



# NimbeLink Confidential

## Document Guide

NimbeLink Corp

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# Introduction

The file or document you have requested requires a non-disclosure agreement (NDA) in order to gain access. Please complete the following NDA and send a PDF version by email to:

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All sections of the document must be filled out, except for the lines under the "NimbeLink" section on the final page. This includes:

- All fields in the header on Page 3.
- All fields in Section 1 on Page 3.
- All fields in Section 10(b) on Page 5.
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## CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (the “Agreement”) is entered into effective \_\_\_\_\_, 20\_\_ (the “Effective Date”) between **NimbeLink Corp.**, a Delaware corporation (“NimbeLink”) and \_\_\_\_\_, a \_\_\_\_\_ (“\_\_\_\_\_”).

In consideration of the mutual commitments in this Agreement, the parties agree as follows:

**1. Purpose.** NimbeLink and \_\_\_\_\_ (the “Parties”) intend to engage in discussions regarding a possible business relationship, which may include \_\_\_\_\_ (the “Relationship”). In the course of those discussions, each Party, as a “Discloser,” may disclose to the other Party, as the “Recipient,” certain information that has a proprietary value to the Discloser or the third parties that have supplied that information to Discloser, due to its confidential nature, all as such information is defined below as “Confidential Information.” Each Party agrees to use and protect the Confidential Information of the other Party as provided in this Agreement.

**2. Confidential Information.**

(a) In this Agreement, “Confidential Information” means all information that the Discloser has identified as “Confidential,” “Trade Secret,” “Proprietary” or similar designation, and, whether or not designated in that manner, all information that a reasonably experienced business person would understand to be confidential by its nature, including, but not limited to, information consisting of or relating to: (i) ideas, methods, design concepts, inventions, formulas, patterns, and completed works; (ii) technical and business process information, research and development activities, product release plans; (iii) customers, prospective customers, vendors, business partners, any potential or pending acquisitions, advertising and marketing plans and strategies; (iv) business plans, financial information, pricing and cost information, capital assets, lending and investment relationships; and (v) systems designs, technical and functional specifications, software (including, without limitation, its architecture, features, functions, structure and code), documentation, databases and other compilations of information, user names and passwords.

(b) The definition of Confidential Information does not include information that is: (i) known to the Recipient prior to disclosure under this Agreement, as established by the written records of the Recipient; (ii) generally known or available in the industry or to the general public through no wrongful act or fault of Recipient; (iii) acquired in good faith by Recipient from a third party that has no obligation of confidentiality to the Discloser with respect to such information and without legal or contractual restrictions on Recipient regarding the use or disclosure of that information; or (iv) independently developed for the Recipient by employees, agents or contractors of Recipient who have not received access to the Confidential Information of Discloser.

(c) Each Party designates the substance of this Agreement, the fact of the discussions between them regarding the Relationship, and the content of those discussions as Confidential Information of that Party.

**3. Method of Disclosure.** Each Party, as Recipient, acknowledges that Confidential Information may be transmitted orally or in any written form (including, by way of example,

photocopying, email, text messages, digital files, access to electronic storage, notes, memos, faxes, letters, e-mails, text messages, files, reports, photographs, surveys, presentations, business plans, financial documents, analyses, video and audio tapes). Disclosures are covered by this Agreement whether made directly by a Party or by another person acting on their behalf. The prohibitions and requirements of this Section apply to all Confidential Information of Discloser in the possession of Recipient whether acquired through intentional disclosure, error, inadvertence, unauthorized access or otherwise.

**4. Permitted Use of Confidential Information.** Recipient may use the Confidential Information disclosed to it under this Agreement only for purposes of evaluating the Relationship and as reasonably required in exercising its rights and performing its obligations under this Agreement (the “Permitted Purposes”).

**5. Internal Reviewers.** Recipients may permit access to Confidential Information only to those employees, agents, attorneys, consultants, and contractors of Recipient, (collectively “Internal Reviewers”) that have a legitimate business or legal need to receive the Confidential Information to further the Permitted Purposes of Recipient, but only if Recipient has advised each Internal Reviewer of the obligations under this Agreement and each internal Reviewer is legally bound to Recipient to protect that Confidential Information under terms equivalent to this Agreement. Recipient shall be responsible and liable to Discloser under this Agreement for any unauthorized use or disclosure of the Confidential Information of the Discloser by the employees, agents, attorneys, consultants and contractors of Recipient, whether acting as Internal Reviewers or otherwise (the “Related Parties” of Recipient).

**6. Copies.** Recipient may make or have made copies or other reproductions of the Confidential Information of Discloser as reasonably required in connection with the Permitted Purposes. Recipient shall not remove or obliterate any restrictive markings on the Confidential Information and shall include all such markings on all copies made by or for it.

**7. Protection of Confidential Information.**

(a) Recipient shall not disclose Confidential Information to any third party or to the public generally unless the Discloser has consented, in advance and in writing, to such disclosure; Discloser, in its sole discretion, may withhold or condition its consent in any manner.

(b) Recipient shall take diligent, commercially reasonable affirmative measures to prevent the unauthorized disclosure of all Confidential Information of the Discloser in the possession of Recipient which measures shall be at a minimum equivalent to the measures taken by Recipient to preserve the confidential status of its own information of a similar nature.

(c) Each Party may designate one or more authorized individuals that will be responsible for receiving all requests for disclosure of information from the other Party and supplying, or directing others to supply, information in response to such requests. The Parties shall only place requests for information of the other Party through such designated individuals and will not solicit nor accept information of the other Party (whether or not Confidential Information) from other individuals.

**8. Unauthorized Use or Disclosure.** Promptly upon discovery by Recipient of any: (i) inadvertent disclosure of Confidential Information by Discloser to Recipient; (ii) unintended access by Recipient to Confidential Information of Discloser; (iii) unauthorized use of Confidential

Information by Recipient; or (iv) unauthorized intentional, unintentional or accidental disclosure of Confidential Information by Recipient; Recipient shall notify Discloser in writing of such occurrence. For purposes of this section, "Recipient" includes its Internal Reviewers. That notice shall describe the Confidential Information improperly used, accessed or disclosed, the approximate date of that occurrence, how the information was used or how and to whom the Confidential Information was disclosed, and other material information regarding the circumstances surrounding that occurrence. Recipient shall apply its diligent, commercially reasonable efforts to mitigate and remediate the effects of such unauthorized use or disclosure in coordination with, and as requested by, Discloser.

**9. Government Requirements.** If Recipient is requested or required to disclose any Confidential Information of Discloser by a governmental authority via subpoena, discovery request, court order or any other request or legal requirement supported by authority of any governmental body (a "Governmental Requirement"), Recipient shall provide Discloser with prompt, written notice of such request or requirement and of its proposed disclosure in response thereto and shall cooperate in all commercially reasonable means to permit Discloser to obtain protective orders or other limitations of the scope or manner of such proposed disclosure as Discloser may request. Failure to promptly notify Discloser of a Governmental Requirement in accordance with this Section shall constitute a material breach of this Agreement. Recipient may disclose Confidential Information of Discloser in response to a Governmental Requirement only to the extent such disclosure is legally required of it according to the advice of legal counsel to Recipient and then only to the extent, and subject to any protections issued in connection with, such Governmental Requirement.

**10. Term and Termination, Effect of Termination.**

(a) This Agreement is effective as of the Effective Date and applies to all disclosures of Confidential Information between the parties occurring on or after that date and otherwise during the Term of this Agreement.

(b) The term of this Agreement commences on the Effective Date and continues through, but expires on \_\_\_\_\_, 20\_\_, subject to earlier termination or further extension as provided in this Section (the "Term").

(c) Either Party may elect to terminate this Agreement prior to its expiration by delivering written notice of its election to do so to the other Party, specifying the effective date of such termination, which may be the date of such notice or any future date.

(d) The Parties may elect to extend the Term of this Agreement beyond its initial expiration date by written amendment hereto, which extension may include the incorporation of this Agreement by reference into another contract between the parties.

(e) Upon the date of expiration or earlier termination of this Agreement (the "Termination Date") each Recipient shall cease further use of the Confidential Information of Discloser except as required to enforce its remaining rights and perform its remaining obligations under this Agreement. Within ten (10) business days after the Termination Date, each Recipient shall either return to Discloser all Confidential Information of Discloser in any form within the possession or control of Recipient or destroy all such Confidential Information of Discloser and certify either the return or destruction of all such Confidential Information to the Discloser in writing.

(f) All provisions of this Agreement relating to the rights and obligations of the Parties concerning the protection and nondisclosure Confidential Information shall survive for a period of four (4) calendar years following the Termination Date.

**11. Remedies.** If a Party is in breach of its obligations under this Agreement, then the non-breaching Party may, in its sole discretion, seek whatever remedies may be available to it at law or equity. It is understood and agreed that money damages alone may not be a sufficient remedy for any breach of this Agreement and that the non-breaching Party shall be entitled to seek injunctive relief, specific performance or other appropriate legal and equitable remedies for any such breach, in addition to all other remedies available to the non-breaching party at law or in equity.

**12. Rights in Disclosed Information.** Confidential Information, in the form disclosed, in any copies made, and as it may be incorporated in any other form or combined in any other manner by Recipient, remains the property of Discloser and its suppliers. Disclosure of Confidential Information under this Agreement does not grant to Recipient any title to, license in, or any other proprietary rights in that Confidential Information, nor in any patent, trademark, copyright, or trade secret of Discloser comprising or relating to that Confidential Information, other than the right of Recipient to use that Confidential Information for the Permitted Purposes as provided in this Agreement.

**13. Right to Disclose.** Each Party, as Discloser, represents and warrants to the other Party that the Discloser has the legal right to possess and disclose the Confidential Information disclosed by it to Recipient under the terms and conditions of this Agreement without violating the legal rights of, or contractual obligations of the Discloser to, any third party.

**14. No Implied Obligations.** Nothing in this Agreement shall be deemed to impose on either Party any obligation to disclose its Confidential Information to the other Party, nor to negotiate or enter into any additional agreement with the other Party.

**15. No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED UNDER THIS AGREEMENT "AS IS." EXCEPT AS SET FORTH IN ANY SEPARATE AGREEMENT BETWEEN THEM INTO WHICH THIS AGREEMENT IS INCORPORATED, NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED, OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS, OR PERFORMANCE OF ANY CONFIDENTIAL INFORMATION.

**16. Additional Provisions.** The relationship between the Parties under this Agreement is that of independent contractors. Neither party may assign or transfer any rights or obligations under this Agreement without the prior written consent of the other party. This Agreement shall be governed by the laws of the State of Minnesota without reference to choice of law or conflict of law principles. Notices shall be directed to the parties at the addresses set forth below, as updated from time to time by the parties. This Agreement constitutes the entire agreement between the parties hereto with respect to its subject matter and supersedes any and all prior agreements or understandings, whether written, oral or implied, with respect to the subject matter of this Agreement. This Agreement may not be modified or amended without the prior written consent of each party as evidenced by a mutually signed written amendment hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which will constitute one and the same instrument. Should any one or more parts of this Agreement be declared invalid through arbitration or by any court of competent jurisdiction for any

reason, such decisions shall not affect the validity of any remaining portions, which shall remain in full force and effect as if this Agreement had been executed with the invalid parts thereof eliminated.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date set forth above:

**NimbeLink Corp.:**

\_\_\_\_\_:

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

Dated: \_\_\_\_\_, 20\_\_

Notices to:

Notices to:

NimbeLink Corp.

\_\_\_\_\_

Attn: Scott Schwalbe, CEO

Attn: \_\_\_\_\_

3131 Fernbrook Lane N., Suite 100

\_\_\_\_\_

Plymouth, MN 55447

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