

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is made as of **EFFECTIVEDATE** (“Effective Date”) by and between S3 AeroDefense, LLC, a company incorporated or organized in Wisconsin, having a principal place of business at 2101 W Camden Road, Milwaukee, Wisconsin 53209 (“S3”) and **COMPANY NAME** (“Company”), having a principal place of business at **COMPANYADDRESS** (individually, a “Party,” or collectively, the “Parties”).

WHEREAS, S3 and Company (each a “Disclosing Party”) contemplate that they may disclose Confidential Information, as defined below, to the other Party (the “Receiving Party”) in connection with **PROJECT** (the “Project”).

WHEREAS, during the course of their dealings with each other, the Parties may disclose Confidential Information in support and furtherance of the Project.

WHEREAS, the Parties wish to provide for the proper protection, use and disclosure of such Confidential Information.

NOW, THEREFORE, in consideration of the mutual obligations and promises contained in this Agreement, the Parties agree as follows:

1) Confidential Information

- a) **Definition.** “Confidential Information” means any information, knowledge, or data that is received by the Receiving Party from the Disclosing Party in furtherance of or pursuant to the Purpose, and that is (a) in writing and clearly marked with a proprietary or confidential legend at the time of disclosure; (b) in a machine-readable form, with the information or the media in which it is provided being clearly marked with a proprietary or confidential legend at the time of the disclosure, or if such marking is not practicable, such information or media being identified as proprietary or confidential by written communication of the Disclosing Party prior to or contemporaneously with its disclosure; (c) disclosed orally or visually, with the information being identified as proprietary or confidential at the time of disclosure, and reduced to writing and clearly marked with a proprietary or confidential legend within thirty (30) days of the initial disclosure; or (d) incorporated or embodied in a sample product or other equipment, material or item clearly marked with a proprietary or confidential legend at the time of disclosure.
- b) **No Obligation to Receive.** Nothing in this Agreement shall require either Party to receive or accept disclosure of Confidential Information from the other.
- c) **Scope of Use.**
 - i) The Parties agree to use Confidential Information solely to perform the Project(s) and not to disclose Confidential Information except as permitted by this Agreement.

- ii) Confidential Information may be disclosed to employees of the Receiving Party who have a need to know such information and who have legally enforceable nondisclosure obligations to the Receiving Party.
- iii) The Receiving Party may also disclose Confidential Information to consultants or other third parties, provided that the Recipient first obtains the Disclosing Party's written consent and that such third party agrees (or has agreed) to protect Confidential Information in a manner at least as stringent as required by this Agreement. No Confidential Information shall be provided to any third party until the Receiving Party has examined and accepted the nondisclosure agreement executed by such third party.
- iv) Confidential Information shall not be reproduced in any form except as required to accomplish the Project(s).
- v) The Parties intend that there shall be no free residual use of the Confidential Information, and that the Confidential Information shall not be used in part or in whole by the Receiving Party for the subsequent development or manufacture of any technology, equipment, program or system, or any part thereof, or for any other purpose other than in support and furtherance of the Project, without the express written consent of the Disclosing Party as executed by an authorized representative of the Disclosing Party.
- d) **Protection of Confidential Information.** The Receiving Party shall protect the Confidential Information of the Disclosing Party with the same degree of care that it uses to safeguard its own Confidential Information from unauthorized disclosure to third parties, but in no event shall the Receiving Party use less than reasonable care to protect the Confidential Information of the Disclosing Party.
- e) **Return of Confidential Information.** Upon the request of the Disclosing Party, the Receiving Party will promptly return or destroy the Disclosing Party's Confidential Information, in whatever form, without retaining any copies or excerpts thereof. The Receiving Party's counsel may, however, retain one copy of the returned or destroyed items for archival purposes.
- f) **No Warranties, Representations, or Liability.** All Confidential Information is provided by the Disclosing Party "AS IS" without warranty or guarantee of any kind as to its accuracy, completeness, operability, fitness for a particular purpose, or any other warranty, express or implied. The Disclosing Party shall not be liable to the Receiving Party for any damages, loss, expense or claim of loss arising from the Receiving Party's use of or reliance on the Disclosing Party's Confidential Information.

2) Information Not Subject To Confidentiality

The obligations set forth above shall not in any way restrict or impair the right of the Receiving Party, to the extent permitted by law, to disclose the following:

- (a) information which at the time of disclosure has been published or is otherwise in the public domain;

- (b) information which, after disclosure, becomes part of the public domain other than through a breach of this Agreement;
- (c) information which was known to the Receiving Party prior to receipt from the Disclosing Party, provided such prior knowledge can be adequately substantiated;
- (d) information which becomes known to the Receiving Party from a source which legally derives such information independently of the Disclosing Party;
- (e) information which the Receiving Party can demonstrate it developed without reference to any Confidential Information provided pursuant to this Agreement;
- (f) Confidential Information which the Receiving Party is required to disclose by law, regulation or lawful order or process. In such event, the Receiving Party shall promptly provide the Disclosing Party with written notice of the disclosure requirement as soon as practicable so as to permit the Disclosing Party with a reasonable opportunity to oppose or challenge such disclosure.

3) **Ownership**

- a) All Confidential Information and any Derivatives (as defined below) thereof, whether or not created by either of the Parties, shall remain the property of the respective Disclosing Party and no license or other rights in the Confidential Information is granted or implied hereunder. For the purpose of this Agreement, "Derivatives" shall mean (i) for copyrightable material, any translatable abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (ii) for patentable or patented material, any improvement thereon; and (iii) for material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and/or trade secret.
- b) Upon expiration or termination of this Agreement, unless otherwise promptly requested by the Disclosing Party in advance of such expiration or termination, the Receiving Party shall return or destroy (and, in the case of destruction, promptly provide a certification of such destruction to the Disclosing Party) all Confidential Information in its possession, including, without limitation, any copies, summaries, and/or compilations made of or from Confidential Information, and shall make no further use of Confidential Information. Notwithstanding the immediately preceding sentence, the Receiving Party is not obligated to return or destroy (a) any Confidential Information stored on back-up media for purposes of disaster recovery in the ordinary course of business that may be subject to destruction in due course, provided that the Receiving Party is precluded from using such Confidential Information after expiration or termination but prior to its destruction, and (b) residual or latent data such as resulting from deleted files, automatically created temporary files, printer spool files, and metadata that can only be retrieved by computer forensics experts and is generally considered inaccessible without the use of specialized tools and techniques.

4) **Circumvention**

- a) The Parties shall not in any way whatsoever circumvent each other and/or attempt such circumvention of each other and/or any of the parties involved in any of the transactions the Parties wish to enter into and to the best of their abilities shall ensure that the original transaction codes, data and Confidential Information are not altered.
- b) Pursuant to this Section 4 (Circumvention) and as concerns the Project, the Parties shall not disclose any contact revealed by either Party to any third parties as the Parties fully recognize such information and contact(s) of the respective Party is Confidential Information, and shall not enter into direct and/or indirect offers, negotiations and/or transaction with such contacts revealed by the other Party who made the contact(s) available.
- c) In the event of circumvention by either Party, whether direct and/or indirect, the circumvented Party shall be entitled to legal monetary compensation equal to the maximum service fee it would have realized from such a transaction, plus any and all expenses, including any and all legal fees incurred in the recovery of such compensation.

5) **Term of This Agreement**

- a) **Effective Date.** The Effective Date of this Agreement shall be the date stated on page one (1) of this Agreement.
- b) **Termination Date.** This Agreement shall terminate five (5) years from its Effective Date, but may be terminated by either Party giving thirty (30) days written notice to the other Party. Termination, however, shall not affect the rights and obligations arising under this Agreement with respect to Confidential Information disclosed prior to termination, including without limitation the three (3) year confidentiality period set forth herein.

6) **Term of Confidentiality**

Unless otherwise agreed to in writing, neither Party shall have any obligations of confidentiality under this Agreement after three (3) years from the Termination Date, except that any Confidential Information identified by the Disclosing Party as a trade secret shall be safe guarded against unauthorized use or disclosure for as long as such information is considered by the Disclosing Party to qualify for such protection.

7) **Notices**

Any notice provided in connection with this Agreement shall be given in writing by certified mail, prepaid, return receipt requested, directed to the parties at the following addresses.

S3 AeroDefense, LLC

CO2NAME02

At: 2101 W Camden Road
Milwaukee, WI 53209

At: CO2ADDRESS01

Attn: CO1CONTACT01

Attn: CO2CONTACT01

8) No Formal Business Obligations

Nothing in this Agreement or in any of the discussions the Parties have engaged in or in the correspondence between the Parties, shall constitute a confirmation, approval, consent or other agreement, to begin any project or any other business in the future between the Parties hereto. The Parties intend to effect a legally binding agreement with respect to any project or business transaction only by the execution and delivery of a definitive, written agreement. In the absence of such definitive agreement, any costs incurred by either Party will be incurred at such Party's risk and will be the sole responsibility of that Party.

9) Miscellaneous

- a) **Governing Law.** The provisions of this Agreement shall be governed by the laws of the State of Wisconsin without regard to conflict of laws principles.
- b) **Entire Agreement.** This Agreement contains the sole and entire agreement between the Parties relating to the subject hereof and any representation, promise, or condition not contained herein, or any amendment hereto shall not be binding on either Party unless set forth in a subsequent written agreement signed by an authorized representative of the Party to be bound thereby.
- c) **Publicity.** Neither Party shall issue any public disclosures or statements regarding the Project or this Agreement without the prior written consent of the other.
- d) **Assignment.** This Agreement is personal to the Parties hereto and neither Party may assign or transfer its rights, interests or obligations hereunder without the prior written consent of the other and such consent shall not be unreasonably withheld.
- e) **Export Laws.** Each Party hereto shall abide by all export/import laws of the United States of America, and any applicable foreign nation, when making disclosure of Confidential Information to the other Party or a third party authorized to receive Confidential Information by the Disclosing Party. The Receiving Party shall control access to, and use of, Confidential Information and the direct product thereof in accordance with all applicable foreign and U.S. export laws and regulations, including, without limitation, the Arms Export Control Act and the International Traffic in Arms Regulations (ITAR), 22. C.F.R. parts 120-130 and the Export Administration Act and the Export Administration Regulations (EAR), 15 C.F.R. parts 730-774.

- f) **Headings.** The section and paragraph headings herein are for reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.
- g) **No Disclosure of Third Party Information.** The Parties hereby agree not to furnish any trade secret, proprietary know-how or Confidential Information acquired from third parties. Further, the Parties represent and warrant that they are free to divulge, without any obligation to or violation of the rights of any third party, any and all information they will demonstrate, divulge or in any other manner make known to the Receiving Party pursuant to this Agreement. The Parties shall and do hereby exonerate, indemnify and hold harmless the other from and against any and all liability, loss, cost, expense, damage, claims or demands for actual violation of the rights of any third party in any trade secret, proprietary know-how or other confidential information by reason of the other's use of the services of or receipt of information disclosed hereunder.
- h) **Unauthorized Disclosure of Confidential Information.** The Parties agree to report promptly to each other if they become aware or have reason to believe that there has been an unauthorized disclosure of Confidential Information, and further agree to endeavor to correct the effects thereof and prevent any further unauthorized disclosure. The Parties agree to take all reasonable and lawful action, including without limitation instituting legal proceedings, to prevent or stop any violation, contravention or breach of this Agreement and to assist each other in remedying any such unauthorized use or disclosure of the Confidential Information.
- i) **Injunctive Relief.** The Parties agree that an impending or existing violation of any provision of this agreement would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law and that the Disclosing Party shall be entitled to seek immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it.
- j) **Savings Clause.** If any provision of this Agreement shall be held invalid or unenforceable, such provision shall be deemed deleted from this Agreement and replaced by a valid and enforceable provision which so far as possible achieves the Parties' intent in agreeing to the original provision. The remaining provisions of this Agreement shall continue in full force and effect.
- k) **Mutual Intent.** This Agreement contains the entire understanding and agreement between the Parties hereto with respect to the subject matter herein and supersedes all prior agreements or understandings between the Parties with respect to its subject matter; except that the terms of this Agreement shall not reduce any requirement, obligation or duty of a Party in a written agreement entered between the Parties prior to the Effective Date of this Agreement regarding non-disclosure or protection of any Confidential Information. This Agreement expresses the mutual intent of the Parties and is a product of negotiation. This Agreement shall not be construed against either Party based on drafting.

AGREED AND ACCEPTED

S3 AeroDefense, LLC

CO2NAME04

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

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