

# Default Non-disclosure Agreement



Effective May 1, 2020

**THIS NON-DISCLOSURE AGREEMENT** (the “Agreement”) is made and entered into, effective on the date of electronic consent of the recipient of this Agreement, by and between the **DISCLOSING PARTY**, an entity or individual (the “Disclosing Party”); and the party executing this Agreement as the “**OTHER PARTY**” hereunder (the “Other Party”) (the Disclosing Party and the Other Party are referred to herein individually as a “Party” and collectively as the “Parties”), with reference to the following facts:

## 1. NON-DISCLOSURE

**1.1 DEFINITIONS.** For purposes of this Agreement, the term:

“**CONFIDENTIAL INFORMATION**” shall mean and include (a) all Trade Secrets, knowledge, data and other information of a confidential or proprietary nature which is owned, held, or known by the Disclosing Party and relating to products, potential products, and specifications, processes, know-how, designs, formulas, data, inventions, customer lists, business plans, marketing plans and strategies, pricing strategies and other subject matter pertaining to any research, business, or planned or contemplated business, and all other information which either (i) is conspicuously identified as “confidential” at the time it is disclosed to the other party, or (ii) is verbally disclosed, is identified as “confidential” at the time of such disclosure, and within ten (10) days after the later of the execution of this Agreement or the disclosure of such information the Disclosing Party confirms to Recipient in writing that such information is to be treated as Confidential Information for purposes of this Agreement.

“**DISCLOSING PARTY**” shall mean each Party to this Agreement, with respect to Confidential Information that is owned by the Disclosing Party or in which the Disclosing Party has any other right, title, or interest.

“**RECIPIENT**” shall mean each Party to this Agreement, in its respective capacity as a recipient of Confidential Information owned by a Disclosing Party or to which a Disclosing Party otherwise has rights.

“**TRADE SECRET**” shall mean that information that has independent economic value, is not generally known in the industry, and is the subject of reasonable efforts to maintain its secrecy by either party.

**1.2 NON-DISCLOSURE OF CONFIDENTIAL INFORMATION.** Each Party, as a “Recipient” hereunder, covenants and agrees (a) to keep secret and confidential, and shall hold in strictest confidence and trust, all Confidential Information of the Disclosing Party disclosed to or otherwise acquired by the Recipient, and (b) not to either disclose such Confidential Information to any third party, or use any Confidential Information for any purpose other than evaluating whether to enter into a transaction with the Disclosing Party.

**1.3 PERMITTED DISCLOSURE.** Recipient’s obligations under Section 1.2, above, shall not apply:

- **PERMITTED.** With respect to any Confidential Information that (i) as of the date of the disclosure by the Disclosing Party to Recipient had been developed by or otherwise was in the possession of Recipient other than by reason of a breach by any person of any duty owed to the Disclosing Party with respect to such Confidential Information; or (ii) as of the date of the disclosure by the Disclosing Party to Recipient is or thereafter becomes generally available to the public other than by reason of a breach by Recipient of its obligations under this Agreement; or (iii) after the date of disclosure by the Disclosing Party to Recipient, is independently developed by or on behalf of Recipient without any use of the Confidential Information owned by the Disclosing Party; or (iv) Recipient is compelled by court order to disclose, *provided that* Recipient provides to the Disclosing Party a reasonable period prior to disclosure written notice of all circumstances pertaining to the proposed Mutual NDA Form disclosure, and cooperates reasonably with any attempt by the Disclosing Party to obtain or file pleadings with respect to any such protective order.

- **ACTION BETWEEN PARTIES.** In any action between the parties pursuant to or in connection with this Agreement, *provided that* Recipient provides to the Disclosing Party, a reasonable time in advance of such disclosure, written notice of the proposed disclosure, and cooperates reasonably in efforts by the Disclosing Party to obtain a protective order with respect thereto.
- **EXPIRATION OF TERM.** After three (3) years from the Effective Date of this Agreement; *provided*, (i) notwithstanding the expiration of that three-year period, the prohibitions of Section 1.2, above, shall continue to apply to each Trade Secret for so long as it is a Trade Secret, and (ii) no Recipient shall acquire any right to use any Confidential Information solely by reason of the expiration of such three-year period.

**1.4 OWNERSHIP.** Recipient shall not acquire any right, title, license, or other interest in or claim to all or any portion of the Disclosing Party's Confidential Information solely by reason of (a) the execution and delivery of this Agreement, or (b) the disclosure of any Confidential Information by the Disclosing Party to Recipient either pursuant to this Agreement or prior to execution hereof in connection with discussions pertaining to a transaction.

#### **1.5 REPRESENTATION AND WARRANTIES.**

- Disclosing Party hereby represents and warrants that it may rightfully disclose the Confidential Information without violating any contractual, legal, fiduciary or other obligation to any person.
- Each Party acknowledges and agrees that neither the execution and delivery of this Agreement nor the disclosure of any Confidential Information pursuant to this Agreement is intended or shall be construed as a representation or warranty by the Disclosing Party with respect to the existence, specifications, performance, completeness or accuracy of any Confidential Information.
- No act, omission or statement (whether oral or written) of a Disclosing Party hereunder or in connection with discussions pertaining to a transaction shall be treated as a representation or warranty of the Disclosing Party.

**1.6 NO OBLIGATION TO CONTINUE DISCUSSIONS.** Neither the execution and delivery of this Agreement, nor the disclosure of any Confidential Information by the Disclosing Party, nor the existence or continuation by the parties of discussions with respect to a transaction, is intended or shall be construed as obligating any party to continue discussions with respect to a transaction or to enter into a transaction or preclude a Party from terminating the discussions contemplated hereunder.

**1.7 REPRODUCTION AND RETURN.** Recipient (a) shall maintain a complete and accurate written record of all reproductions or copies of any Confidential Information of the Disclosing Party, (b) shall provide a copy of such written record to the Disclosing Party promptly (but in any event within ten (10) days of a request therefor) following the Disclosing Party's request for a copy thereof from time to time during the term of this Agreement, and (c) immediately upon a request of the Disclosing Party within three years from the Effective Date of this Agreement, shall return to the Disclosing Party all copies of all documents and other items (whether in print, electronic, or other form) embodying any Confidential Information then in the possession of the Recipient.

**1.8 EQUITABLE RELIEF.** Each party (a) acknowledges that any violation of the provisions of this Section 1 by a Recipient may cause to the Disclosing Party immediate and irreparable damage for which the Disclosing Party cannot be adequately compensated by monetary damages, and (b) therefore agrees that in the event of any such breach, the Disclosing Party shall be entitled to such preliminary or other injunctive relief, an order for specific performance, and any other equitable relief that a court may determine to be appropriate, and (c) hereby waives any requirement that the Disclosing Party post, as a condition or other requirement of obtaining any such equitable relief, a bond or other collateral, and (d) further agrees that such equitable relief shall be in addition to any damages or other remedies provided by law and otherwise available to the Disclosing Party by reason of Recipient's breach.

## 2. MISCELLANEOUS

- **NOTICES.** All notices permitted or required by this Agreement shall be in writing and shall be deemed to have been delivered and received (a) when personally delivered, (b) on the date on which transmitted by electronic mail, (c) on the third (3rd) business day after the date on which deposited in the mail, postage prepaid, or (d) on the next business day after the date on which deposited with a regulated public carrier (e.g., Federal Express) for the fastest commercially available overnight delivery, addressed to the party for whom intended at the street address or email address (as the case may be) set forth on the signature page of this Agreement for such party, or such other address or email address, notice of which is delivered to the other Party in a manner permitted by this Section 2.1.
- **ATTORNEYS' FEES.** If any action is commenced to construe or enforce the terms and conditions of this Agreement or the rights created hereunder, then the party prevailing in that action shall be entitled to recover its reasonable attorneys' fees and costs incurred in that action, as well as all costs and fees incurred in enforcing any judgment entered therein.
- **COUNTERPARTS AND ELECTRONIC CONSENT SIGNATURES.** This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which will be deemed to be a single agreement. A copy of this Agreement which is executed by a party and transmitted by that party to the other party by electronic consent shall be binding upon the signatory to the same extent as a copy hereof containing the signatory's original signature.
- **ENTIRE AGREEMENT; AMENDMENTS.** For Confidential Information disclosed on or after the Effective Date of this Agreement and as to all other matters addressed herein, this Agreement (a) represents the entire understanding of the parties regarding the subject matter hereof, and supersedes all prior and contemporaneous understandings regarding the subject matter hereof, whether oral or written, and (b) may not be modified or amended, except by a written instrument executed by the parties after the Effective Date of this Agreement.
- **GOVERNING LAW; JURISDICTION AND VENUE.** This Agreement shall be construed in accordance with the laws of the governing laws of the place in which the Disclosing Party resides, or in situations in which the Disclosing Party is an entity, the jurisdiction in which that entity is incorporated (without regard to the provisions thereof governing conflicts of laws). Each Party consents, for the sole purpose of and limited to actions and proceedings arising under this Agreement, to the jurisdiction of the courts of the State of Washington for the purpose of enforcing the rights and obligations created under this Agreement. The exclusive venue for all disputes, which arise under this Agreement, shall be the place in which the Disclosing Party resides, or in situations in which the Disclosing Party is an entity, the jurisdiction in which that entity is incorporated.
- **PARTIAL INVALIDITY.** If any provision of this Agreement or the application thereof to any circumstances shall be determined by a court of competent jurisdiction to be unenforceable or invalid, then such unenforceability or invalidity shall not affect the enforcement or validity of this Agreement as applied to other circumstances.
- **EFFECTIVE DATE.** The effective date of this Agreement shall be the date of signature, or electronic consent by the "Other Party" (the "Effective Date").