

**EXPLANATORY COVER SHEET FOR
NON-DISCLOSURE AGREEMENT (MUTUAL)**

This form of Non-Disclosure Agreement is intended as a reference for technology companies evaluating a business relationship with a party in the U.S. This is a mutual agreement, meaning that both parties agree to keep the other party's information confidential. Its provisions contemplate that both parties will be sharing sensitive information. However, please note that it is slightly more favorable to the party making more substantial disclosures.

This Non-Disclosure Agreement is a simplified, basic form, and as such may be inappropriate for major transactions or disclosures. This form does not include certain provisions that may be appropriate depending on the nature of the transaction and the disclosures contemplated, such as provisions for M&A or other significant transactions or relating to the sharing of highly sensitive information, such as robust "clean room" limitations on disclosure and dissemination of disclosed information. Please contact your attorney if you have any questions about the form and whether it is appropriate for your needs.

Furthermore, this form may not be appropriate for use by life sciences companies, particularly where the Company is disclosing key technical and scientific information. If you need a Non-Disclosure Agreement intended for use by life sciences companies in this context, please contact your attorney.

If you are entering into a Non-Disclosure Agreement with a party outside of the U.S., the laws of one or more foreign countries may apply and you should consult with foreign counsel to make any appropriate modifications or to provide a separate form of agreement.

[DELETE THE EXPLANATORY COVER SHEET BEFORE USE]

MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (this “*Agreement*”) is entered into between {PLEASE ENTER COMPANY'S FULL LEGAL NAME}, a Delaware corporation (“*Company*”) and the other party named on the signature page hereto (“*Other Signatory*”) as of _____, 20____ (the “*Effective Date*”), to protect the confidentiality of certain confidential information of Company or of Other Signatory to be disclosed under this Agreement solely for use in evaluating or pursuing a business relationship between the parties (the “*Permitted Use*”). Company and Other Signatory may be referred to in this Agreement individually as a “*Party*” and collectively as the “*Parties*.”

1. As used herein, the “*Confidential Information*” of a Party will mean any and all technical and non-technical information disclosed by such Party (the “*Disclosing Party*”) or its representatives to the other Party (the “*Receiving Party*”), whether before or after the Effective Date, and which may include without limitation: (a) patent and patent applications; (b) trade secrets; (c) proprietary and confidential information, ideas, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of the Disclosing Party, such as information concerning research, experimental work, development, prototypes, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business and contractual relationships, business forecasts, sales and merchandising, and marketing plans; (d) any data related to customers, investors, employees, or others; and (e) all other information that the Receiving Party knew, or reasonably should have known, was the Confidential Information of the Disclosing Party. The Confidential Information shall include all such technical and nontechnical information of, or related to, the Disclosing Party, any of its affiliates and any of their respective contract parties, stockholders or personnel.

2. Subject to Section 3, the Receiving Party agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party any Confidential Information of the Disclosing Party, except as approved in writing by the Disclosing Party, and will use the Confidential Information of the Disclosing Party for no purpose other than the Permitted Use. The Receiving Party will also protect such Confidential Information with at least the same degree of care that the Receiving Party uses to protect its own Confidential Information, but in no case, less than reasonable care. The Receiving Party will limit access to the Confidential Information of the Disclosing Party to only those of the Receiving Party’s employees or authorized representatives having a need to know and who have signed confidentiality agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein.

3. The Receiving Party will not have any obligations under this Agreement with respect to a specific portion of the Confidential Information of the Disclosing Party if such Receiving Party can demonstrate with competent evidence that such portion of Confidential Information:

- (a) was in the public domain at the time it was disclosed to the Receiving Party;
- (b) entered the public domain subsequent to the time it was disclosed to the Receiving Party, through no fault of the Receiving Party;
- (c) was in the Receiving Party’s possession free of any obligation of confidence at the time it was disclosed to the Receiving Party;
- (d) was rightfully communicated to the Receiving Party free of any obligation of confidence subsequent to the time it was disclosed to the Receiving Party; or

(e) was developed by employees or agents of the Receiving Party who had no access to any Confidential Information, as demonstrated by contemporaneous written evidence.

4. Notwithstanding the above, the Receiving Party may disclose certain Confidential Information of the Disclosing Party, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, *provided that* the Receiving Party provides the Disclosing Party with reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist the Disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued; and provided further that any Confidential Information so disclosed retains its confidentiality protections for all other purposes.

5. The Receiving Party will immediately notify the Disclosing Party upon discovery of any loss or unauthorized disclosure of the Confidential Information of the Disclosing Party.

6. Upon termination or expiration of this Agreement, or upon written request of either Party, each Party will promptly return to the Disclosing Party or destroy (with written certification of destruction, upon request) all documents and other tangible materials representing the Disclosing Party's Confidential Information and all copies and summaries thereof and notes related thereto, provided that the Receiving Party may retain an archival copy of the Disclosing Party's Confidential Information for the sole purpose of complying with applicable legal or regulatory requirements. Any copies so retained shall remain subject to all confidentiality obligations herein.

7. Confidential Information is and will remain the sole property of the Disclosing Party. The Receiving Party recognizes and agrees that nothing contained in this Agreement will be construed as granting any property rights, by license or otherwise, to any Confidential Information of the Disclosing Party, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information, except as expressly set forth herein. Neither this Agreement nor the disclosure of any Confidential Information under this Agreement will result in any obligation on the part of either Party to enter into any further agreement with the other, license any products or services to the other, or to require either Party to disclose any particular Confidential Information. Nothing in this Agreement creates or will be deemed to create any employment, joint venture, or agency between the Parties.

8. The Receiving Party will not reproduce the Confidential Information of the Disclosing Party in any form except as required to accomplish the intent of this Agreement. Any reproduction by a Receiving Party of any Confidential Information of the Disclosing Party will remain the property of the Disclosing Party and will contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Disclosing Party.

9. Any ideas, suggestions, guidance or other information disclosed by the Receiving Party related to the Disclosing Party's Confidential Information and any intellectual property rights relating to the foregoing shall be collectively deemed "**Feedback**." The Receiving Party agrees to grant and hereby grants to the Disclosing Party a nonexclusive, perpetual, irrevocable, royalty free, worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform and otherwise exploit such Feedback without restriction.

10. This Agreement will terminate five years after the Effective Date, or may be terminated by either Party at any time upon 30 days' written notice to the other Party. Each Party's obligations under this Agreement will survive termination of this Agreement and will be binding upon such Party's heirs,

successors, and assigns. Each Party's obligations with respect to all Confidential Information of the other Party will terminate only pursuant to Section 3.

11. THE DISCLOSING PARTY IS PROVIDING CONFIDENTIAL INFORMATION ON AN "AS IS" BASIS FOR USE BY THE RECEIVING PARTY AT ITS OWN RISK. THE DISCLOSING PARTY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

12. This Agreement and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of Delaware, without giving effect to any conflicts of laws principles that require the application of the law of a different state. Any disputes under this Agreement may be brought in the state courts and the Federal courts for the county in which Company's principal place of business is located, and the parties hereby consent to the personal jurisdiction and exclusive venue of these courts.

13. Each Party acknowledges that its breach of this Agreement may cause irreparable damage to the other Party and hereby agrees that the other Party will be entitled to seek injunctive relief under this Agreement, without obligation of posting bond or proving damages, as well as such further relief as may be granted by a court of competent jurisdiction.

14. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole and, in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

15. Neither Party will communicate any information to the other Party in violation of the proprietary rights of any third party.

16. Neither Party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void, except that a Party may assign this Agreement without such consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets. The terms of this Agreement will be binding upon assignees.

17. The Receiving Party will not export, directly or indirectly, any U.S. technical data acquired pursuant to this Agreement, or any products utilizing such data, in violation of the United States export laws or regulations.

18. All notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, five days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices will be sent to the addresses set forth at the end of this Agreement or such other address as either Party may specify in writing.

19. Each Party agrees that the software programs, hardware, prototypes, samples, and other tangible objects of the other Party contain valuable confidential information and each Party agrees that it will not modify, reverse engineer, decompile, create other works from, or disassemble any software programs, hardware, prototypes, samples, and other tangible objects contained in the Confidential Information of the other Party without the prior written consent of the other Party.

20. This Agreement is the final, complete and exclusive agreement of the Parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the Parties with respect to such matters. No modification of or amendment to this Agreement will be effective unless in writing and signed by the Party to be charged.

21. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, Uniform Electronic Transactions Act or other applicable law) or other transmission method and any counterpart so delivered will be deemed to have been duly and validly delivered and be valid and effective for all purposes.

[Remainder of page intentionally left blank]

The parties have executed this Non-Disclosure Agreement as of the Effective Date.

COMPANY:

{PLEASE ENTER COMPANY'S FULL LEGAL NAME}

By: _____

Name: _____

Title: _____

Email: **{PLEASE ENTER COMPANY EMAIL}**

Address: **For example:
123 Main Street
Suite 1302
{PLEASE ENTER COMPANY CITY}, California {PLEASE ENTER COMPANY ZIPCODE}**

OTHER SIGNATORY:

Name of Other Signatory (Please Print)

Signature

Title (if applicable)

Email: _____

Address: _____

