

## **MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT**

This Mutual **Confidentiality and Non-Disclosure Agreement** ("Agreement") is made and entered into as of the date fully executed below (the "Effective Date") by and between Array US, Inc. (hereinafter "Array"), and , ("hereinafter "Company") (individually "Party"; together referred to as the "Parties").

### **RECITALS**

**WHEREAS**, Array and Company desire to exchange certain proprietary or confidential information solely for the purpose of evaluating, entering into, conducting, or performing a potential or existing business transaction or relationship between the Parties (the "Authorized Purpose"), and that such confidential information should be protected from unauthorized dissemination and use.

**WHEREAS**, Array and Company desire to maintain the confidentiality of all confidential information belonging to the Parties.

**NOW THEREFORE**, in consideration of the foregoing recitals and the mutual covenants, terms and conditions set forth herein, the Parties hereto, with advice of counsel and intending to be legally bound, hereby agree as follows:

1. **CONFIDENTIAL INFORMATION.** "Confidential Information" shall mean any and all commercial, business, technical, financial, proprietary, and other information relating to a Party, its parent companies, subsidiaries, affiliated divisions and affiliated companies (collectively its "Affiliates"), which shall include, but not be limited to, all information relating to the Party and its Affiliates' customers, leads, contracts, business records, production techniques, methods of operation, systems, facts, data and other information concerning the Party or its Affiliates' business operations. Confidential Information also includes (i) any written, oral or electronic information, any file, record, marketing material, client list, business plan, business knowledge, trade secret, programming idea or format, marketing strategy, financial data, procedure, computer software, integrated computer systems, device, prototype, drawing, print, sketch, document, and/or any information which a Party has developed, acquired or received, or which may be in its possession, prior to or after the Effective Date of this Agreement; (ii) any information that is specifically identified as such in writing; (iii) any information described above which a Party obtains from a third party and which a Party treats as proprietary or designates as confidential, whether or not owned or developed by said Party; and (iv) the fact that the Parties have entered into this Agreement and are engaged in discussions regarding a potential transaction or business relationship.
  - a. A Party, or its agents, employees or representatives, disclosing Confidential Information shall be referred to as the "Disclosing Party", whereas a Party, or its agents, employees or representatives receiving such Confidential Information shall be referred to as the "Receiving Party".
2. **DISCLOSURE AND USE.**
  - a. **Restrictions and Covenants.** The Receiving Party agrees that it will (i) hold the Disclosing Party's Confidential Information in strict confidence, use a high degree of care in safeguarding the Disclosing Party's Confidential Information, and will take all precautions necessary to protect the Disclosing Party's Confidential Information including, at a minimum, all precautions the Receiving Party normally employs with respect to its own confidential information, (ii) not divulge any of the Disclosing Party's Confidential Information or any information derived therefrom to any other person or entity (except as set forth in Section 2(b) below), (iii) not use the Disclosing Party's Confidential Information for any purpose whatsoever other than as may be directly in furtherance of the Authorized Purpose, (iv) not export the Disclosing Party's Confidential Information in violation of the United States Export Administration Act and regulations thereunder, or any other applicable export control laws or regulations, (v) notify the Disclosing Party in writing immediately upon discovery by the Receiving Party or its representatives of any unauthorized use or disclosure of the Disclosing Party's Confidential Information, and (vi) upon the oral or written request of the Disclosing Party, immediately return to the Disclosing Party or destroy (at the option of the Receiving Party) all such Confidential Information, including all originals, copies and extracts, provided that the Receiving Party's legal counsel may retain one copy of the returned or destroyed items for archival purposes.

- b. **Disclosure.** The Receiving Party shall use the Confidential Information only for the Authorized Purpose. The Receiving Party may only disseminate the Disclosing Party's Confidential Information to its representatives who have been informed of the Receiving Party's obligations under this Agreement and are bound by a written and executed confidentiality and non-use agreement with respect to the Disclosing Party's Confidential Information at least as broad in scope as the Receiving Party's obligations under this Agreement. The Receiving Party agrees to reasonably restrict disclosure of the Disclosing Party's Confidential Information to the smallest number of the Receiving Party's representatives which have a need to know the Confidential Information. The Receiving Party shall be responsible for enforcing this Agreement as to the Receiving Party's representatives and shall take such action (legal or otherwise) to the extent necessary to cause them to comply with this Agreement. For purposes of this Agreement, a Party's "representatives" shall consist of the directors, officers, employees, financial advisors, accountants, attorneys, consultants, and Affiliates of the Party.
- c. **Term.** The restrictions set forth in this Agreement shall apply to all Confidential Information received by the Receiving Party prior to the Effective Date and during the three (3) year period beginning on the Effective Date (the "Disclosure Period"), except that the Disclosure Period may be terminated earlier by either Party upon thirty (30) days prior written notice to the other Party. Notwithstanding the expiration of the Disclosure Period, the obligations and restrictions of the Receiving Party under this Agreement with respect to any and all Confidential Information received prior to or during the Disclosure Period shall survive the expiration of the Disclosure Period and shall continue to remain in full force and effect at all times thereafter.
- d. **Exceptions.** The restrictions on the Receiving Party's disclosure and use of Disclosing Party's Confidential Information under this Section will not apply to the extent of any Confidential Information:
- i. that was already known by the Receiving Party prior to the Disclosure Period as evidenced by the Receiving Party's written documentation;
  - ii. that becomes publicly known without breach of the Receiving Party's obligations under this Agreement;
  - iii. that can be demonstrated was rightfully acquired by the Receiving Party from a third party which is not subject to any restriction or obligation (whether contractual, fiduciary, or otherwise) on disclosure or use of such Confidential Information;
  - iv. that is independently developed by the Receiving Party or its representatives without knowledge or reference to such Confidential Information, as evidenced by written documentation or other tangible evidence;
  - v. that is required to be disclosed by law or by court order or government order, provided that the Receiving Party (a) promptly notifies the Disclosing Party of any such disclosure requirement so that the Disclosing Party may seek an appropriate protective order (or other appropriate protections), and (b) provides reasonable assistance (at no cost to the Receiving Party) in obtaining such protective order or other form of protection; or
  - vi. as to which and to the extent to which the Receiving Party has received express written consent from an authorized officer of the Disclosing Party to disclose or use.

A specific item of Confidential Information shall not be deemed to fall within the foregoing exceptions merely because such specific item is embraced or implied by more general Confidential Information that falls within the foregoing exceptions.

#### 1. **ADDITIONAL COVENANTS AND AGREEMENTS.**

- a. **No Obligation to Disclose; No Warranty.** No provision of this Agreement shall be construed as an obligation by either Party to disclose any Confidential Information to the other Party or to consummate any proposed transaction or enter into any further agreements with the other Party. All Confidential Information is provided

“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. Neither Party shall be liable to the other Party for any damages, loss, expense, or claim of loss arising from use or reliance on the Confidential Information of the other Party.

- b. **No License Implied.** The Parties acknowledge and agree that all Confidential Information (and any proprietary and novel features contained in the Confidential Information) shall remain the property of the Disclosing Party and, except as otherwise specifically set forth in this Agreement, no license or right with respect thereto is granted to the Receiving Party, whether by implication or otherwise. The Receiving Party shall have no rights whatsoever under any patent, trademark, copyright, or application therefor, or any other proprietary right of the Disclosing Party, and the Parties agree that the Disclosing Party shall remain free to grant such rights to others and to disclose the Confidential Information to anyone the Disclosing Party chooses.
- c. **Ownership; Title.** The Parties understand and agree that all such Confidential Information is and shall remain, at all times, the sole property of the Disclosing Party, and upon termination of this Agreement, shall be returned and left in its entirety in the undisputed possession and control of the Disclosing Party after such termination. No license is granted by the Disclosing Party to the Receiving Party, by implication or otherwise, to use any Confidential Information except as expressly provided in this Agreement.
- d. **Parent; Affiliates or Subsidiaries.** The Parties recognize, acknowledge and agree that this Agreement is specifically and expressly intended to protect, and does specifically and expressly protect, all Confidential Information of the Parties, which shall include such Confidential Information belonging to a Party's parent, affiliate or subsidiary companies.
- e. **Performance.** The Parties represent and warrant that neither is under any obligation to any other party inconsistent with or in conflict with this Agreement which would prevent, limit or impair in any way their performance of any obligations hereunder.
- f. **Equitable Relief.** Each Party acknowledges and agrees that due to the unique nature of the Confidential Information, there can be no adequate remedy at law for any breach of their respective obligations hereunder, which breach may result in irreparable harm to the other Party. Therefore, that upon any such breach or any threat thereof, the non-breaching Party shall be, in addition to any remedies that may be available at law, entitled to appropriate equitable relief, including injunction, without the requirement of posting a bond, in addition to whatever remedies it might have at law.
- g. **Choice of Law; Forum.** This Agreement shall be governed by the laws of the State of New York (U.S.A.), without giving effect to the principles of conflict of laws thereof and without regard to where the Agreement is executed or to be performed. The Parties hereby submit to the personal jurisdiction of the state and federal courts located in New York County, New York (U.S.A.), and agree that any cause of action brought under or related to this Agreement by either Party may be brought in the state or federal courts sitting in New York County, New York (U.S.A.).
- h. **Attorney's Fees.** If any legal action or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees, court costs and all expenses incurred in that action or proceeding at both the state and appellate level, even if not taxable as court costs, in addition to any other relief to which such Party or Parties may be entitled.
- i. **Notices.** All notices requests, instructions, consents, waivers and other communications to be given pursuant to this Agreement must be in writing and shall be deemed to have been duly given and received (i) on the same day if delivered in person, by same-day courier, or by telegraph, telex or facsimile transmission (with written confirmation of receipt), (ii) on the next business day if delivered by overnight mail or courier

(return receipt requested), (iii) on the date indicated by return receipt, or if there is no such receipt, on the 5th business day after delivery by certified or registered mail, postage prepaid, to the party for whom it is intended at the following addresses:

Name:	Array US, Inc.	Name:	
Attn:	Legal	Attn:	
Address:	2200 N. Federal Hwy Ste 217	Address:	
City State Zip:	Boca Raton, FL 33431	City State Zip:	
Email:	legal@array.com	Email:	

- 1. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the undersigned Parties, their successors and assigns. Neither Party may assign this Agreement or any right or obligation hereunder to any person at any time, without the written consent of the other Party. No assignment of this Agreement or of any right or obligation hereunder shall relieve the assignor of its obligations hereunder without the written consent of the other Party.
- 2. **Severability.** All of the provisions of this Agreement are intended to be distinct and severable. If a specific provision of this Agreement is determined to be invalid or unenforceable for any reason, the validity and enforceability of the remaining provisions of this Agreement shall not be affected, and the Agreement shall thereafter be construed as if the invalid provision had not been included in the Agreement.
- 3. **Entire Agreement; Amendment; Waiver.** It is understood by both Parties that this Agreement constitutes the complete agreement between the Parties with respect to the subject matter hereof and supersedes any previous understandings, agreements, negotiations, discussions, practices or customs, both written and oral, between the Parties pertaining to the subject matter hereof. This Agreement may not be amended, modified, or waived unless in writing signed by the Parties to this Agreement or in the case of a waiver, by the Party waiving compliance. The failure of a Party at any time or times to require performance of any provision, condition, or covenant hereof shall in no manner affect the right of such Party at a later time to enforce such provision, condition, or covenant or any other provision, condition, or covenant of this Agreement.
- 4. **Execution; Counterparts.** This Agreement may be executed in one or more counterparts, any of which may be executed and transmitted by facsimile or PDF email, and each of which shall be deemed an original, and all of which, when together, shall constitute one and the same enforceable instrument.
- 5. **Due Diligence and Order Form.** Upon execution of this Agreement, Array shall provide its standard due diligence materials and applicable order form, subject to the terms provided herein, to the Company representatives identified below:

Due Diligence:	

Order Form:

**IN WITNESS WHEREOF**, each of the Parties, through their duly authorized representatives, have executed this Agreement and affixed their signatures herein.

BY: ARRAY US, INC.			BY:		
					
Signature			Signature		
Kyle E. Williams					
Printed			Printed		
Asst. GC					
Title		Date	Title		Date