



THIS AGREEMENT is made between Pondurance, LLC, an Indiana, (US) corporation (“Pondurance”), and you (“company”). Pondurance and company would like to exchange information and enter into discussions regarding a possible partnership between them. In connection with that information exchange and those discussions, each party may receive valuable proprietary information relating to the other’s ideas, technologies, operations and businesses. Pondurance and company would like to protect the confidentiality of, maintain their respective rights in and prevent the unauthorized use and disclosure of their valuable confidential information. Accordingly, Pondurance and company hereby agree as follows:

1. Confidential Information

As used in this Agreement, (Confidential Information) means all nonpublic information disclosed by one party or its agents (the Disclosing Party) to the other party (the Receiving Party) that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation (i) nonpublic information relating to the Disclosing Party’s technology, business plan, customers, promotional and marketing activities, finances and other business affairs, (ii) third-party information that the Disclosing Party is obligated to keep confidential, and (iii) the nature, contents and existence of the parties’ negotiations.

2. Exclusions

Confidential Information does not include any information that (i) is or becomes publicly available without breach of this Agreement, (ii) can be shown by documentation to have been known to the Receiving Party at the time of its receipt from the Disclosing Party, (iii) is received from a third party who did not acquire or disclose such information by a wrongful or tortious act, or (iv) can be shown by documentation to have been independently developed by the Receiving Party without reference to any Confidential Information.

3. Use of Confidential Information

The Receiving Party may use Confidential Information only in pursuance of its business relationship with the Disclosing Party. Except as expressly provided in this Agreement, the Receiving Party will not disclose Confidential Information to anyone, or use for its own benefit, without the Disclosing Party’s prior written consent. The Receiving Party will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature. The Receiving Party will not export any Confidential Information in any manner contrary to the export regulations of the United States.

4. Receiving Party Personnel

The Receiving Party will restrict the possession, knowledge and use of Confidential Information to its employees, contractors and entities controlled by it who (i) have a need to know Confidential Information in connection with the parties’ business relationship, and (ii) have executed written agreements obligating them to protect the Confidential Information.

5. Disclosures to Governmental Entities

The Receiving Party may disclose Confidential Information as required to comply with binding orders of governmental entities that have jurisdiction over it, provided that the Receiving Party (i) gives the Disclosing Party reasonable written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy, (ii) discloses only such information as is required by the governmental entity, and (iii) and uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed.

6. Ownership of Confidential Information

All Confidential Information will remain the exclusive property of the Disclosing Party. The Disclosing Party’s disclosure of Confidential Information will not constitute an express or implied grant to the Receiving Party of any rights to or under the Disclosing Party’s copyrights, trade secrets, trademarks or other intellectual property rights.

7. Notice of Unauthorized Use

The Receiving Party will notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Receiving Party. The Receiving Party will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of such Confidential Information and prevent its further unauthorized use.

8. Return of Confidential Information

The Receiving Party will return or destroy all tangible materials embodying Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) promptly following the Disclosing Party's written request. At the Disclosing Party's option, the Receiving Party will provide written certification of its compliance with this Section.

9. Injunctive Relief

The Receiving Party acknowledges that a breach of its obligations under this Agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or an inadequate remedy. The Receiving Party therefore agrees that the Disclosing Party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of this Agreement.

10. Scope

This Agreement is intended to cover Confidential Information disclosed by each party both prior and subsequent to the date hereof. This Agreement automatically will terminate upon the completion or termination of the parties' business relationship; provided, however, that each party's obligations with respect to the other party's Confidential Information will survive for two years following such completion or termination.

11. Independent Development

The Disclosing Party acknowledges that the Receiving Party may currently or in the future be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement that the Receiving Party will not develop or have developed for its products, concepts, systems or techniques that are similar to or compete with the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information, provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.

12. Miscellaneous

12.1 This Agreement will not create a joint venture, partnership or other formal business relationship or entity of any kind, or an obligation to form any such relationship or entity. Each party will act as an independent contractor and not as an agent of the other party for any purpose, and neither will have the authority to bind the other.

12.2 This Agreement constitutes the entire agreement (and supersedes all previous agreements) between the parties relating to the matters discussed herein and may be amended or modified only with the mutual written consent of the parties. Each party's obligations hereunder are in addition to, and not exclusive of, any and all of its other obligations and duties to the other party, whether express, implied, in fact or in law. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the parties and their respective successors and assigns.

12.3 Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

12.4 If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

12.5 This Agreement will be governed by internal laws of the State of Indiana, without reference to its choice of law rules. Exclusive jurisdiction over and venue of any suit arising out of or relating to this Agreement will be in the state and federal courts of Marion County, Indiana. This Agreement may be executed by email, facsimile and in counterpart copies.

