



**PowerSILO Inc.**  
**MUTUAL NON-DISCLOSURE AGREEMENT**

**COMPANY/INDIVIDUAL INFORMATION:**

Company/Person Name:   
State of Incorporation:   
Address:   
City/ State:   
Zip:

Contact Name:   
Contact Phone:   
Contact Fax:   
E-mail Address:

**POWERSILO INC INFORMATION:**

**PowerSILO Inc.**  
7250 Redwood Blvd. Ste300 Room 345  
Novato, CA 94945

Contact Name: Rod Nash  
Contact Mobile: 510-551-5182  
Contact Fax:  
E-mail Address: [rod@powersilos.com](mailto:rod@powersilos.com)

This Agreement consists of three pages including this cover page and the attached terms and conditions.

**EFFECTIVE DATE:**

The Parties have entered into this Agreement as of the Effective Date written above.

Signatures of the Parties for the Mutual Non-Disclosure Agreement (MNDAv20):

**COMPANY/INDIVIDUAL:**

\_\_\_\_\_  
**Authorized Signature**

**Name**

**Title**

**POWERSILO, INC.**

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Title**

# TERMS & CONDITIONS

## THE PARTIES HEREBY AGREE AS FOLLOWS:

### SECTION 1. PURPOSE OF DISCLOSURE

The purpose of disclosing Confidential Information is to facilitate discussions about, and the evaluation of, a potential and/or an on-going business relationship related to the commercialization and development of the PowerSILO Inc. technology ("Purpose") between the parties as identified on the cover page of this Agreement and their Affiliates (as defined in Section 3(A) below).

### SECTION 2. CONFIDENTIAL INFORMATION

As used herein, "Confidential Information" shall mean any and all information that is (i) disclosed for the Purpose, (ii) received on or after the Effective Date and (iii) designated by disclosing party as "confidential" if communicated in writing or other tangible form or if orally disclosed or impossible to mark, (x) clearly identified as confidential at the time of the disclosure and (y) summarized in writing, marked "confidential" and delivered to receiving party within thirty (30) days of such initial disclosure, including, without limitation any idea, finding, research, data, specification, process, technique, algorithm, architecture, know-how, invention, design, plan, drawing, sketch, product schematic, document, manual, report, study, photograph, sample, program, source code, prototype, customer list, price list, product description, business plan, marketing plan, financial information, or work in process, whether such information is in oral, written, graphic or electronic form, or any other information which the receiving party knows or reasonably ought to know is confidential, proprietary or trade secret information of the disclosing party.

### SECTION 3. NON-DISCLOSURE OBLIGATIONS

Each party receiving Confidential Information shall treat such information as strictly confidential, and shall use the same care to prevent the disclosure of such information as such party uses with respect to its own confidential and proprietary information (which shall be no less than the care a reasonable person would use under similar circumstances) and to use the Confidential Information for the purpose set forth herein. In any event, each party receiving Confidential Information shall:

(A) Disclose such Confidential Information to only those officers, directors, employees, consultants and/or Affiliates ("Representatives") (1) whose duties justify their need to know such information and (2) who have been clearly informed of their obligation to maintain the confidential, proprietary and/or trade secret status of such Confidential Information. "Affiliates" shall mean any company, existing now or in the future, owning or owned by, either directly or indirectly, or controlling, controlled by or under common control with either party, and their directors, officers and employees;

(B) Disclose the fact that it has received such Confidential Information only to Representatives of such party (1) whose duties justify their need to know such fact and (2) who have been clearly informed of their obligation to maintain the confidential status of such fact; and

(C) Use such Confidential Information only for the purpose of reviewing, analyzing and discussing with the disclosing party.

Each party receiving Confidential Information shall, immediately upon the request of the disclosing party, (i) return to the disclosing party or destroy, at the option of the disclosing party, all Confidential Information received from the disclosing party, including all copies thereof made by the receiving party or any of its Representatives, (ii) destroy all materials incorporating or based on such Confidential Information which were prepared by the receiving party or any of its Representatives, and (iii) certify to the disclosing party in writing that it has complied with the provisions of this Section 3. The foregoing obligations shall not apply to computer records and files which have been created pursuant to automatic electronic archiving, IT back-up or internal disaster recovery procedures.

### SECTION 4. EXCEPTIONS TO NON-DISCLOSURE OBLIGATIONS

The obligations set forth in Section 3 above shall not apply to any Confidential Information:

(A) Which the disclosing party expressly agrees in writing is free of any nondisclosure obligations;

(B) Which, at the time of disclosure to the receiving party, was known to the receiving party or any of its Representatives (as evidenced by documentation in the possession of the receiving party or its Representatives) free of any nondisclosure obligations;

(C) Which is independently developed by the receiving party or any of its Representatives (as evidenced by documentation in the possession of the receiving party or its Representatives); or which is lawfully received by the receiving party or any of its Representatives, free of any nondisclosure obligations, from a third party which the receiving party or its Representatives reasonably believe has the right to so furnish such Confidential Information;

(D) Which is or becomes generally available to the public without any breach of this Agreement; or

(E) Which must be disclosed pursuant to applicable federal, state or local law, regulation, court order or other legal process, provided that, if legally permissible, the receiving party has notified the disclosing party prior to such required disclosure and, to the extent reasonably possible, has given the disclosing party an opportunity to contest such required disclosure at the disclosing party's expense.

### SECTION 5. TERM

This Agreement shall become effective as of the Effective Date and shall remain in effect until terminated by either party giving thirty (30) days' prior written notice of termination to the other party, or the two (2) year anniversary of the Effective Date, whichever comes first. Upon any termination of this Agreement for any reason, each party's obligations hereunder with respect to Confidential Information received prior to such termination shall continue for a period of three (3) years after the date of such termination; *provided, however*, with respect to trade secret information specifically designated in writing as such at the time of its disclosure, whereby the obligations set forth herein shall survive for the maximum period of time permitted by law.

### SECTION 6. GENERAL

(A) NO COMMITMENT. Neither party has any obligation to disclose any Confidential Information to the other party. In addition, neither this Agreement, nor the disclosure or receipt of Confidential Information hereunder, shall constitute or imply any promise or intention by either party to enter into any other agreement or transaction or to continue discussions relating thereto.

(B) NO LICENSE GRANTED. All Confidential Information shall remain the property of the disclosing party, and nothing contained in this Agreement shall be construed as granting or conferring any rights whether by license or otherwise to any Confidential Information.

(C) COMPETITION. Nothing in this Agreement shall prohibit or restrict either party's right to develop, use, or market products or services similar to or competitive with those of the other party disclosed in the Confidential Information as long as it shall not thereby breach this Agreement. Additionally, each party acknowledges that the other may already possess or has developed products or services similar to or competitive with those of the other party to be disclosed in the Confidential Information.

(D) NO REPRESENTATIONS. No party shall be deemed to make any representation, warranty, assurance or guarantee with respect to any Confidential Information disclosed hereunder, including without limitation any representation or warranty of merchantability, fitness for any particular purpose, or non-infringement of intellectual property or other rights of third

parties.

(E) GOVERNING LAW AND FORUM. This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of Delaware, without reference to its conflicts of laws principles.

(F) SEVERABILITY. If any provision of this Agreement is determined to be unenforceable for any reason, the remaining provisions hereof shall be unaffected and remain in full force and effect.

(G) MODIFICATIONS. Any modification, amendment, supplement, or other change to this Agreement must be in writing and signed by both parties. As used herein, the term "Agreement" shall include any future amendments or supplements hereto.

(H) WAIVERS. All waivers must be in writing. The failure of either party to insist upon strict performance of any provision of this Agreement, or to exercise any right provided for herein, shall not be deemed to be a waiver for the future of such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce any other provision or right herein.

(J) EQUITABLE REMEDIES. The parties agree that any breach of this Agreement, including without limitation any actual or threatened disclosure of Confidential Information without the express prior written consent of the disclosing party, would cause irreparable injury to the disclosing party for which no adequate remedy at law exists; therefore, the parties agree that in addition to all other remedies available to the parties, equitable remedies, including without limitation injunctive relief and specific performance, are appropriate remedies to redress any breach or threatened breach of this Agreement by the receiving party, any of its Representatives, or any other persons directly or indirectly acting for or on behalf of or with the receiving party. In case of arbitration the Rules of Uncitral Arbitration of the International Chamber of Commerce United Nations Commission should be applied by one or more arbitrators appointed in accordance with the said rules.

(K) RIGHTS AND REMEDIES. All rights and remedies hereunder shall be cumulative, may be exercised singularly or concurrently, and shall not be deemed exclusive. If any legal action is brought to enforce any obligations hereunder, the prevailing party shall be entitled to receive its attorneys' fees,

court costs and other collection expenses, in addition to any other relief it may receive. This Agreement is not intended to provide any rights or remedies to any person or entity other than the parties and their respective successors and assigns.

(L) CONSTRUCTION. The headings and subheadings contained herein shall not be considered a part of this Agreement. This Agreement may be executed in several counterparts, all of which shall constitute one agreement. This Agreement may be delivered by means of facsimile transmission and facsimile copies shall be deemed originals if executed by both parties and delivered by facsimile. This Agreement shall bind, and inure to the benefit of, each party and its successors and assigns.

(M) NOTICES. Any notice or communication permitted or required hereunder shall be in writing and shall be delivered in person or by courier, sent by electronic facsimile (fax), or mailed by certified or registered mail, postage prepaid, return receipt requested, and addressed as set forth on the cover page with a copy to the Legal Department or to such other address as shall be given in accordance with this Section 6(M). If notice is given in person, by courier or by fax, it shall be effective upon receipt; and if notice is given by mail, it shall be effective three (3) business days after deposit in the mail.

(N) RELATIONSHIP BETWEEN PARTIES. Nothing contained in this Agreement shall be construed to constitute either party hereto as the partner, employee, agent or other representative of the other party hereto.

(O) EXPORT CONTROL LAWS. Each party shall comply with all provisions of the export control laws of the United States and other relevant countries as such laws currently exist and as they may be amended from time to time, with respect to any export of Confidential Information.

(P) ENTIRE AGREEMENT. This Agreement is the final, complete and exclusive agreement between the parties relating to the Confidential Information, and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, promises and other communications relating to such subject matter.

END OF TERMS & CONDITIONS