

MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Mutual Confidentiality and Nondisclosure Agreement (this "Agreement") is entered into effective as of this ____ day of _____, 2022 between **VALENCE SURFACE TECHNOLOGIES LLC**, a Texas limited liability company and its Affiliates ("Company") and _____, a(n) _____ ("Customer") (each a "Party" and collectively, the "Parties").

1. **Applicability.** The provisions of this Agreement shall apply to each entity in which Valence owns 50% or more of the equity therein, and their successors and assigns ("Affiliates") as if such entity was a party hereto. All references to "Company" hereinbelow shall include each of the Affiliates that offer or actually provide Services to Customer during the term of this Agreement. On or after the date hereof, Company or its Affiliates may provide certain services ("Services") to the Customer's products. In connection with quoting, evaluating, performing, or receiving the Services, either Party ("Discloser") may disclose proprietary or confidential information to the other Party ("Recipient"). This Agreement shall govern the use, disclosure, and return of such information.

2. **Confidential Information.** The term "Confidential Information" means the Services and all non-public proprietary or confidential information that is disclosed in accordance with this Section 2, including without limitation, all trade secrets concerning the business and affairs of Discloser, product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, pricing, processing parameters, samples, inventions and ideas, manufacturing processes, treatment methods and processes, computer software and programs, systems, structures and architectures and related processes, formulae, composition, improvements, devices, inventions, discoveries, concepts, ideas, designs, methods and other non-public information. Except as otherwise provided hereinbelow, to gain protection under this Agreement as Confidential Information, Discloser shall: (i) conspicuously identify any information disclosed in written or other permanent form as being proprietary using an appropriate legend at the time of original disclosure; and (ii) identify any information disclosed in oral, visual or other non-permanent form as proprietary at the time of original disclosure and deliver a written summary of the proprietary nature of such information to Recipient within fifteen (15) days following the original disclosure.

3. **Exclusions from Confidential Information.** Except as required by applicable law, the term "Confidential Information" as used herein shall not include any information: (i) lawfully known by Recipient or generally known to the public prior to the date of this Agreement; (ii) which becomes common knowledge within the industry thereafter other than by disclosure from Recipient; or (iii) which was lawfully available to Recipient on a non-confidential basis prior to the date hereof.

4. **Recipient Obligations.** Recipient shall: (i) hold all Confidential Information in strict confidence; (ii) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care as the Recipient would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (iii) not use the Confidential Information in any manner other than as necessary to quote, evaluate, provide or receive the Services; and (iv) except with Discloser's prior written consent, not disclose the Confidential Information to any person or entity other than Recipient's to its affiliates, employees, and representatives (collectively, "Representatives") who have a legitimate need to know the same, provided Recipient exercises due care in obtaining legally valid assurances from said individuals or entities that they will honor the confidentiality restrictions contained in this Agreement to the same degree as is required of Recipient. Recipient agrees to be fully responsible to Discloser for any violations of this Agreement caused by its Representatives and any other person or entity to whom Recipient discloses Discloser's Confidential Information. Upon discovery of any unauthorized use or disclosure of Confidential Information by its organization, Recipient shall, promptly notify Discloser of the unauthorized use or disclosure, diligently attempt to correct the effects thereof, and endeavor to prevent any further unauthorized uses or disclosures.

5. **Additional Obligations.** Notwithstanding any provision to the contrary in this Agreement, Customer shall not, without Company's prior written consent, discuss, disclose, publish, or otherwise disseminate to any third party any information directly or indirectly related to the past, present or future cost, pricing or quoting of Company's goods and/or services, regardless of the form or medium in which such information is made available to or otherwise obtained by Customer, and whether or not such information is marked or identified as being confidential or proprietary to Company.

6. **Legal Compulsion.** In the event Recipient becomes legally compelled to disclose any of the Confidential Information Recipient agrees that prior to such disclosure it will provide Discloser with advance written notice and a copy of the documents and information relevant to such legal action so that Discloser may seek a protective order or other appropriate remedy to protect its interests, and Recipient further agrees that it shall furnish only that portion of the requested information that it is advised by a written opinion of counsel is legally required to comply with such request.

7. **Export Compliance.** Each Party represents and warrants that no technical data furnished by either Party shall be exported from the United States without such Party's complying with all requirements of all United States export laws and regulations, including the requirement for obtaining any export license, if applicable. Such Party shall first obtain the written consent of the other Party prior to submitting any request for authority to export any such technical data or any controlled

material. Each Party shall indemnify and hold harmless the other Party from all claims, demands, costs, fines, penalties, attorney's fees and all other expenses arising from such Party's failure to comply with the provisions of this Section 7.

8. Return of Confidential Information. Recipient agrees to return the Confidential Information and any notes or other documents created by Recipient that uses any of the Confidential Information to Discloser promptly following any written request therefor or will promptly provide a certificate from an executive officer of Recipient that Recipient has destroyed the requested Confidential Information; provided however Recipient may retain one copy of the Confidential Information for archival purposes to: (i) respond to future government, accounting or customer audits or inquiries; (ii) have evidence of compliance with contracts or agreements between the Parties; (iii) be able to pursue or respond to warranty claims; or (iv) assist in the prosecution or defense of legal proceedings involving the Parties; provided further, Recipient agrees to continue to comply with the covenants of confidentiality and use restrictions contained herein for so long as Recipient maintains possession of the archived documents even if such possession continues beyond the natural expiration or termination of this Agreement.

9. Remedies; Injunctive Relief. The rights and remedies of the Parties hereto are cumulative and not alternative. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. Material and irreparable harm shall be presumed if Receiving Party, or anyone it discloses any of the Confidential Information to, breaches or threatens to breach any provision of this Agreement. Recipient agrees that any court of competent jurisdiction shall have full authority to immediately enjoin any breach of this Agreement, upon the request of Discloser, which also shall be entitled to all other rights, damages and remedies which Discloser may have at law or in equity, including without limitation, specific performance and the right to recover its actual damages, reasonable attorney fees and court costs. Neither Party shall seek to recover special, indirect, or consequential damages from the other Party arising out of or in any manner related to this Agreement or the breach of any provision contained herein.

10. Term and Termination. This Agreement shall continue in full force and effect for five (5) years from the date hereof, unless earlier terminated by either Party upon thirty (30) days' advanced written notice; provided however, Recipient agrees to continue to comply with the covenants of confidentiality and use restrictions contained herein for the later of: (i) five years from the date of termination or expiration of this Agreement; or (ii) so long as Recipient maintains possession of any of the Confidential Information for archival purposes as provided in Section 8. The provisions of Sections 7, 8, 9, 10 and 11 shall survive the natural expiration or termination of this Agreement.

11. Governing Law; Severability. This Agreement will be governed by the laws of the State of Texas without regard to conflicts of laws principles. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. If any of the covenants or provisions of this Agreement are determined to be unenforceable by reason of its extent, duration, scope or otherwise, then the Parties contemplate that the court making such determination shall reduce such extent, duration, scope or other provision and enforce them in their reduced form for all purposes contemplated by this Agreement.

12. Successors and Assigns. This Agreement shall be binding upon the Parties and shall inure to the benefit of their respective successors and permitted assigns. This Agreement may not be assigned by either Party without the consent of the other Party except in connection with the sale of substantially all of the stock or assets of such Party and then only if: (i) notice of assignment is given to the other Party; (ii) the assignee is not a direct competitor of the other Party; and (iii) the assignee agrees in writing to assume the obligations of the assignor under this Agreement. No permitted assignment shall relieve the assigning Party of its obligations hereunder with respect to Confidential Information disclosed to it before the assignment.

13. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter contained herein and may be modified or waived only by a separate writing signed by the Parties hereto. Each Party acknowledges that each Party was actively involved in the negotiation and drafting of this Agreement and that no law or rule of construction shall be raised or used in which the provisions of this Agreement shall be construed in favor or against either Party solely because one is deemed to be the author thereof. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

VALENCE SURFACE TECHNOLOGIES LLC

Print Name of Customer Above

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____