

MUTUAL CONFIDENTIALITY AGREEMENT

THIS MUTUAL CONFIDENTIALITY AGREEMENT ("Agreement"), entered into as of the last signature hereto (the "Effective Date"), by and among **ark data centers LLC**, an Iowa limited liability company ("ark"), and the customer identified on the signature page below (the "Customer"). Customer and ark may be referred to individually as a "Party" or collectively as the "Parties."

1. CONFIDENTIAL INFORMATION.

(a) **Description.** ark and/or the Customer may, from time to time during the term of this Agreement, disclose to the other Party (such disclosing party, "Disclosing Party" and such party receiving the disclosure, "Receiving Party") certain non-public information including, without limitation, whether disclosed in written, oral, electronic, or any other form including, without limitation, information regarding trade secrets, technical and non-technical data, business methods and models, drawings, financial terms, pricing, processes, assessment models, intervention selection, interventions, data collection methods, data analysis, formulas, ideas, concepts, know-how, techniques, sketches, models, inventions, processes, algorithms, software (in both source code and object code formats), and formulas related to each of the parties, and including information regarding experiments, developments, designs, specifications, customer lists, product plans, investors (or potential investors), employees, agents, contractual relationships, forecasts, sales, merchandising, and marketing plans (collectively, "Confidential Information"). Regardless of whether so marked or described as Confidential Information, and regardless of whether disclosed in written or oral form, any non-public information in whatever format shall be deemed to be Confidential Information. For the avoidance of doubt, Confidential Information disclosed orally shall be deemed Confidential Information regardless of whether it is subsequently reduced to writing or otherwise confirmed in writing by the Disclosing Party. The terms and conditions of this Agreement, the fact that the Parties are entering into this Agreement, and the discussions in connection with the Relationship (as defined below), shall also be deemed Confidential Information for purposes of this Agreement.

(b) **Protection.** Except as expressly permitted by this Agreement, Receiving Party shall not use the Confidential Information for any purpose other than in connection with the evaluation, negotiation and/or carrying out of a possible business relationship and/or agreement between the Parties (the "Relationship"). Receiving Party will not disclose any Confidential Information to third parties or to employees of the Receiving Party, other than employees who are required to have the information in order to carry out the discussions regarding the Relationship; provided, however, that the Receiving Party may disclose the Agreement or its content, and Confidential Information on a confidential basis, subject to the limitations and restrictions set forth herein, to its Representatives who are directly participating with the

Receiving Party in its evaluation, negotiation and/or carrying out of the Relationship. Receiving Party agrees that it will take all commercially reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that Receiving Party utilizes to protect its own Confidential Information. Receiving Party agrees that it shall be liable for any breach by its Representatives of any terms of this Agreement. Receiving Party agrees to notify the Disclosing Party in writing of any misuse or misappropriation of Confidential Information which may come to the Receiving Party's attention within one (1) business day of learning of any such misuse or misappropriation. For purposes of this Agreement, "Representatives" shall mean the Receiving Party's affiliates, directors, officers, employees, agents, legal counsel, accountants, consultants and financial advisors, as well as any representative of any of the foregoing.

(c) **Proprietary Rights and Acknowledgement.** Receiving Party acknowledges and agrees that the Disclosing Party has exclusive proprietary and other rights in Disclosing Party's Confidential Information including, without limitation, any and all worldwide patent, copyright, mask work, trademark, trade secret and other intellectual property rights, however and whenever arising (collectively, the "Proprietary Rights"). Receiving Party acknowledges and agrees that: (i) no title or ownership of the Disclosing Party's Confidential Information is transferred to Receiving Party by this Agreement; (ii) the Confidential Information and all Proprietary Rights therein are and shall remain the exclusive property of the Disclosing Party; and (iii) Receiving Party shall not have any right or interest in the Confidential Information. DISCLOSING PARTY MAKES NO EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION CONCERNING ITS CONFIDENTIAL INFORMATION, OR THE ACCURACY OR COMPLETENESS OF ITS CONFIDENTIAL INFORMATION, AND IS UNDER NO OBLIGATION TO UPDATE OR CORRECT ANY INACCURACY (IF ANY) IN THE CONFIDENTIAL INFORMATION. DISCLOSING PARTY SHALL NOT BE LIABLE TO RECEIVING PARTY OR ANY THIRD PARTY TO WHOM RECEIVING PARTY DISCLOSES CONFIDENTIAL INFORMATION, IF IT IS RELIED UPON.

(d) **Exceptions.** Notwithstanding anything herein to the contrary, Confidential Information shall not be

deemed to include any information which: (i) was already known to Receiving Party or its Representatives from a source that, to Receiving Party's or its Representative's knowledge after reasonable inquiry, had no confidentiality obligations to Disclosing Party at the time of disclosure as reflected in the written records of Receiving Party; (ii) was or becomes known to the general public without breach of this Agreement; (iii) is independently developed by Receiving Party without access to, or use of, the Confidential Information; (iv) is approved in writing by one of the Parties for disclosure by Receiving Party; or (v) is required to be disclosed by law or by the order of a court or similar judicial or administrative body (collectively, "Law"); provided, however, that Receiving Party shall notify Disclosing Party of such requirement immediately and in writing, unless prohibited by applicable law, government regulation or requirements of regulators, and shall cooperate reasonably with Disclosing Party, at Disclosing Party's expense in the obtaining of a protective or similar order with respect thereto, and the scope of any disclosure required by Law shall be limited to that which is required by Law. Notwithstanding the foregoing, Receiving Party and its Representatives who make disclosures may do so to the extent such disclosure is required pursuant to routine investigations, inspections, examinations or regulatory or self-regulatory inquiries.

(e) Return of Confidential Information.

Receiving Party shall, within thirty (30) days of Disclosing Party's request, return to the Disclosing Party, or at Receiving Party's option, destroy or erase all Confidential Information in tangible form (and provide prompt written confirmation (email shall suffice) to Disclosing Party of such destruction and erasure): (i) upon the written request of Disclosing Party; or (ii) upon the expiration or termination of this Agreement, whichever comes first, and in both cases, Receiving Party shall certify promptly and in writing that it has done so. Except for the rights expressly described herein, no party is granted any rights to the patents, copyrights, trade secrets, trade names, trademarks (whether or not registered), or any other rights, franchises or licenses of the other parties. Notwithstanding anything in this Agreement to the contrary, Receiving Party and its Representatives may retain Confidential Information solely and to the extent necessary to: (i) comply with applicable laws, rules, and regulations; and (ii) to comply with Receiving Party's and its Representatives' respective bona fide document retention and disaster recovery policies and procedures.

2. TERM AND TERMINATION. The obligations contained in this Agreement shall continue for a period terminating the later of (i) three (3) years following the date of this Agreement; or (ii) three (3) years from the date that Confidential Information is last disclosed by either Party under this Agreement; provided, however, that all non-disclosure and non-use obligations of the Parties under this Agreement shall survive for the longest period allowable under applicable

law. Notwithstanding any provision of this Agreement to the contrary, with respect to any Confidential Information that constitutes a trade secret under applicable law, such obligations will remain in effect for so long as such Confidential Information retains its trade secret status. Only information that is clearly marked as a trade secret will be subject to the foregoing restriction, and Receiving Party will have the option to not receive such information in advance.

3. REMEDIES FOR BREACH. Receiving Party acknowledges that damages alone might not be an adequate remedy for breach. Accordingly, without prejudice to any other rights and remedies, the Disclosing Party may be entitled to seek equitable (including without limitation injunctive) relief concerning any actual or threatened breach of this Agreement. Each party to this Agreement agrees to comply fully with all relevant export laws and regulations of the United States to assure that no Confidential Information or any portion thereof is exported, directly or indirectly, in violation of United States law.

4. CHOICE OF LAW AND JURISDICTION. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and assigns, except that neither party may assign or transfer this Agreement, by operation of law or otherwise, without the other party's prior written consent. This Agreement shall be governed by the laws of the State of Delaware, without reference to conflict of laws principles. Each party hereby irrevocably and unconditionally consents to submit to the exclusive jurisdiction of the federal or state courts of Delaware for any actions, suits or proceedings arising out of or relating to this Agreement and the matters contemplated hereby (and each party agrees not to commence any action, suit or proceeding relating thereto except in such courts, and further agree that service of any process, summons, notice or document by U.S. registered mail to its respective address set forth below shall be effective service of process for any action, suit or proceeding brought against such party in any such court, subject to providing the other party written notice of any change in address). Each party hereby irrevocably and unconditionally waives any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement or the matters contemplated hereby in the courts of Delaware, and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

5. SEVERABILITY. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole, and in such event, such provision shall be changed and interpreted so as to best accomplish the objectives of the

unenforceable or invalid provision within the limits of applicable law or applicable court decisions.

6. No ASSIGNMENT No party may assign this Agreement, in whole or in part, without the prior, written permission of the other parties. Any purported assignment in derogation of the foregoing shall be without any effect whatsoever.

7. NOTICES. All notices permitted or required to be given under this Agreement shall be in writing and delivered to each party by certified mail, return receipt requested, to the address for each party described in the signature section of this Agreement or such other address as each party may specify for itself by giving notice as provided above.

8. NO REVERSE ENGINEERING. Receiving Party shall not modify, create derivative works of, reverse engineer, reverse assemble, decompile or reverse compile any software, formula or other material contained in the Confidential Information.

9. DEFEND TRADE SECRETS ACT NOTICE. Notwithstanding the foregoing nondisclosure obligations, pursuant to 18 USC Section 1833(b), the parties shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (ii) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

10. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement between the parties with respect to the Confidential Information disclosed herein, and supersedes all prior and contemporaneous agreements, discussions, contracts and negotiations between the parties concerning such Confidential Information, whether written or oral. This Agreement may not be modified except in writing and signed by all parties. Any purported oral modification of this Agreement shall be without any effect whatsoever. The Parties agree that neither Party is under any legal obligation to conduct or continue any discussions or negotiations with respect to, or enter into, any relationship, other agreement or transaction whatsoever, including without limitation the Relationship.

AGREED TO:

CUSTOMER:

[THE CUSTOMER'S FULL LEGAL NAME]

By: _____

NAME: _____

TITLE: _____

DATE: _____

CUSTOMER ADDRESS FOR NOTICE:

ark data centers LLC

By: _____

NAME: _____

TITLE: _____

DATE: _____

ark data centers, LLC address for notice:

305 2nd ST SE, Ste 500
Cedar Rapids, IA 52401
Attention: General Counsel