

**PLEASE READ THESE INSTRUCTIONS CAREFULLY. IF YOU FAIL TO COMPLETE ANY ITEM, YOU MAY EXPOSE REALTEK LLC.. TO UNINTENDED RISKS. IF YOU HAVE ANY QUESTIONS REGARDING COMPLETING THIS FORM, PLEASE CONTACT LEGAL AFFAIRS**

## **I. INSTRUCTIONS**

- This form is intended for use only in support of a government procurement or contract. Do not use this form for discussions involving commercial activities such as mergers, acquisitions, divestitures, investments, joint ventures; or transactions outside of the United States. Contact your Legal Affairs representative for assistance in those types of discussions.
- Plan ahead. Before substantive contact takes place, always consider: “I’m setting up an initial meeting with a teaming partner/client. I need to think about putting a mutual NDA in place.” NDA’s are important – they establish trust by setting forth each party’s confidentiality obligations to the other.
- It is best for the NDA to be mutual. But consider who will be providing services or products to whom. Provisions that appear to be even-handed may become unbalanced if confidential information is being disclosed by only one party.
- It is best to use REALTEK LLC.’ form NDA. It is mutual and fair and reflects generally accepted approaches to confidentiality provisions. If, however, the other party feels strongly about using its own form NDA, forward a copy to Legal Affairs immediately for review and comment. Keep in mind that the way in which the parties handle the NDA process may be indicative of things to come in negotiating a subcontract, as well as in performance.
- Fill in the address and full legal name of the other party (“Company”) in the box at the top of page 1. The Company’s name should include "Incorporated," "Company," "Limited" or an abbreviation or variation thereof.
- Check (and, if appropriate, fill in) the Date, Business Purpose and Exchange Period section of the Agreement. For the Business Purpose, be as specific as possible, e.g., cite RFP Number, Program Name. The preferred approach is to make the agreement specific to an identified project or effort. Note whether the business purpose includes responding to a proposal and whether other parties will also be participating on the team. For the Exchange Period, enter the shortest reasonable period. Ideally, the starting point would be the date meaningful discussions are entered into and the ending point would be the date when the parties execute a contractual agreement containing its own nondisclosure provisions or upon award of the project to a party other than REALTEK LLC. If the ending point cannot be tied to a specific event, a specific end date may be selected. In this case, the agreement will need to be monitored to determine if the ending date requires extension.
- Check the optional language bolded in the Agreement (relating to access by third parties) for its applicability to the Business Purpose. If appropriate, delete the optional language. If the optional language is retained, delete the bolding.
- Print two copies of the Agreement (without the instructions) and have both documents signed and dated by an authorized representative of the prospective customer and REALTEK LLC. Each signatory should print his/her name and title.

- After you have completely filled out the Agreement, printed two copies of the Agreement, and had both documents executed by the prospective customer and REALTEK LLC., return one original to your Legal Affairs representative and give one original to the prospective customer. Retain a photocopy for your files.
- *DO NOT MAKE ANY SUBSTANTIVE CHANGES TO THIS FORM WITHOUT FIRST TALKING TO YOUR LEGAL AFFAIRS REPRESENTATIVE.*
- IF YOU HAVE ANY QUESTIONS ABOUT THIS FORM, CALL YOUR LEGAL AFFAIRS REPRESENTATIVE.
- Once the Agreement is executed, please refer to the Compliance Guidelines for suggestions on complying with the Agreement.

**DO NOT SEND THE INSTRUCTIONS AND COMPLIANCE GUIDELINES TO THE CLIENT, ONLY THE ACTUAL CONFIDENTIALITY AGREEMENT.**

## II. COMPLIANCE GUIDELINES<sup>1</sup>

Take the following steps with respect to information delivered or received under each Nondisclosure Agreement.

- Review and understand the provisions of the Nondisclosure Agreement.
- If REALTEK LLC. delivers any confidential information to the other party:
  - Mark any written information as required by the Nondisclosure Agreement (for example, mark the material as "confidential"). Identify any oral information as confidential as required by the Nondisclosure Agreement. If required by the Nondisclosure Agreement, notify the other party in writing that such oral information was confidential.
- Keep a list of any confidential information delivered to the other party.
- At the appropriate time, request that the other party return or destroy, if permitted by the Nondisclosure Agreement, the confidential information that was delivered to it.
- If REALTEK LLC. receives any confidential information from the other party:
  - Keep a list of the confidential information received from the other party.
  - Track which employees of RealTek LLC. had access to the confidential information and whether copies were made.

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<sup>1</sup> REALTEK LLC. must comply with the obligations set forth in any Nondisclosure Agreement. These guidelines are meant to provide a simple mechanism to help you comply with the obligations set forth in a typical Nondisclosure Agreement. For guidance with respect to a specific Nondisclosure Agreement, contact your Legal Affairs Representative. There are other mechanisms that you can use to help you comply, and failure to use this mechanism does not imply that you have not complied with the obligations set forth in a particular Nondisclosure Agreement.

- Alert REALTEK LLC. employees with access of their obligation under the Nondisclosure Agreement. Consider whether it would be advisable to have them sign individual nondisclosure agreements, affirming their understanding of and agreement to comply with their obligations of the agreement.
- At the appropriate time, return or destroy the information as required and permitted by the Nondisclosure Agreement.
- Keeping logs will provide evidence that REALTEK LLC. complied with its obligations under the Nondisclosure Agreement and prevent potential claims of misuse of data or "poisoning" of REALTEK LLC. development efforts.

If you have any questions about how to comply with the Nondisclosure Agreement, contact your Legal Affairs Representative.

**NONDISCLOSURE AGREEMENT**

<b>COMPANY:</b>	<b>RealTek LLC.:</b> REALTEK LLC.
<b>ADDRESS:</b>	<b>ADDRESS:</b>
<b>CITY: STATE: ZIP: -</b>	<b>CITY: Charlotte STATE: NC ZIP: 28269</b>

This Nondisclosure Agreement (this "**Agreement**") is between each of the company(ies) named above ("**Company**") and RealTek LLC., LLC ("**REALTEK LLC.**"). The obligations of REALTEK LLC. set forth in this Agreement will be performed by REALTEK LLC., itself and through its subsidiaries. All references to REALTEK LLC. in this Agreement will be deemed to include all such subsidiaries, and REALTEK LLC. and Company may be referred to in this Agreement individually as a "**Party**" and together as the "**Parties.**" During the Exchange Period set forth below, the Parties intend to exchange Confidential Information in furtherance of the Business Purpose set forth below.

**EFFECTIVE DATE:** \_\_\_\_\_, 20\_\_

**BUSINESS PURPOSE:** Discussions and/or negotiations regarding the possibility of the Company teaming with REALTEK LLC.. in connection with the \_\_\_\_\_ procurement.

**EXCHANGE PERIOD (check one)**

\_\_\_\_\_ One (1) year from the Effective Date set forth above.

\_\_\_\_\_ (Other -describe: no more than two (2) years): \_\_\_\_\_

**ADDITIONAL TERMS AND CONDITIONS**

1. Confidentiality. Each Party will (a) use the same means it uses to protect its own confidential information, but in any event not less than reasonable means, to prevent the disclosure and protect the confidentiality of information, whether electronic, oral or written, communicated to it by the disclosing Party (the "**Disclosing Party**") during the Exchange Period in connection with the Business Purpose (the "**Confidential Information**"), and (b) use the Disclosing Party's Confidential Information only in connection with the Business Purpose. **[INCLUDE IF APPROPRIATE - In the development of the proposal contemplated by the Business Purpose, the Parties agree that Confidential Information may be disclosed to third party members of the proposal team operating under similar non-disclosure agreements. Furthermore, Confidential Information incorporated into the proposal contemplated in this Agreement may be submitted to the intended customer provided that such submission is identified as confidential and proprietary.]** Each Party may disclose this Agreement and the other Party's Confidential Information to those employees of the recipient Party (the "**Recipient Party**") who have a need to have access to such Confidential Information in connection with their employment by the Recipient Party, so long as the Recipient Party advises such employees of the confidentiality obligations set forth in this Agreement. Compliance by employees with the confidentiality obligations in this Agreement will remain the responsibility of the Party employing such persons. With respect to any particular Confidential Information, the Recipient Party's obligations under this Agreement will expire three (3) years after the Recipient Party's receipt of that Confidential Information. Neither Party will make or issue, or cause to be made or issued, any announcement or statement regarding activities under this Agreement for dissemination to the general public or any third party without the prior written consent of the other Party.

2. Exclusions. The foregoing will not prevent the Recipient Party from disclosing Confidential Information that (a) was or becomes generally available to the public other than as a result of disclosure by the Recipient Party to the public or any third party in violation of this Agreement, (b) becomes available to the Recipient Party from a source other than the Disclosing Party, provided that the Recipient Party has no reason to believe that such source is itself bound by a confidentiality or non-disclosure agreement with the Disclosing Party or otherwise prohibited from disclosing such Confidential Information by a legal, contractual or fiduciary obligation, (c) was rightfully in the Recipient Party's possession prior to receipt from the Disclosing Party, or (d) is independently developed by the Recipient Party without the use of the Disclosing Party's Confidential Information. If Confidential Information is required to be disclosed by the Recipient Party by a governmental agency or law, such Confidential Information may be disclosed pursuant to such requirement so long as the Recipient Party provides the Disclosing Party with written notice of the required disclosure promptly upon receipt of notice of the required disclosure, to the extent such notice is permitted by law, and coordinates with the Disclosing Party in an effort to limit the nature and scope of such required disclosure. Notwithstanding anything to the contrary in this Agreement, each Party (and each affiliate, officer, employee, director, advisor, representative or other agent of such Party) is, and has been from commencement of discussions, permitted (i) to disclose to any and all persons, without limitation of any kind, the U.S. federal income tax treatment and tax structure of any transaction discussed in connection with the Business Purpose and all materials of any kind (including opinions or other tax analyses) that are provided to a Party relating to such tax treatment and tax structure and (ii) to consult any tax advisor regarding the U.S. federal income tax treatment or tax structure of any transaction discussed in connection with the Business Purpose.
3. Right to Terminate Discussions. The provision of Confidential Information and discussions held in connection with the Business Purpose will not prevent either Party from pursuing similar discussions or transactions with third parties, or obligate either Party to continue discussions with the other Party or to take, continue or forego any action relating to the Business Purpose. Any proposals, estimates or forecasts provided by either Party to the other Party will not constitute commitments. Either Party may terminate discussions regarding the Business Purpose at any time, without any liability or obligation whatsoever, except as expressly set forth in this Agreement.
4. Return of Confidential Information. Upon the written request of the Disclosing Party, the Recipient Party will, at the Recipient Party's option, either return all of the Disclosing Party's Confidential Information, including all copies thereof, or certify in writing that all of the Disclosing Party's Confidential Information and all copies thereof have been destroyed. Either Party may return the other Party's Confidential Information, or any part thereof, at any time.
5. Third Party Information. Either Party's Confidential Information may include information which belongs to a third party that is assisting such Party with the Business Purpose. In such event, such third party will be a third party beneficiary of this Agreement. Except as provided in the preceding sentence, this Agreement does not confer any rights or remedies upon any person or entity not a Party to this Agreement.
6. Remedies. Upon any actual or threatened violation of this Agreement by the other Party, the Disclosing Party may be entitled to seek preliminary and other injunctive relief against such violation. If either Party is liable to the other Party on account of this Agreement, the measure of damages will not include any amounts for indirect, consequential or punitive damages or lost profits.
7. No Warranties or Further Rights. Neither Party makes any representations or warranties, express or implied, with respect to any of its Confidential Information. Nothing contained in this Agreement will be construed as granting or conferring any rights by license or otherwise in either Party's Confidential Information, except for the use of such Confidential Information as expressly provided in this Agreement.

8. Export Restriction. Confidential Information provided pursuant to this Agreement may be subject to U.S. government laws, regulations, orders or other restrictions regarding export or re-export of U.S. origin technical data or other items, or derivatives of such items. Each Party agrees (a) to comply with all such laws or restrictions and (b) to not export or re-export any such items received pursuant to this Agreement to a destination or end user for which applicable law, including U.S. law, requires an export license or other approval without first having obtained such license or approval. Each Party will reasonably cooperate with the other to assure compliance with this Section 8.
  
9. Miscellaneous. If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the Parties as nearly as possible in accordance with applicable law. Neither Party will act or have authority to act as an agent of the other Party for any purpose whatsoever. This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina. This Agreement will be binding on Company and REALTEK LLC. and their successors and permitted assigns. However, neither Party may assign its rights or obligations under this Agreement without the prior written consent of the other Party. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter of this Agreement. This Agreement may be modified only by a written instrument executed by Company and REALTEK LLC.

The Parties have duly executed and delivered this Agreement by their duly authorized representatives as of the Effective Date set forth above.

**Company: RealTek LLC.**

**COMPANY:**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
(Please print or type)

Name: \_\_\_\_\_  
(Please print or type)

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_