

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (“Agreement”) is made and entered into as of _____, by and between Our Entity, located at 123 Any Street, Town, ST 00000 and Other Entity, located at 345 Other Street, Town, ST 00000 hereinafter who may be referred to collectively as the “Parties” or individually as a “Party”.

1. **Purpose:** The Parties wish to explore a business opportunity of mutual interest (“Purpose”). In connection with this opportunity, a Party may disclose certain confidential technical and business information which a Party desires the other Party to treat as confidential. For purposes of this Agreement, the Party disclosing confidential information is hereinafter referred to as “Disclosing Party” and the Party receiving confidential information is hereinafter referred to as “Recipient”.
2. **Confidential Information:** Means any information, technical data, or know-how disclosed by Disclosing Party to Recipient, either directly or indirectly, in writing, orally or by inspection of tangible objects, including research, products, services, developments, inventions, discoveries, ideas, concepts, software, designs, drawings, engineering, specifications, documentation, processes, techniques, models, source code, diagrams, flow charts, procedures, plans, strategies, business opportunities, financial information, pricing information, sales information and client information or data regardless of the method or media in which it is contained. Confidential Information also includes: (i) this Agreement, the fact that discussions have, will or are occurring, the status of such discussions, and that Confidential Information has or will be disclosed; (ii) all “Personally Identifiable Information” (“PII”) relating to an individual, in individual or aggregate form, which shall include all information that may be used to track, locate, or identify such individual or which is otherwise protected by privacy laws, including but not limited to: first and/or last name; home, geolocation, or other address; telephone number; date of birth; Social Security number (or its equivalent); license number (or other government-issued or personal identification number); stock, tax, or financial information; payment card data; email, IP address or other online contact information; access code, password or security questions and answers; birth or marriage certificate; health or medical data; demographic, biometric, or other identifier; (iii) Critical Energy/Electric Infrastructure (“CEII”) means a system or asset of the bulk-power system, (physical or virtual) the incapacity or destruction of which would negatively affect national security, economic security, public health or safety, or any combination of such matters; (iv) all non-public information whether specifically identified, which by its nature a reasonable person would consider proprietary or confidential.
 - a. Confidential Information shall not include portions of information which: (i) was publicly known or generally available in the public domain prior to disclosure; (ii) becomes publicly known or generally available after disclosure without breach or fault of Recipient; (iii) was in the rightful possession of Recipient without a duty of confidentiality as shown by Recipient’s records prior to disclosure; (iv) is obtained by Recipient from a third-party without breach of such party’s confidentiality obligations; (v) is independently developed by Recipient without reference to the Confidential Information as evidenced by Recipient’s business records; (vi) is required by law to be disclosed, provided Recipient gives Disclosing Party prompt written notice, if permitted by law, prior to disclosure; (vii) disclosure pursuant to 18 U.S.C. §1833(b); or (viii) is disclosed by Recipient with Disclosing Party’s prior written approval. If only a portion of the Confidential Information falls under subsections (i) – (viii) above, then only that portion shall be excluded from the requirements. Under no circumstance shall PII, CEII, or trade secrets be excluded.
3. **Non-Use and Non-Disclosure:** Recipient agrees that during and after the Term, not to use any Confidential Information for any reason except for the above stated Purpose. Recipient agrees not to disclose any Confidential Information to any third-party, including its affiliates, agents, contractors, consultants, attorneys, or employees (“Representatives”), excluding only those Representatives on a “need to know” basis who are required to have the Confidential Information to evaluate the Purpose.

Recipient shall not reverse engineer, disassemble or decompile any prototypes, software, processes, or other items which form the Confidential Information. Nothing in this Agreement shall be construed as preventing employees of a Party who had access to Confidential Information from using their general skill, knowledge, talent, and expertise, and the fact that such an employee had access to the Confidential Information will not preclude such employee from working on future projects that relate to similar subject matters, provided that such employee does not refer to or utilize the Confidential Information.

4. **Maintenance of Confidentiality:** Recipient agrees that it shall take all reasonable measures to maintain the secrecy and avoid disclosure or unauthorized use of the Confidential Information. Without limiting the foregoing, Recipient shall take at least those measures that it takes to protect its own highly confidential information, provided Recipient shall use no less than reasonable efforts. Recipient shall reproduce any proprietary rights or notices on any copies in the same way such were in or on the original. Each Party shall, at its own expense, at any time upon the request of the other Party, do, execute, acknowledge, and deliver all such further acts, documents, and instruments as may be reasonably necessary or desirable to give full effect to every part of this Agreement.

Recipient shall maintain a formal security program in accordance with industry standards designed to: (i) ensure the security and integrity of Confidential Information; (ii) protect against threats or hazards to the security or integrity of Confidential Information; (iii) prevent unauthorized access to Confidential Information. During the Term, Recipient shall not materially diminish the protections provided by the controls described in this Agreement. Upon request, Recipient will provide a copy of Recipient's then-current SOC2 audit reports or comparable industry-standard successor report. If Recipient suspects that there has been a cyber-security breach affecting any Confidential Information, Recipient must promptly notify Disclosing Party, unless legally prohibited from doing so, within 48 hours or any shorter period as may be required by law. Additionally, Recipient will reasonably assist Disclosing Party in mitigating any potential damage arising from any cyber-security breach. Recipient shall promptly conduct a root cause analysis after any such cyber-security breach and will share the results of its analysis and its remediation plan with Disclosing Party. If any unauthorized access to or acquisition of Confidential Information is caused by Recipient's breach of its security obligations under this Agreement, Recipient shall pay all reasonable costs incurred by Disclosing Party in connection with: (i) any investigation to determine the cause of the breach; (ii) providing notification to applicable government and relevant industry self-regulatory agencies, the media (if required by Applicable Law), and individuals whose Personal Information may have been accessed or acquired; (iii) providing credit monitoring service to individuals whose Personal Information may have been accessed or acquired for a period of one year, or as required by law if longer, after the date such individuals were notified of the unauthorized access or acquisition for individuals who elect such credit monitoring; and (iv) operating a call center to respond to questions from individuals whose Personal Information may have been accessed or acquired for a period of one year, or as required by law if longer, after the date such individuals were notified of the unauthorized access or acquisition. All the foregoing shall be considered direct damages for the purposes of this Agreement.

5. **No Obligation:** Nothing herein obligates either Party to proceed with any transaction between them or imply any promise or intention to make any purchase of products or services. Each Party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning any business opportunity.
6. **No Warranty:** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". DISCLOSING PARTY MAKES NO WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING ITS ADEQUACY, ACCURACY, COMPLETENESS, SUFFICIENCY OR FREEDOM FROM DEFECT OF ANY KIND, INCLUDING FREEDOM FROM ANY PATENT INFRINGEMENT THAT MAY RESULT FROM THE USE OF SUCH CONFIDENTIAL INFORMATION. Disclosing Party shall not be liable to Recipient based on the Recipient's use of the Confidential Information.

7. **Return of Materials:** All documents, physical or electronic, containing Confidential Information shall remain the property of the Disclosing Party. Recipient shall cause all Confidential Information and any memoranda, summaries, reports, or other works containing or based on the Confidential Information to be returned or destroyed upon the earlier of: (i) Disclosing Party's written request; (ii) termination of discussions regarding the Purpose; or (iii) termination of this Agreement. Notwithstanding the foregoing, Recipient may retain one copy of the Confidential Information for record retention purposes or for any governmental regulations. Any Confidential Information held in computer systems shall be required to be destroyed or returned only to the extent reasonably practical. Return, destruction, or retention of any Confidential Information shall not abrogate the continued confidentiality obligation hereunder.
8. **Compelled Disclosure:** If disclosure is required by judicial, administrative, or other rule, decree, or order, Recipient shall promptly notify Disclosing Party to the extent legally permissible, allow Disclosing Party reasonable time to oppose such disclosures, and cooperate in obtaining a protective order. If Recipient is still required to disclose the Confidential Information, then Recipient may furnish only that portion of the Confidential Information which it is legally obligated to disclose without liability hereunder. Recipient shall use reasonable efforts to maintain the confidentiality of and to require disclosed Confidential Information be used only for the purposes for which it was disclosed.
9. **No License:** Confidential Information shall remain the sole property of Disclosing Party. This Agreement doesn't grant any rights to Recipient under any patent, mark, work right, intellectual property or copyright of Disclosing Party, nor shall it grant Recipient any rights in or to Confidential Information except as expressly set forth herein.
10. **Term:** This Agreement shall survive until such time as the Confidential Information disclosed hereunder becomes publicly known and made generally available without breach or fault of Recipient or two (2) years after disclosure under this Agreement, except trade secret(s) shall qualify for the greater of such two-year period or so long as the information qualifies as a trade secret under applicable law and any PII or CEII shall remain confidential in perpetuity ("Term").
11. **Default:** Recipient shall immediately notify Disclosing Party of any unauthorized use or disclosure of the Confidential Information of which Recipient becomes aware. Recipient shall be liable for any damages, losses, expenses, or costs arising out of unauthorized disclosure of the Confidential Information due to Recipient's violation of any provision of this Agreement. If Disclosing Party commences a lawsuit or other proceeding against Recipient to enforce any of the provisions of this Agreement or on account of any damages by reason of Recipient's violation of any provisions of this Agreement, Recipient shall pay Disclosing Party's attorneys' fees in addition to any other costs and damages.
12. **Securities:** Receiving Party acknowledges United States securities laws and stock exchange regulations prohibit any person who has material, non-public information concerning Disclosing Party, its Client, each of their parent or affiliates or any possible transaction involving those parties, from trading, purchasing or selling those party's securities when in possession of such information and from communicating such information to any other person or entity under circumstances in which it is reasonably foreseeable that such person or entity is likely to purchase or sell such securities in reliance upon such information.
13. **Governing Law:** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Pennsylvania (without regard to conflict of law provisions) and be subject to the exclusive jurisdiction and venue of the federal and state courts of the Eastern District of Pennsylvania.
14. **Severability:** If any of the provisions contained in this Agreement should be found to be invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, or enforceability of the remaining provisions contained in this Agreement shall not in any way be affected or impaired by such a finding. Any unenforceable provision shall be modified to the limited extent required to permit its enforcement in a manner closing representing the intention of the Parties expressed herein.

15. **No Exclusivity or Partnership:** The relationship of the Parties shall be that of independent contractors and the Parties agree that no joint venture, partnership, agency, or other fiduciary relationship shall be deemed to exist or arise with respect to this Agreement or the Purpose. This Agreement does not create and shall not be construed to create or establish a duty to deal exclusively with each other. Neither Party shall have the authority to act as an agent, representative, trustee, or fiduciary of, or bind or legally obligate the other Party in any manner.
16. **Continued Business:** Parties acknowledge that they may be engaged in the same or similar business and neither this Agreement nor any Confidential Information furnished or obtained pursuant hereto shall be used as a basis for preventing either Party from continuing to compete against the other or from soliciting the same customers either during or subsequent to the execution of this Agreement, provided that no such solicitation or competition results from the improper or prohibited use of Confidential Information.
17. **Non-Solicitation:** Each Party shall not, without prior written consent, solicit employees of the other during their employment and for twelve (12) months after their employment with the other Party ends. The foregoing restriction shall not apply to (i) solicitations for employment made to the public; or (ii) any person hired through a third party not in violation of this clause.
18. **Waiver:** Failure by a Party to enforce or require strict or timely compliance with any provision herein shall not affect or impair that provision or the rights of a Party to any remedies it has relating to any breach of that provision. Any waiver or consent given by a Party must be in writing but shall be effective only as to that instance and will not be construed as a bar to or waiver of any right on any other occasion.
19. **Remedies:** Recipient agrees that should it breach or threaten to breach any provision of this Agreement, Disclosing Party may suffer irreparable damages and remedy at law may be inadequate. Therefore, Disclosing Party shall, in addition to all other remedies available at law or in equity and without posting bond, be entitled to: (a) equitable relief, including specific performance and injunctive relief to enforce any provision hereof; (b) restrain Recipient from using or disclosing, in whole or in part, directly or indirectly, any Confidential Information, without the necessity of proof of actual injury, loss, or damage; and (c) recover for damages, losses, and expenses of any nature (including attorney or litigation fees or expenses) arising out of, resulting from, or otherwise relating to such breach or threatened breach. Receiving Party shall indemnify, defend, and hold harmless Disclosing Party and its officers, directors and employees (and each of their heirs, successors and assigns) (“Indemnified Parties”) from and against all losses, damages, claims and actions, including reasonable attorneys’ fees and costs, and all expenses incidental to such losses, damages, claims or actions (“Losses”), based upon or arising out of, or contributed to by the breach of Receiving Party’s confidentiality obligations. Receiving Party’s liability hereunder shall not be limited in any way or by any other document or manner.
20. **Miscellaneous:** This Agreement: (i) shall bind and inure to the benefit of the Parties hereto and their successors and assigns; (ii) contains the entire agreement between the Parties with respect to the subject matter hereof; (iii) may not be amended, nor any obligation waived, except by a writing signed by both Parties hereto; (iv) does not obligate a Party to deal exclusively with the other Party; (v) may be executed in multiple counterparts, including facsimile copies and/or electronic signatures, each of which shall be deemed to be an original. No terms or provisions of this Agreement shall be deemed waived except by a writing signed by both Parties. Failure of any Party to require performance of any provision hereof shall not affect such Party's right to later enforce the same. Waiver by a Party of any provision hereof shall not be deemed to be a continuing waiver of any such provision or a waiver of any other provision hereof. When used herein, the words “include” and “including” shall be construed as “include, without limitation” and “including, without limitation.”

Signatures on following page

The Parties have read and agree to the terms of this Agreement and the undersigned represents that he, she, or they is duly authorized to sign this Agreement.

Company Name above

Company Name above

Sign: _____

Sign: _____

Name: _____

Name: _____

Title: _____

Title: _____

SAMPLE