MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (this “**Agreement**”) is entered into and effective as of [\_\_, \_\_ 2023] (the “**Effective Date**”), by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with a registered address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Company**”), and ODL, Incorporated, with offices located at 215 E. Roosevelt Ave., Zeeland, MI 49464 (“**ODL**”). The party which may, from time to time, disclose Confidential Information (as defined herein) in connection with the Business Purpose (as defined herein) shall be referred to herein as the “**Discloser**” and the party from time to time receiving such Confidential Information shall be referred to as the “**Recipient**.” ODL and Company are sometimes referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

# **Confidential Information.** In connection with an existing or prospective business relationship between the Parties (the “**Business Purpose**”), Discloser may disclose to Recipient certain Confidential Information pursuant to the terms and conditions of this Agreement. As used herein, “**Confidential Information**” means any and all information, data or materials disclosed by or on behalf of Discloser to Recipient or its affiliates, or to any of such Recipient’s or its affiliates’ employees, officers, directors, partners, shareholders, agents, attorneys, accountants, or advisors (collectively, “**Representatives**”) prior to, on or after the Effective Date, whether orally, in writing, by demonstration, electronically or other form of media, which, in each case, ought to reasonably be considered confidential or proprietary, whether or not marked or otherwise designated as “proprietary” or “confidential.” “Confidential Information” includes, but is not limited to: (a) information concerning Discloser’s past, present and future business affairs including finances, products, services, technology, technology infrastructure, organizational structure, internal practices, forecasts, sales and prices; (b) Discloser’s unpatented inventions, ideas, methods and discoveries, trade secrets, goods, know-how and other intellectual property; (c) designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions, in whole or in part, of any of the foregoing; (d) any third-party confidential information included with, or incorporated in, any information provided by Discloser; and (e) all notes prepared by Recipient or its Representatives that contain, reflect or are derived from, in whole or in part, any of the foregoing.

# **Exclusions from Confidential Information**. Except as required by applicable federal, state or local law or regulation, “Confidential Information” shall not include information that, at the time of disclosure: (a) is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Agreement by Recipient or any of its Representatives; (b) is, or thereafter becomes, available to Recipient on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information; (c) was known by or in the possession of Recipient or its Representatives, as established by documentary evidence, prior to being disclosed by or on behalf of Discloser; or (d) was or is independently developed by Recipient, as established by documentary evidence, without reference to or use of, in whole or in part, any of Discloser’s Confidential Information.

# **Protection of Confidential Information.** Subject to the above,Recipient agrees to maintain and protect the Discloser’s Confidential Information as confidential and proprietary using the same degree of care Recipient uses to protect its own confidential and proprietary information, but in no event less than a reasonable degree of care. Recipient shall not disclose the Discloser’s Confidential Information to any third party except that Recipient may disclose the Confidential Information only to those of its Representatives who, on a strict need to know basis: (a) require knowledge of or access to the Confidential Information in connection with the Business Purpose; (b) are made aware that the Confidential Information constitutes confidential information and/or trade secrets of Discloser; (c) are subject to confidentiality duties or obligations to Recipient that are no less restrictive than the terms and conditions of this Agreement; and (d) agree to treat and protect the Confidential Information accordingly. Recipient shall be responsible for any breach of this Agreement by any of its Representatives.

# **Required Disclosure.** Any disclosure by Recipient or its Representatives of any of Discloser’s Confidential Information under applicable federal, state, or local law, regulation, or a valid order issued by a court or governmental agency of competent jurisdiction (a “**Legal Order**”) shall be subject to the terms of this Section. Before making any such disclosure, Recipient shall make commercially reasonable efforts to provide Discloser with:(a) prompt written notice of such requirement so that Discloser may seek, at its sole cost and expense, a protective order or other remedy; and (b) reasonable assistance, at Discloser’s sole cost and expense, in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, Recipient remains subject to a Legal Order to disclose any Confidential Information, Recipient (or its Representatives or other persons to whom such Legal Order is directed) shall disclose no more than that portion of the Confidential Information which, on the advice of Recipient’s legal counsel, such Legal Order specifically requires Recipient to disclose and, on Discloser’s request, shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

# **Ownership; Return of Confidential Information.** Recipient agrees that, as between the Parties, any and all Confidential Information is and shall remain the property of Discloser. Recipient agrees that upon request of Discloser, Recipient shall, within five (5) business days, return to Discloser all originals, copies, notes and abstracts of any such Confidential Information that Recipient previously obtained from Discloser. Upon request by Discloser, Recipient shall certify their compliance with the foregoing, in writing, signed by an officer of Recipient. Notwithstanding the foregoing, Recipient may retain copies of Confidential Information that are stored on Recipient’s IT backup and disaster recovery systems until the ordinary course deletion thereof. Recipient shall continue to be bound by the terms and conditions of this Agreement with respect to such retained Confidential Information.

# **Limitation on Obligations**. Nothing contained in this Agreement, the disclosure of Confidential Information, or any discussions between the Parties shall: (a) be deemed to grant to either Party a license (by implication or otherwise) to the other Party’s copyrights or patents; (b) be deemed to create any partnership, joint venture, or other commercial relationship; or (c) be deemed to be an agreement or commitment to use, procure, develop, or provide any products or services between the Parties. Nothing herein shall obligate Discloser to disclose any Confidential Information to Recipient and any such disclosure shall be entirely voluntary.

# **No Representations or Warranties.** Neither the Each Party understands and acknowledges that neither Discloser nor any of its Representatives make any representation or warranty, expressed or implied, as to the accuracy or completeness of the Confidential Information disclosed to Recipient hereunder and all Confidential Information disclosed hereunder is disclosed “as is”, and received as “parts of”, with NO WARRANTY OR REPRESENTATION OF ANY NATURE, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Neither Discloser nor any of its Representatives shall be liable to Recipient or any of its Representatives relating to or resulting from Recipient’s use of any of the Confidential Information or any errors therein or omissions therefrom. Recipient shall not decompile, analyze the composition of, reverse engineer, or disassemble any tangible materials, components, or software constituting Confidential Information provided by Discloser.

# **Miscellaneous**.

## Recipient acknowledges that Discloser shall not have an adequate remedy in the event that this Agreement is breached, and that Discloser will suffer irreparable damage and injury in such event, and that, in addition to any other rights and remedies available at law or in equity, Discloser shall be entitled to seek an injunction restricting Recipient from committing or continuing any violation of this Agreement without the requirement of posting a bond. This Agreement shall be governed by the laws of the State of Michigan, without regard to its conflict of law principles. The Parties agree to submit to the jurisdiction of the state and federal courts located in the State of Michigan for the purpose of interpreting or enforcing any of the provisions of this Agreement.

## The waiver of either Party of a breach or default under any provision of this Agreement shall not be construed as a waiver of any subsequent breach or default of the same or other provision, nor shall any delay or omission on the part of a Party to exercise or avail itself of any right or remedy that it has or may have, operate as a waiver of any right or remedy. In the event that any provision of this Agreement is found to be unenforceable by a court of competent jurisdiction, then such provision shall be stricken, and this Agreement shall remain in full force and effect.

## The initial term of this Agreement shall be for a period of three (3) years commencing on the Effective Date. Thereafter the Parties may renew this Agreement for additional one (1) year periods upon written consent signed by both Parties. Either Party may terminate this Agreement immediately upon written notice to the other Party. Regardless of the cause of termination of this Agreement, or the judicial striking of provisions, the obligations of the Parties hereunder shall survive for three (3) years after the termination or expiration of this Agreement, even after the return or destruction of Confidential Information by Recipient; provided however, a Party’s obligations as they pertain to trade secret Confidential Information of the Discloser shall remain in effect until Discloser no longer treats it as trade secret.

## Each Party agrees to comply with U.S. export control laws and regulations, including without limitation the Export Administration Act and implementing Export Administration Regulations and the Arms Export Control Act and International Traffic in Arms Regulations in their activities involving Confidential Information.

## This Agreement shall be binding upon and inure to the benefit of the Parties, their assigns, and successors; provided, however, that neither Party may transfer or assign its rights, duties or obligations hereunder without the prior written consent of the other Party. Any such purported assignment or transfer shall be void. Any signature, written original or facsimile, shall be deemed to be original for purposes of the enforceability of this Agreement.

## This Agreement may only be modified by a written amendment, signed by the Parties. This Agreement sets forth the entire understanding and agreement of the Parties with respect to the subject matter, and supersedes all prior or contemporaneous understandings or agreements, or course of dealings between the Parties regarding the subject matter.

[Signature page follows]

 IN WITNESS WHEREOF, the undersigned have caused their duly authorized representatives to execute this Agreement as of the Effective Date.

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| --- | --- |
| **ODL, INCORPORATED**By: Name: Title:  | **[COMPANY]**By: Name: Title:  |

\*\* **NOTE**: This document is posted on the ODL supplier web page at https:\\www.odl.com\suppliers and any future revisions must be updated there as soon as it is issued.