

**EXCHANGE OF
PROPRIETARY INFORMATION
AND
NON-DISCLOSURE AGREEMENT**

This Agreement is entered into as of **Enter Date** (the "*Effective Date*") by and between **Fiber-Span Inc.** a New Jersey company with offices located at 3434 Rt. 22W, Branchburg, NJ 08876 ("*Fiber-Span Inc.*") and **Enter Name of Entity**, having a place of business at Enter Address Of Entity, acting on its own behalf , collectively, the "*Parties*" and individually a "*Party*").

WITNESSETH:

WHEREAS, **Enter Name of Entity** and **Fiber-Span Inc.** wish to specify the conditions under which they may exchange certain Proprietary Information (as defined herein) during the term of any agreement(s) resulting from such discussions (collectively, the "*Purpose*");

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definitions.

- a. "*Affiliate*" means any person or entity directly or indirectly controlling, controlled by, or under common control with a Party.
- b. "*Owner*" means the Party disclosing Proprietary Information to the other Party.
- c. "*Proprietary Information*" means any information or data disclosed by Owner to Recipient under the terms of this Agreement including, by way of example and without limitation, trade secrets, new products, commercial plans, data, know-how, formulae, techniques, methods, procedures, processes, designs, sketches, photographs, plans, drawings, specifications, samples, reports, vendor and customer lists and other technical information relating to the Owner's business, studies, findings, pending and unfiled patent applications and disclosures and patent strategies, any information not generally known to the public or within the industry or trade in which the Owner competes including Owner's financial information, technical information pertaining to the configuration and operation of the Owner's products, services, inventions and ideas, whether tangible or intangible, and whether or how stored, compiled or memorialized physically, electronically, graphically, photographically or in writing. To the extent practical, Proprietary Information shall be disclosed in documentary or tangible form marked "*Proprietary*" or "*Confidential*" but may be disclosed orally and/or visually. Failure to include a confidentiality notice shall not give rise to an inference that the information disclosed is non-confidential.
- d. "*Recipient*" means the Party receiving Proprietary Information from the other Party.

2. Use of Proprietary Information. The Recipient hereby covenants that it shall use the Owner's Proprietary Information solely for the Purpose. The Recipient:

- a. shall protect and keep in strict confidence the Owner's Proprietary Information using the same degree of care and safeguards as it uses to protect its own Proprietary Information of like importance, but in any case no less than a reasonable degree of care;

INITIALS:

Enter Name of Entity.: _____

Fiber-Span Inc.: _____

b. may disclose Owner's Proprietary Information received hereunder to its employees and consultants, and to its Affiliates' employees and consultants, who have a need to know for the Purpose and who are bound to protect the Owner's Proprietary Information from unauthorized use and disclosure under the terms of a written agreement;

c. shall not otherwise disclose the Owner's Proprietary Information to any third party without the Owner's prior written consent;

d. shall not copy, reproduce or otherwise duplicate in whole or in part the Owner's Proprietary Information without the Owner's prior written consent.

3. **Exception to Restrictions.** The restrictions of this Agreement on use and disclosure of Proprietary Information shall not apply to information that:

- a. was publicly known at the time of Owner's communication thereof to Recipient;
- b. becomes publicly known through no fault of Recipient;
- c. was rightfully in Recipient's possession free of any obligation of confidence at the time of Owner's communication thereof to Recipient;
- d. is developed by Recipient independently of and without reference to any of Owner's Proprietary Information;
- e. is rightfully obtained by Recipient from third parties authorized to make such disclosure without restriction; or
- f. is identified by Owner as no longer Proprietary Information.

4. **Obligations for Required Disclosure.** In the event Recipient is required by law, regulation, court order, discovery request, subpoena, or investigative demand to disclose any of Owner's Proprietary Information, Recipient shall promptly notify the Owner in writing prior to making any such disclosure in order to facilitate the Owner seeking a protective order or other appropriate remedy from the relevant authority. Recipient agrees to cooperate with Owner in seeking such order or other remedy. Recipient further agrees that if Owner is not successful in precluding the requesting legal body from requiring the disclosure of the Proprietary Information, it will furnish only that portion of the Proprietary Information that is legally required to be disclosed and will exercise reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Proprietary Information.

5. **Ownership of Proprietary Information.** Any Proprietary Information and copies thereof disclosed by either Party to the other shall remain the property of the Owner. Upon request from the Owner or upon expiration or termination of this Agreement, Recipient shall return all of Owner's Proprietary Information in tangible form to Owner and destroy all of Owner's Proprietary Information in electronic form, and Recipient shall not thereafter retain any of Owner's Proprietary Information in any form.

6. **Designation of Authorized Individuals.** The following employees and consultants shall, on behalf of the respective Parties, be the exclusive individuals authorized to receive and/or transmit Proprietary Information under this Agreement (each an "***Authorized Individual***"):

For **Fiber-Span Inc.:** Hal Halpern

Hal@fiber-span.com

For **Enter Name of Entity :**

Enter email address

Each Party may re-designate its Authorized Individuals from time to time. Any such changes in designations that are made by either Party shall be effected by rendering written notice of such change to the other Party.

7. Classified Information. Any Proprietary Information disclosed by the Parties under this Agreement which is designated as classified information or similar designation of secrecy by a government, shall be identified by the Owner as “Classified Information” at the time of disclosure and the disclosure, protection, use and handling of such information shall be in accordance with security procedures prescribed by the appropriate government.

8. Representations of the Parties. Each Party represents that it has the right to make disclosures under this Agreement; that it will not disclose to the other any information confidential to any third party without authorization from that third party; and that the terms of this Agreement are not inconsistent with other contractual and/or other legal obligations it may have.

9. No Grant of Intellectual Property Rights. Neither the disclosure nor provision of Proprietary Information under this Agreement by either Party to the other shall be construed as granting to the Recipient any rights whether expressed or implied by license or otherwise on the matters, inventions or discoveries to which such Proprietary Information pertains or any copyright, trademark or trade secret rights. The intellectual property rights in all information and/or data disclosed by an Owner to the Recipient pursuant to this Agreement shall, subject to any right of any other owner, rest with the Owner.

10. Confidentiality of Agreement. The execution, existence and performance of this Agreement shall be kept confidential by the Parties and shall not be disclosed by either Party without the prior written consent of the other.

11. Expiration; Termination. Unless earlier terminated, this Agreement shall expire on the later to occur of (i) five (5) years after the Effective Date or (ii) if the Parties enter into an agreement contemplated by the Purpose, five (5) years after the termination date of such agreement (the “*Expiration Date*”). Either Party may terminate this Agreement upon written notice to the other Party. Notwithstanding termination of this Agreement, such termination shall not relieve a Recipient of complying with the obligations imposed by this Agreement with respect to the use and protection of Proprietary Information received prior to the date of such termination. Such obligations shall continue through the Expiration Date; provided however, that to the extent any of the Owner’s Proprietary Information constitutes a trade secret, the Recipient shall maintain the confidentiality of such Proprietary Information for as long as such Proprietary Information remains a trade secret.

12. Governing Law. This Agreement shall be governed by and in accordance with the laws of the State of New York, without regard to its conflict of laws provisions.

13. Remedies. The Parties acknowledge that Proprietary Information is unique and valuable, and that disclosure in breach of this Agreement will result in irreparable injury to Owner for which monetary damages alone would not be an adequate remedy. Therefore, the Parties agree that in the event of a breach or threatened breach of confidentiality, the Owner shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any such relief shall be in addition to and not in lieu of any appropriate relief in the way of monetary damages.

14. **Assignment.** Neither Party shall assign any of its rights or obligations hereunder, except to an Affiliate or successor in interest, without the prior, written consent of the other Party, which consent shall not be unreasonably withheld.

15. **Waiver.** No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.

16. **Notices.** All notices, approvals, consents and other communications required or permitted under this Agreement will be in writing and delivered by confirmed facsimile transmission, by courier or reputable international delivery service with written verification of receipt, or by registered mail, return receipt requested, postage prepaid, and in each instance will be deemed given upon receipt. All such notices, approvals, consents and other communications will be addressed to the address set forth in this Agreement or to such other address as may be specified by either party to the other in accordance with this Section.

17. **Amendments.** This Agreement may not be amended or in any manner modified except by a written instrument signed by authorized representatives of both Parties.

18. **Severability.** If any provision of this Agreement is found to be unenforceable, the remainder shall be enforced as fully as possible and the unenforceable provision shall be deemed modified to the limited extent required to permit its enforcement in a manner most closely representing the intention of the Parties as expressed herein.

19. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

20. **Entire Agreement.** The foregoing constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all prior representations, negotiations, commitments, undertakings, communications whether oral or written, acceptances, understandings and agreements between the Parties with respect to or in connection with any of the matters or things to which this Agreement applies or refers.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized officers or representatives as of the Effective Date.

Enter Name of Entity

FIBER-SPAN INC.

By: _____
Printed
Name: _____

By: _____
Printed
Name: Hal Halpern

Title: _____

Title: CEO