

MUTUAL NON-DISCLOSURE AGREEMENT



THIS MUTUAL NON-DISCLOSURE AGREEMENT (this "**Agreement**") is made as of the 8th December 2022 by and between Nexxiot Inc, a US corporation with offices at 7290 Virginia Parkway Suite 3000, McKinney, TX 75071, United States ("**Nexxiot**") and _____, a _____ corporation with offices at _____ (the "**Company**"). As used in this Agreement, the "**Discloser**" shall mean the party that discloses its Confidential Information to the other Party and the "**Recipient**" shall mean the Party that receives Confidential Information of the other Party.

BACKGROUND

- A. Nexxiot and the Company (together, the "**Parties**", and individually, a "**Party**") are or may be discussing a potential business relationship and each desire to receive from, and are prepared to supply to the other Party, certain Confidential Information (defined below) on the terms and conditions set out herein and solely for the purposes connected with the business relationship (the "**Purpose**").
- B. The Parties have, in part, acquired their Confidential Information through the expenditure of time, effort and money and wish to protect their Confidential Information as the use or disclosure of their Confidential Information by or to anyone, and particularly to the general public or a competitor, could be highly detrimental to, and not in the best interests of, the Parties.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of each Party providing its Confidential Information to the other Party and the exchange of other good and valuable consideration between the Parties, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Definition of "Confidential Information".

For the purposes of this Agreement, "**Confidential Information**" shall mean any and all written or oral information, whether or not on paper, in electronic form, or otherwise, whether or not marked as "confidential", and whether or not disclosed prior to or following the execution of this Agreement, and whether or not disclosed, or to be disclosed, to the Recipient or its Representatives (defined in Section 4) by, or on behalf of, the Discloser and in any way relating to the Purpose or otherwise acquired by the Recipient or its Representatives in connection with the Purpose, and which information or knowledge is not within the public domain at the time it is gained by, or comes to the attention of, the Recipient, including, without limitation:

- (a) All software code, algorithms, databases, drawings, statistical and other reports, studies, industry analyses, records, prototypes, internal photos, user manuals, samples, models, designs, formulae, specifications, processes, machines, methods of doing business,
- (b) Any technical information, supplier lists, marketing materials and strategies, commercial business information and methods, financial information (including projections and statements), sales information and plans, pricing information, terms of contracts with discounts, revenue models and indices, and data retention methodologies by which Discloser maintains information regarding parties to whom Discloser provides any services or products of any nature whatsoever ("**Client**" or "**Clients**"),
- (c) The identity of all Discloser's Clients and prospective Clients, Client lists, Client files and records, including names, addresses, telephone numbers, contact persons, and banking information, and any and all information relating to the business of any of Discloser's Clients and prospective Clients,
- (d) All employee manuals, interviewing techniques, training manuals, employee salaries and any other personal information relating to the employees of Discloser,
- (e) Any information received by Discloser from third parties to whom it owes a duty of confidence, and
- (f) All research and other background and other information relating in any way to any matter contemplated in items a) to e) above.

2. **Exclusions.**

The Parties agree that Confidential Information shall not include information which the Recipient can establish through written records created in the usual course of business:

- (a) is or became a part of the public domain other than as a result of a failure on the part of the Recipient or its Representatives to observe the confidentiality and non-use restrictions set out in this Agreement,
- (b) was in the lawful possession of the Recipient on a non-confidential basis prior to its disclosure hereunder,
- (c) is already available to or is hereafter lawfully acquired by the Recipient through a third party, which, to the knowledge of the Recipient, is not under an obligation of confidentiality to the entity making the disclosure,
- (d) is independently developed by the Recipient or any of its Representatives without violating any applicable obligations hereunder, or
- (e) is approved for release in writing (and only to the extent so approved) by the Discloser,

provided, however, that any combination of information that includes part of the Confidential Information shall not be considered to fall within the foregoing exceptions merely because individual parts of the combination of information were in the public domain or were within the possession of the Recipient prior to disclosure hereunder, unless the combination of information itself was in the public domain or in the possession of the Recipient prior to disclosure hereunder.

3. **Non-Disclosure of Confidential Information.**

The Recipient shall use the Confidential Information solely for the Purpose and shall not use the Confidential Information for its own or any third party's benefit, in any manner except as reasonably required for the Purpose. The Recipient will take all reasonable technical, administrative and operational precautions to protect the secrecy of and avoid unauthorized disclosure, publication, dissemination, or use of Confidential Information of the Discloser to any third party. Such precautions include, but shall not be limited to, the highest degree of care that a reasonable Recipient would use under the same or similar circumstances. Nothing in this Agreement obligates either Party to make any disclosure of Confidential Information.

4. **Disclosure to Representatives.**

Notwithstanding Section 3, the Recipient may disclose the Confidential Information to those of its affiliates, and its and their respective controlling shareholders, directors, officers, employees, agents, professional advisors, lenders and consultants ("**Representatives**") who have a legitimate need to know such Confidential Information in connection with the Purpose and who are informed by the Recipient of the confidential nature of the Confidential Information and understand the restrictions on use stipulated herein. The Recipient agrees to be responsible for any breach of this Agreement or use or disclosure of all or any part of the Confidential Information in violation of this Agreement by any of its Representatives or by any other person to whom the Recipient or its Representatives have provided the Confidential Information. The term "**person**" as used in this Agreement shall be broadly interpreted to include, without limitation, the media and any individual, corporation, company, firm, group, partnership, limited liability company, group, joint venture, government, governmental agency, board, commission, authority, unincorporated association, body politic or any other entity or collective body.

5. **Copying and Reverse Engineering Prohibited.**

Recipient shall not reproduce or make copies, models, or replicas of the Confidential Information of the Discloser in addition to those provided, or stored in a retrieval system or database by the Recipient without the prior written consent of the Discloser, except to the extent that reproduction or copying is required in connection with the Purpose. All such authorized copies shall be marked as Confidential Information of the Discloser. If Confidential Information is furnished in the form of tangible property or computer software, the Recipient agrees not to analyze, decompile, disassemble, decode, redesign, reverse engineer, or otherwise reproduce, attempt to reproduce, or permit any other person, including its affiliates and Representatives, to take possession of such Confidential Information, or do any of the foregoing.

6. Notice of Unauthorized Disclosure.

The Recipient agrees to notify the Discloser in writing of any misuse, misappropriation, or unauthorized disclosure of the Discloser's Confidential Information by or through the Recipient, and to assist the Discloser in every reasonable way to regain possession of its Confidential Information and prevent further unauthorized use.

7. Notice Preceding Compelled Disclosure.

In the event that the Recipient is required to disclose the Confidential Information pursuant to any applicable law or an order from a court of competent jurisdiction, the Recipient shall only disclose such portion of the Confidential Information that it is legally required to disclose, and shall use all reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed. If the Recipient is compelled to disclose the Confidential Information such disclosure shall not be a breach of this Agreement. To the extent permitted by law, the Recipient shall promptly notify the Discloser of the required disclosure and any relevant information in respect thereto so that the Discloser may take appropriate steps to protect such Confidential Information from such disclosure.

8. Return of Confidential Information.

Upon demand by the Discloser, the Recipient and its Representatives shall destroy or return within seven (7) business days upon receipt of such notice, all Confidential Information provided to it, except for that portion of the Confidential Information which is jointly developed or consists of analyses, compilations, forecasts, studies or other documents prepared by the Recipient or its Representatives, provided that such jointly developed information and analyses, compilations, forecasts, studies or other documents remain confidential and shall not be used in a manner inconsistent with this Agreement. Notwithstanding the foregoing, the Recipient may retain: (a) one copy of any Confidential Information it receives from the Discloser in the Recipient's confidential files for the purpose of defending any claims or enforcing any rights with respect to this Agreement, for regulatory compliance or for corporate record keeping purposes (provided that such retained files are kept subject to the terms of this Agreement) and (b) any electronic files containing Confidential Information created by the Recipient's automatic computer generated backup systems, provided that such files shall be deleted in the ordinary course of the Recipient's file maintenance systems, shall not be generally accessed by the Recipient, and shall remain subject to the terms of this Agreement. Subject to the foregoing, if requested by the Discloser, the Recipient shall provide an affidavit within three business days of such request, duly sworn by an officer of the Recipient, attesting to the return or destruction of all Confidential Information.

9. Ownership of Confidential Information.

All right, title and interest in and to the Confidential Information, including, without limitation, all patent rights, trade secret and confidential information rights, copyrights and other intellectual property, industrial, proprietary and other rights of any kind or nature, shall remain the exclusive property of the Discloser, and the Confidential Information shall be held in trust and confidence by the Recipient for the Discloser. The Discloser shall retain title to all tangible media on which Confidential Information resides, including documentation, diskettes, and all copies thereof. No interest, licence or any other right in, or to, the Confidential Information, other than expressly set out herein, is granted to the Recipient under this Agreement by implication or otherwise.

10. Non-Solicitation and Non-Circumvention.

During the term of this Agreement, neither the Recipient nor its Representatives will initiate or arrange, directly or indirectly, or maintain contact with any Client of Discloser, or any supplier or sales representative of Discloser, except for those contacts made in the ordinary course of business of the Recipient unrelated to the Purpose or with the express prior written consent of Discloser. Any such consent granted by Discloser shall be revocable at any time. Without the prior written consent of the other Party, during the term of this Agreement and for a period of two (2) years thereafter, neither Party will directly or indirectly solicit: (a) the other Party's Client(s) for the purpose of diverting business away from a Party, or ending the other Party's business relationship with its Clients, and/or (b) the other Party's employees for employment. For a period of five (5) years from the termination of this Agreement, the Recipient and its officers and directors, separately and individually, will not make any effort to circumvent the terms of this Agreement.

11. **No Warranty of Confidential Information.**

This Agreement shall not constitute any representation, warranty or guarantee to the Recipient by the Discloser whatsoever, including without limitation any representation, warranty or guarantee with respect to the Confidential Information infringing, violating, misappropriating or otherwise interfering with any rights of third parties. The Discloser shall not be held liable for any errors or omissions in its Confidential Information or the use, or the results of the use of, such Confidential Information.

12. **Remedies and Indemnification.**

The Recipient understands and agrees that the Confidential Information is information of a confidential nature of the Discloser, is consistently treated as such by the Discloser and that the public release of this information may cause irreparable damage to the Discloser. The Confidential Information is being disclosed by the Discloser in specific reliance on the commitments and representations of the Recipient in this Agreement. It is accordingly agreed that the Discloser shall be entitled to equitable relief, including injunctive relief to prevent breaches of this Agreement by the Recipient and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which the Discloser may be entitled at law or in equity. The Recipient shall indemnify and hold harmless the Discloser against all claims, liabilities, damages, costs and expenses arising out of or related to contravention by the Recipient of any terms of this Agreement.

13. **No Obligation to Contract.**

The Parties understand and agree that unless and until a definitive agreement has been executed and delivered, no contract or agreement providing for a transaction between the Parties shall be deemed to exist between the Parties, and neither Party will be under any legal obligation of any kind whatsoever with respect to any business transaction by virtue of this or any written or oral expression thereof, except in the case of this Agreement, for the matters specifically agreed to herein. Unless and until a definitive agreement has been executed and delivered, the Parties understand that each Party shall be free to conduct business as it may, in its sole discretion, determine; and each Party shall have the right to accept or reject any proposal, offer, or transaction for any reason whatsoever in its sole discretion. This Agreement neither obligates a Party to deal exclusively with the other Party nor prevents a Party or its affiliates from competing with the other Party or any of its affiliates.

14. **Term.**

This Agreement shall remain in force and effect for three (3) years from the date first written above, at the expiry of which time this Agreement and the obligations and restrictions contained herein shall terminate. Notwithstanding the foregoing, the obligations of Sections 3 through 10 and this Section 14 shall survive the expiration of such period and shall be in effect for five (5) years following the termination or expiration of this Agreement, except that, with respect to any scientific or technical information constituting trade secrets, the obligations of Sections 3 through 10 shall be in effect until such information is not considered trade secrets under applicable law.

15. **Notices.**

Notices sent out pursuant to this Agreement shall be sent by personal delivery or by other electronic transmission to the addresses noted above and shall be deemed to have been received, if sent by personal delivery, on the date of delivery, and if delivered by electronic transmission, notice shall be effective upon actual receipt if received during the recipient's normal business hours or on the recipient's next business day after receipt if not received during the recipient's normal business hours.

16. **Miscellaneous.**

- (a) This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and restates and supersedes any prior understandings and agreements between the Parties with respect thereto. No failure or delay by either Party hereto in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof or preclude any other or further exercise of such right or the exercise of any other right under this Agreement.

- (b) This Agreement shall be governed by and construed in accordance with the laws of Texas applicable therein, without reference to conflicts of law rules or principles. The Parties irrevocably attorn to the jurisdiction of the courts of Dallas (including all courts of appeal therefrom).
- (c) Neither Party hereto may assign this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. This Agreement may not be amended or modified except by a written agreement signed by each Party. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns.
- (d) If any provision of this Agreement is declared void, invalid, illegal or unenforceable by a court of competent jurisdiction such provision shall be severed from this Agreement and all other provisions of this Agreement shall remain in full force and effect.
- (e) The Parties may execute this Agreement in counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement. Delivery of an executed counterpart signature page by facsimile or electronic scan is as effective as executing and delivering this Agreement in the presence of the other Party to this Agreement. This Agreement is effective upon delivery of one executed counterpart from each Party to the other Party.
- (f) This Agreement may be executed electronically through an electronic acceptance and acknowledgement in an electronic workspace designed for that purpose, which acceptance and acknowledgement shall have the same legal effect, validity and enforceability as a signature affixed by hand.

IN WITNESS WHEREOF the Parties have executed this Agreement with full force and effect from the date and year first written above.

Nexxiot AG

COMPANY: _____

Place, Date: _____

Place, Date: _____

Stefan Kalmund
CEO

Name:
Title:

Kenneth Mannka
Executive Vice President

Name:
Title: