information without breach of any obligation of confidentiality; or (d) was independently developed by Receiving Party without use of or reference to Disclosing Party's Confidential Information.

### 2. Non-Disclosure and Non-Use

2.1 Receiving Party shall: (a) hold Confidential Information in strict confidence and take all reasonable precautions to protect such Confidential Information (which precautions shall be no less than those employed by Receiving Party to protect its own confidential information); (b) not disclose any Confidential Information to any person or entity except as permitted by this Agreement; and (c) not use any Confidential Information for any purpose except to evaluate and pursue a business relationship or transaction with Disclosing Party or for such other purpose as expressly authorized in writing by Disclosing Party (the "Permitted Purpose").

2.2 Receiving Party shall restrict disclosure of Confidential Information to those of its employees, agents, contractors, and advisors (collectively, "Representatives") who have a need to know for the Permitted Purpose and who are bound by confidentiality obligations at least as restrictive as those in this Agreement. Receiving Party shall be responsible for any breach of this Agreement by its Representatives.

### 3. Exclusions

3.1 The obligations in Section 2 do not apply to Confidential Information to the extent it falls within the exclusions set forth in Section 1.2 or is described as: [SPECIFIC EXCLUSION DESCRIPTION].

### 4. Required Disclosures

4.1 If Receiving Party or any of its Representatives is required by applicable law, regulation, or valid legal process to disclose Confidential Information, Receiving Party shall, to the extent legally permissible, provide Disclosing Party with prompt written notice of such requirement so that Disclosing Party may seek a protective order or other appropriate remedy. If such protective order or remedy is not obtained,

Receiving Party may disclose only that portion of the Confidential Information that it is legally required to disclose and shall use reasonable efforts to obtain confidential treatment for any disclosed Confidential Information.

## **5. Term**

5.1 The obligations under this Agreement with respect to any particular item of Confidential Information shall remain in effect for a period of [CONFIDENTIALITY PERIOD] years from the date of disclosure of that Confidential Information, unless a longer period is required by applicable law or otherwise agreed in writing by the Parties. Notwithstanding the foregoing, trade secrets shall remain protected for so long as they qualify as trade secrets under applicable law.

## **6. Return or Destruction of Materials**

6.1 Upon Disclosing Party's written request, Receiving Party shall promptly return to Disclosing Party or destroy (and certify in writing the destruction of) all documents, materials, and other tangible embodiments of Confidential Information in Receiving Party's possession or control, including copies and extracts, except that Receiving Party may retain one archival copy for recordkeeping purposes subject to the confidentiality obligations of this Agreement.

## **7. No License**

7.1 Nothing in this Agreement grants Receiving Party any license, express or implied, under any patent, trademark, copyright, trade secret, or other intellectual property right of Disclosing Party, nor shall this Agreement be construed to grant any rights in or to Confidential Information except as expressly set forth herein.

## **8. Representations and Warranties; Disclaimers**

8.1 Each Party represents that it has the full power and authority to enter into this Agreement. Disclosing Party does not make any express or implied warranties with respect to the accuracy or completeness of Confidential Information and shall have no liability to Receiving Party resulting from Receiving Party's use of Confidential Information except as may be expressly provided in a separate written agreement between the Parties.

## **9. Remedies**

9.1 Receiving Party acknowledges that breach of this Agreement may cause irreparable harm to Disclosing Party for which monetary damages would be inadequate. Therefore, in addition to any other remedy available at law or in equity, Disclosing Party shall be entitled to seek injunctive relief and specific performance to enforce the provisions of this Agreement without the requirement of posting bond or showing actual damages.

## **10. Indemnification**

10.1 Receiving Party shall indemnify and hold harmless Disclosing Party from and against any losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees) arising out of or resulting from any breach of this Agreement by Receiving Party or its Representatives.

## **11. Limitation of Liability**

11.1 EXCEPT FOR A PARTY'S WILLFUL BREACH OR BREACHES INVOLVING MISAPPROPRIATION OF TRADE SECRETS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, HOWEVER CAUSED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **12. Termination**

12.1 Either Party may terminate this Agreement upon thirty (30) days' prior written notice to the other Party. Termination shall not relieve Receiving Party of its obligations with respect to Confidential Information disclosed prior to the effective date of termination; such obligations shall survive as provided in Section 5 and Section 13.

### **13. Survival**

13.1 All provisions of this Agreement that by their nature should survive termination or expiration of this Agreement shall so survive, including but not limited to Sections 1, 2, 3, 6, 7, 9, 10, 11, 12, 13, and 14.

### **14. Notices**

14.1 All notices, requests, consents, claims, demands, waivers, and other communications required or permitted under this Agreement shall be in writing and shall be delivered to the Parties at the addresses set forth below (or to such other address that a Party may specify in writing) by personal delivery, certified mail (return receipt requested), nationally recognized overnight courier, or email with confirmed receipt:

If to Disclosing Party: [DISCLOSING PARTY NAME]

Address: [DISCLOSING PARTY ADDRESS], [CITY], [STATE] [ZIP]

Email: [DISCLOSING PARTY EMAIL]

If to Receiving Party: [RECEIVING PARTY NAME]

Address: [RECEIVING PARTY ADDRESS], [CITY], [STATE] [ZIP]

Email: [RECEIVING PARTY EMAIL]

### **15. Miscellaneous**

15.1 Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of [GOVERNING STATE], without regard to its conflicts of law principles. The state and federal courts located in [COUNTY], [GOVERNING STATE] shall have exclusive jurisdiction to resolve any disputes arising out of this Agreement, and each Party consents to the personal jurisdiction and venue of such courts.

15.2 Assignment. Neither Party may assign or transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, except that either Party may assign this Agreement without consent to a successor by merger, acquisition, or sale of substantially all of its assets, provided that the assignee agrees in writing to be bound by the terms of this Agreement.

15.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral or written agreements, understandings, and communications relating thereto.

15.4 Amendment and Waiver. No amendment or modification of this Agreement shall be effective unless made in writing and signed by both Parties. No waiver of any breach shall constitute a waiver of any other breach or default.

15.5 Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable, the remaining provisions shall continue in full force and effect to the maximum extent permitted by law.

15.6 No Waiver of Employee Rights. Nothing in this Agreement shall be deemed to limit any rights that either Party may have under applicable whistleblower protection laws or other similar statutes.

15.7 Counterparts; Electronic Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Signatures transmitted by electronic means (including PDF or facsimile) shall be deemed original signatures.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

**DISCLOSING PARTY:**

[DISCLOSING PARTY NAME]

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

Name: [DISCLOSING PARTY SIGNATORY NAME]

Title: [DISCLOSING PARTY SIGNATORY TITLE]

Date: [DATE]

Address: [DISCLOSING PARTY ADDRESS]

**RECEIVING PARTY:**

[RECEIVING PARTY NAME]

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

Name: [RECEIVING PARTY SIGNATORY NAME]

Title: [RECEIVING PARTY SIGNATORY TITLE]

Date: [DATE]

Address: [RECEIVING PARTY ADDRESS]

**EXHIBIT A (OPTIONAL) - DESCRIPTION OF CONFIDENTIAL INFORMATION**

[DETAILED DESCRIPTION OF CONFIDENTIAL INFORMATION, PROJECT SCOPE, OR SPECIFIC MATERIALS THAT ARE SUBJECT TO THIS AGREEMENT]

[END OF AGREEMENT]

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