

## CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Agreement, effective from [DATE DD/MM/YYYY] between [Your Name] (Your last name), having offices located at [Address], and [Their Name], [Their Address] (Their Last Name), establishes terms under which the parties shall protect certain business or technical information including (but not limited to) product plans, designs, costs, prices, names, finances, marketing or strategic plans, business opportunities, research, development, know-how, personnel, specifications, drawings, software, data, samples, and prototypes, and all copies and derivatives containing such Information, which may be disclosed by either party to the other during the term of FIVE (5) years from the Effective Date of this agreement, relating to a project: 1) [What it is you want kept secret], referring herein as **Project Name**. This agreement only encompasses information disclosed during the term of this agreement and relating to the subject matter and purpose recited herein.

To identify the Confidential Information, if it is disclosed (i) in a tangible item such as, for example and without limitation, a writing, an equipment, a part of an equipment and so forth, the Disclosing Party shall affix to the tangible item a label, an appropriate legend, or the like with an indication such as "Proprietary" or "Confidential"; or (ii) verbally or visually, the Disclosing Party shall make a contemporaneous oral statement and delivers to the Recipient a written statement within thirty (30) days to the effect that such disclosure is confidential or the like. In particular, (Their last name) acknowledges that, among other things, technical designs embodied in sample, product, module, component, part, supply, material, subassembly or other good and related software supplied by [your last name] are proprietary to [your last name] and are included in [your last name]'s Confidential Information.

1. For a period of FIVE(5) years from the date of disclosure, the Recipient of Confidential Information shall:

- (a) protect Confidential Information from disclosure to third parties with at least the same degree of care (but no less than a reasonable degree of care) as it uses to protect its own Confidential Information of like kind from unauthorized use or disclosure;
- (b) limit the access to and dissemination of Confidential Information within its organization to only those employees or agents under its direct control and supervision having a need for such information to fulfill the purpose stated herein, and who have been notified of and agree to the obligations imposed by this Agreement;
- (c) use Confidential Information only for the purpose recited above; and
- (d) not reproduce Confidential Information or incorporate it into derivative works or notes unless necessary to fulfill the purpose stated herein, and in such case only if that Confidential Information continues to be identified as Confidential Information of the Disclosing Party.

2. The obligations of Paragraph 1 above shall not apply to any information that the Recipient can show by competent evidence:

- (a) was known to Recipient prior to the disclosure of that information by the Disclosing Party and receipt thereof by Recipient;
- (b) is independently developed by or for Recipient without breach of this agreement by persons who have not been exposed to the Confidential Information;
- (c) was publicly available and readily ascertainable in substantially the same form at the time of disclosure, or became publicly available and readily ascertainable in such form without breach of this agreement;
- (d) was or is publicly disclosed by the Disclosing Party, or is rightfully received by the Recipient from a third party without any solicitation by the Recipient and not subject to

an obligation of confidentiality; or

(e) is the subject of a subpoena or other legal or administrative demand for its disclosure, provided that Recipient gives the Disclosing Party prompt notice of such demand and reasonably cooperates with the Disclosing Party's efforts to secure an appropriate protective order or otherwise prevent or limit such disclosure, and in any event such disclosure shall be strictly limited to only such information as is legally required to satisfy such subpoena or demand.

70 During the Period of Confidentiality, Recipient shall not use or disclose Confidential Information in reliance on any of the above exceptions without notifying the other in writing of its intended reliance at least fourteen (14) days in advance of that use or disclosure. Confidential Information shall not be deemed to be within the above exceptions merely because it: (i) is embraced by more general public information, or (ii) is a combination derivable from separate sources of public information, none of which discloses the combination itself.

80 3. Recipient will, upon a written request or at the expiration or termination of this Agreement, promptly return any and all printed or electronic documents or tangible things containing or embodying the Confidential Information received from the Disclosing Party, together with all copies or derivatives thereof, or certify in writing that all such Confidential Information has been destroyed. One archival copy of documents evidencing the Confidential Information may be retained by Recipient's counsel in a secure location for verification purposes only.

90 4. Recipient certifies that it will not export or re-export any information furnished hereunder unless it complies fully with all regulations of the United States relating to such export or re-export. This information shall be handled in strict accordance with the U.S. export administration regulations, and Recipient agrees to comply, and do all things necessary for the Disclosing Party to comply, with all applicable federal, state, and local laws including (but not limited to) the Regulations of the U.S. Department of Commerce relating to the Export of Technical Data, insofar as they relate to activities to be performed under this agreement. In addition to the above, any diversion contrary to U.S. law is prohibited. Recipient may refuse to receive information if the receipt of such information conflicts with any obligation under this provision.

100 5. Confidential Information remains the property of the Disclosing Party. This Agreement does not grant (and is not intended to grant) to Recipient any warranty, license, or immunity under patents or other intellectual property rights. Neither party acquires any intellectual property rights of the other, explicitly or implicitly, under any invention, patent, trademark, copyright, mask work protection right, trade secret, or any other intellectual property rights, either by executing this agreement or by exchanging Confidential Information, except permission to use the Confidential Information to the limited extent necessary to carry out the purpose of this agreement, or as otherwise agreed to in writing between the parties.

110 6. No failure or delay by a party in exercising any right, power, or privilege under this agreement or enforcing any provision of this agreement shall operate as a waiver thereof, nor preclude the party from any later exercise thereof or the exercise of any other right, power, or privilege under this agreement, nor seeking enforcement or any available remedy. Each party acknowledges that any injury due to the improper disclosure or use of Confidential Information may be irreparable; therefore the injured party is entitled to seek an injunction to prevent the threatened or actual disclosure or use of Confidential Information, in addition to all other remedies that may be available.

7. Either party may terminate this Agreement at any time upon thirty (30) days written notice, provided that all obligations relating to or affecting the protection, use, or disclosure of Confidential Information disclosed prior to such termination shall continue for the full period of confidentiality.

8. This agreement is personal to and may not be assigned or transferred by the parties without the prior written consent of the other.

9. This Agreement does not create any agency, partnership, joint venture, employment, or independent contractor relationship between the parties.

10. Neither this Agreement nor the disclosure or receipt of Confidential Information shall create an obligation for either party to make any further agreement or business arrangement, purchase products or services, or engage in any present or future marketing activities. This agreement imposes no obligation to disclose confidential information, nor to purchase, sell, license transfer, otherwise dispose of, or practice any products, services, or information.

130 11. This Agreement embodies the entire understanding between the parties regarding the subject hereof, and supersedes all prior communications or agreements on this subject.

12. Any amendment to or termination of this Agreement must be made in writing and signed by the parties. Any waiver of a provision of this Agreement must be in writing signed by the party making the waiver.

140 13. This agreement shall be considered to have been entered into, and shall be construed in accordance with, the substantive laws of the State of New York (without regard to comity or conflict of laws principles), Ohio and the laws of these United States. The parties consent to personal jurisdiction in the appropriate forum within the State of New York to resolve any dispute arising from, or with regard to Confidential Information disclosed or used pursuant to, this agreement.

150 14. Each party intends that a facsimile of its signature printed by a receiving fax machine be regarded as an original signature and agrees that this agreement can be executed in any number of counterparts, each of which shall be effective upon delivery and thereafter shall be deemed an original, and all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this agreement without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this agreement identical in form hereto but having attached to it one or more additional signature pages.

[Your full name]

(Their last name) ,

By:

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

(Signature)

(Signature)

Notary Witness:

Notary Witness:

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

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

Expiration of Term: \_\_\_\_\_

Expiration of Term: \_\_\_\_\_

(SEAL)

(SEAL)

Date: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_



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