

## **Mutual Confidentiality Agreement**

This Mutual Confidentiality Agreement ("Agreement"), effective as of \_\_\_\_\_ ("Effective Date"), is between \_\_\_\_\_ ("Outside Party") and the Arizona Board of Regents for and on behalf of Arizona State University ("ASU") and ASU's University Technology Office.

The parties are interested in disclosing to each other certain proprietary information for the purpose of engaging in discussions prior to, after and at a supplier presentation, (collectively, the "Purpose").

ASU will be disclosing certain proprietary information relating to General information about current software systems ASU is using and its process to use application programming interfaces ("ASU Information"). Outside Party will be disclosing certain proprietary information relating to a demonstration and system processes ("Outside Party Information") (ASU Information and Outside Party Information are collectively referred to herein as "Information").

Therefore, in reliance on the commitments and obligations set forth herein, the parties agree as follows:

1. This Agreement governs Information disclosed by the disclosing party to the receiving party for **1 year** from the Effective Date. The parties may, at their discretion, disclose their respective Information to each other. To be protected hereunder, Information must be marked confidential if disclosed in written or other tangible form. If Information is disclosed orally or visually, Information must be identified as confidential at the time of disclosure and reduced to writing, marked confidential, and transmitted to the receiving party within thirty (30) days of the initial disclosure.
2. The disclosing party agrees to give express advance written notice to the receiving party prior to providing any export controlled information, technology, software, equipment or know-how so the receiving party can take the appropriate measures. All export controlled information, technology, software, equipment or know-how furnished by either party shall be appropriately marked as "export controlled". ASU shall have the right to refuse acceptance of export controlled information.
3. The relationship between the parties is that of independent contractors, and no party is the agent, employee, partner or joint venture of any other party. Nothing in this Agreement will be construed to convey to either party any right, title or interest in any Information provided by the other party or any right, title or interest in any intellectual property of the parties, including but not limited to, processes, copyrights or patents. No license to the receiving party under any trademark, patent or copyright is either granted or implied by the conveying of Information to the receiving party. Neither party will use any service marks, trademarks, logos or other marks of the other party without the express written approval of the other party.
4. The receiving party will not use, or disclose to any third party, Information of the disclosing party in any manner except for the Purpose, and will require that its employees and agents (in the case of ASU, including employees of Skysong Innovations, LLC ("SI")) who have access to such information maintain the same in strict confidence subject to the same restrictions. By way of example, but not limitation, the receiving party will not use Information of the disclosing party in connection with any patent application, for any commercial purpose, or for the benefit of any third party. The receiving party's obligations regarding the disclosing party's Information received pursuant to this Agreement survive for **3 years** from the Effective Date.

5. If applicable, the parties will notify each other of the results of their evaluations of Information within thirty (30) days after receipt thereof.
6. The receiving party's obligations under paragraph 4 will not apply if the receiving party can show, with convincing written evidence, that the Information of the disclosing party received hereunder:
  - a) was already known to the receiving party prior to the time of first disclosure; or
  - b) at the time of disclosure is in the public domain, or after the date of the disclosure, lawfully becomes a part of the public domain other than through breach of this Agreement by the receiving party; or
  - c) is received in good faith, without any obligation of confidentiality from a third party having a legal right to disclose the same; or
  - d) is independently developed by the receiving party by individuals without access to such information; or
  - e) is required to be disclosed by the receiving party pursuant to a legally enforceable order, law, subpoena, or other regulation ("Order"), provided, however, that the receiving party promptly notifies the disclosing party in advance of such disclosure and discloses only that Information necessary to comply with said Order.
7. ALL INFORMATION IS PROVIDED "AS IS" AND WITHOUT WARRANTY, REPRESENTATION, OR GUARANTEE OF ANY SORT, EXPRESSED OR IMPLIED.
8. This Agreement will not be construed to create any obligation on the part of either party hereto to retain the other party's services or to compensate the other party in any manner, except as may be set forth by a separate written agreement duly executed by authorized representatives of the parties hereto.
9. Notwithstanding any other provision of this Agreement to the contrary, the parties acknowledge that ASU is a public institution and, as such, is subject to A.R.S. §§ 39-121 through 39-127 regarding public records. Any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of Arizona law.
10. This Agreement constitutes the entire understanding between the parties relating to the subject matter hereof, and no amendment or modification to this Agreement shall be valid or binding upon the parties unless made in writing and signed by each party. This Agreement may be executed in counterparts, each of which shall be deemed an original. Electronically transmitted and imaged copy signatures will be fully binding and effective for all purposes.

**Outside Party****Arizona Board of Regents for and on  
behalf of Arizona State University**

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Printed Name:

Title:

Date:

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Printed Name: Heather Clark

Title: Executive Director, Research Operations

Date: