

MUTUAL NONDISCLOSURE AGREEMENT

Each undersigned party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose information relating to the Disclosing Party’s business (including, without limitation, computer programs, technical drawings, algorithms, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial, customer and product development plans, forecasts, strategies and information), which to the extent previously, presently or subsequently disclosed to the Receiving Party is hereinafter referred to as “Proprietary Information [PI]” of the Disclosing Party.

In consideration of the parties’ discussions and any access of the Receiving Party to PI of the Disclosing Party, the Receiving Party hereby agrees as follows:

1. The Receiving Party agrees (i) to hold the Disclosing Party’s PI in confidence & to take reasonable precautions to protect such PI (including, without limitation, all precautions the Receiving Party employs with respect to its own confidential materials), (ii) not to divulge any such PI or any information derived therefrom to any third person, (iii) not to make any use whatsoever at any time of such PI except to evaluate internally its relationship with the Disclosing Party, (iv) not to copy or reverse engineer any such PI and (v) not to export or reexport (within the meaning of U.S. or other export control laws or regulations) any such PI or product thereof. If the receiving party is an organization, then the Receiving Party also agrees that, even within Receiving Party, PI will be disseminated only to those employees, officers & directors with a clear and well-defined “need to know” for purposes of the business relationship between the parties. Without granting any right or license, the Disclosing Party agrees that the foregoing shall not apply with respect to any information after five years following the disclosure thereof or any information that the Receiving Party can document (i) is or becomes (through no improper action or inaction by the Receiving Party or any affiliate, agent, consultant or employee of the Receiving Party) generally available to the public, or (ii) was in its possession or known by it without restriction prior to receipt from the Disclosing Party, or (iii) was rightfully disclosed to it by a third party without restriction, or (iv) was independently developed without use of any PI of the Disclosing Party. The Receiving Party may make disclosures required by law or court order provided the Receiving Party uses diligent reasonable efforts to limit disclosure & to obtain confidential treatment or a protective order & allows the Disclosing Party to participate in the proceeding.
2. Immediately upon a request by the Disclosing Party at any time, the Receiving Party will turn over to the Disclosing Party all PI of the Disclosing Party and all documents or media containing any such PI and any and all copies or extracts thereof. The Receiving Party understands that nothing herein (i) requires the disclosure of any PI of the Disclosing Party or (ii) requires the Disclosing Party to proceed with any transaction or relationship.
3. This Agreement applies only to disclosures made before the first anniversary of this Agreement. The Receiving Party acknowledges and agrees that due to the unique nature of the Disclosing Party’s PI, there can be no adequate remedy at law for any breach of its obligations hereunder, which breach may result in irreparable harm to the Disclosing Party, and therefore, that upon any such breach or any threat thereof, the Disclosing Party shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to whatever remedies it might have at law. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect. This Agreement shall be governed by the laws of the State of California without regard to the conflicts of law provisions thereof. This Agreement supersedes all prior discussions and writings and constitutes the entire agreement between the parties with respect to the subject matter hereof. The prevailing party in any action to enforce this Agreement shall be entitled to costs and attorneys’ fees. No waiver or modification of this Agreement will be binding upon a party unless made in writing and signed by a duly authorized representative of such party and no failure or delay in enforcing any right will be deemed a waiver.

	<u>Company</u>	AccuKnox
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