

## MUTUAL NON-DISCLOSURE AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT, dated as of \_\_\_\_\_ (the "Effective Date"), is by and between InnoPhase IoT, Inc. a corporation organized under the laws of Delaware having offices at 6815 Flanders Drive, San Diego, California 92121 USA ; and \_\_\_\_\_, a corporation organized under the laws of \_\_\_\_\_ having offices at \_\_\_\_\_ .

### Background

A. The parties desire to engage in discussions relating to one or more possible business relationships between the parties and/or their respective Affiliates (as defined below) (the "Discussions").

B. In furtherance of the Discussions, the parties may need to exchange certain confidential technical and commercial information, and the parties are willing to undertake such an exchange under the terms and conditions set forth below.

### Agreement

NOW THEREFORE, the parties, intending to be legally bound, hereby agree as follows:

1. **Confidential Information.** For purposes of this Agreement, "Confidential Information" means all confidential and/or proprietary information disclosed by or on behalf of one party to the other before, on or after the Effective Date of this Agreement, in any form whatsoever, whether written, oral, electronic, visual or otherwise, including, without limitation, information regarding: existing and/or contemplated products, services, pricing and terms; inventions, ideas, patentable ideas, trade secrets, drawings and/or illustrations, patent searches, know-how and other intellectual property rights; processes, methods, designs, platforms, technologies, techniques and concepts; software, firmware, source and object codes and algorithms; product specifications, models, descriptions, drawings, materials, samples and prototypes; research and development efforts, development tools, marketing and other business plans and information; current or prospective suppliers, customers, licensees and licensors and relationships with each; and business and financial data. "Confidential Information" shall also expressly include the fact that the parties are having the Discussions and any details of such Discussions.

2. **Confidentiality; Restricted Use.** Each party shall use the other party's Confidential Information solely for purposes of the Discussions and not for any other purpose (including without limitation not for such party's own purposes or for the purposes or benefit of any third party) and shall not disclose, or allow disclosure of, such Confidential Information to any third party without the prior written approval of the other party or as expressly provided herein. Neither party shall reverse engineer, reverse assemble, or otherwise seek to de-compile any prototypes, software or other tangible Confidential Information

3. **Standard of Care.** Each party shall protect the confidentiality of the other party's Confidential Information with the same degree of care it uses to protect its own similar confidential information, but in no event with less than a reasonable standard of care.

4. **Limited Authorized Disclosures.** Each party may disclose the other party's Confidential Information solely to those of its or its Affiliates' directors, officers, shareholders, employees, agents or representatives (collectively, "Representatives") who have a need to know such information. The party disclosing any such Confidential Information shall ensure that such persons are subject to written agreements with respect to

confidentiality that include provisions that are no less restrictive than the provisions here contained, and shall be liable for any breach of this Agreement by any person to whom it makes such a disclosure.

For purposes of this Agreement, a party's "Affiliates" shall mean any party that controls, is controlled by, or is under common control with such party. Each party also expressly agrees that disclosures made directly to or by a party's Affiliates or Representatives in connection with the Discussions shall be subject to the terms of this Agreement. Notwithstanding anything herein to the contrary, no party shall disclose Confidential Information of the other party to any Affiliate or other person who competes, directly or indirectly, with the disclosing party, except with the disclosing party's express prior written consent.

5. **Form of Disclosures.** The parties shall use reasonable efforts to ensure that Confidential Information that is disclosed in written, documentary or tangible form is marked with a legend (such as "Confidential" or "Proprietary") indicating its confidential nature, and that Confidential Information that is disclosed orally or visually is identified as confidential at the time of the disclosure, and is documented in a writing (email is sufficient) sent to the party receiving the Confidential Information within thirty (30) days of disclosure. Notwithstanding the foregoing, if a disclosing party fails to mark, identify and/or confirm the confidentiality of any information as provided in this Section 5, such information shall nevertheless be deemed Confidential Information subject to protection under this Agreement if it is of the type or nature that would reasonably be expected by the parties, in the context of its disclosure, to be confidential.

6. **Copies of Confidential Information.** A party may copy Confidential Information of the other party only to the extent reasonable and necessary for the Discussions. All copies shall always clearly contain any proprietary and confidential notices and legends that appear on the original Confidential Information. All Confidential Information, including any copies thereof, shall remain the property of the disclosing party.

7. **Return of Confidential Information.** Within thirty (30) days of receipt by the receiving party of a written request from the disclosing party, all Confidential Information received from the disclosing party, together with all copies thereof, shall be returned to the disclosing party or destroyed at the disclosing party's election, and any notes, correspondence, analyses, documents or other records to the extent containing such Confidential Information shall be destroyed (and if requested by the disclosing party, the receiving party shall provide written certification of all such destruction). Notwithstanding the foregoing, the receiving party may retain one archival copy of the other party's Confidential Information, which shall be held by such party's legal counsel (which may be in-house counsel) and used solely for purposes of demonstrating the receiving party's compliance with this Agreement in the event of a dispute.

8. **Permitted Exceptions.** "Confidential Information" shall not include, and the obligations of confidentiality and restricted use set forth in this Agreement shall not apply to, any information that:

(a) was known to the receiving party or any of its Affiliates free of any confidentiality obligation at the time of disclosure by the disclosing party hereunder;

(b) is or becomes generally available to the public other than as a result of any breach of this Agreement by the receiving party or any person to whom it disclosed such information;

(c) is independently developed by the receiving party or any of its Affiliates without any use of or reference to the disclosing party's Confidential Information; or

(d) is received by the receiving party or any of its Affiliates on a non-confidential basis from a third party, provided that the receiving party or such Affiliate is not aware and has no reasonable basis for believing that the third party is subject to any obligation of confidentiality to the disclosing party with respect to such information.

In addition, a party may disclose Confidential Information of the other party to the extent such disclosure is legally required; provided that the receiving party takes reasonable steps to give the disclosing party prompt notice to allow the disclosing party to contest such disclosure requirement or to seek a protective order or other confidential treatment for such Confidential Information, and provided further that the receiving party shall disclose only the minimum amount of Confidential Information so required.

For purposes of this Section, specific ideas or information shall not be considered "generally available to the public" merely because general information on the subject matter is publicly known, nor shall a combination of ideas or information be so considered merely because the individual ideas or information are publicly known.

9. **No Grant of License.** All Confidential Information shall remain the disclosing party's property. Nothing contained herein shall be construed as conferring any license or right in respect of any Confidential Information or any intellectual property rights based on any such Confidential Information. No other rights or obligations other than those expressly set forth herein are to be implied from this Agreement.

10. **No Commitment; No Commercial Restrictions.** Neither party shall have any legal obligation to the other to enter into any commercial agreement or transaction of any kind as a result of the Discussions, unless and until such time, if any, that the parties enter into a definitive written agreement with respect thereto. Except for the obligations of confidentiality and non-use contained herein, nothing in this Agreement shall limit either party from entering into any agreement with any third party (including third parties who may compete with the other party), including any agreement to sell, license, develop for or provide to any such third party any intellectual property, products or services (including any intellectual property, products or services that may be competitive with the intellectual property, products or services of the other party).

11. **No Warranty.** Each party receiving information hereunder agrees that (a) all Confidential Information it receives from the disclosing party, and any other material or information it receives hereunder, is provided "as is," without warranty of any kind, whether express or implied, regarding accuracy, completeness, merchantability, fitness for a particular purpose or noninfringement of any third party intellectual property right, and without any obligations of compensation or indemnification; and (b) the disclosing party shall not be liable for any damages arising out of any use of such Confidential Information.

12. **Term of Agreement.** This Agreement shall become effective on the Effective Date stated above and shall remain in effect for a period of two (2) years unless sooner terminated or extended in writing by the parties. Either party may terminate this Agreement upon fifteen (15) days prior written notice to the other party.

13. **Survival of Obligations.** The rights and obligations of the parties hereunder shall apply to all Confidential Information disclosed during the term of this Agreement and shall survive any expiration or termination hereof for a period of three (3) years following the date of expiration or termination; provided that the receiving party's obligation to protect the disclosing party's trade secrets shall continue for so long as the Confidential Information is maintained as a trade secret .

14. **Governing Law; Jurisdiction.** This Agreement shall be construed in accordance with and governed by the laws of the State of California, USA without reference to any conflict of laws principles. The parties irrevocably consent to the venue and jurisdiction of the state and federal courts sitting in San Diego, California for the purposes of interpreting and enforcing the provisions herein and agree that such courts will have exclusive jurisdiction of any such proceeding.

15. **Equitable Remedies.** Each party acknowledges that any breach of its obligations under this Agreement will have a material adverse effect on the other party for which damages may be difficult to ascertain. Each party therefore agrees that, in addition to and not in lieu of any other rights and remedies the disclosing party may have, the disclosing party shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of this Agreement by the receiving party. In any proceeding by the disclosing party to obtain injunctive relief, the receiving party's or any other defendant's ability to answer in damages shall not be a bar or be interposed as a defense by the receiving party to the granting of such relief, and the disclosing party shall not be required to post a bond or other undertaking in such a proceeding.

16. **Export Control.** Each party agrees to adhere to all applicable laws, rules and regulations relating to the export and re-export of technical data and agrees not to transfer any Confidential Information received hereunder without first obtaining any necessary export licenses and authorizations.

17. **Severability.** If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such provision shall be ineffective to the extent of such unenforceability (but shall be enforced to the maximum extent permissible), and it is the parties' intent that the remaining provisions shall continue in full force and effect.

18. **Waivers.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced. Any waiver will apply only to the particular circumstance giving rise to the waiver and shall not constitute a continuing waiver in other similar circumstances unless the intention to grant a continuing waiver is expressly stated in writing.

19. **Entire Agreement; Amendments.** This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or understandings between the parties, whether written or oral, with respect thereto. This Agreement may only be amended in a writing signed by both parties that expressly states it is intended to modify this Agreement.

20. **No Assignment.** Neither party may assign or transfer this Agreement or any rights or obligations contained herein to any third party without the prior written consent of the other party hereto; except that either party may assign this agreement to a transferee of the party's business to which this Agreement relates.

21. **Counterparts.** This Agreement may be executed by the parties in counterparts, each of which shall be deemed an original and both of which, taken together, shall constitute one and the same document.

**IN WITNESS WHEREOF**, the parties hereto have caused this Mutual Non-Disclosure Agreement to be executed by their duly authorized officers as of the Effective Date.

InnoPhase IoT, Inc.

[Company]

By:

By:

Name:

Name:

Title:

Title:

Date:

Date:

Address for notices to InnoPhase IoT, Inc.:

InnoPhase IoT, Inc.  
6815 Flanders Drive  
San Diego, CA 92121

Address for notices to Company:

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