

## Non-Disclosure Agreement (Mutual)

This Non-Disclosure Agreement ("Agreement") is made and entered into effective as of the last date signed below by and between **ElevATE Semiconductor, Inc.**, with offices located at 9455 Farnham St., Suite 103, San Diego, CA 92123 USA, and \_\_\_\_\_ ("Company"), with offices located at \_\_\_\_\_.

WHEREAS, Either party may receive or disclose Confidential Information under this Agreement. The party disclosing Confidential Information shall be considered the "Discloser." The party receiving Confidential Information shall be considered the "Recipient."

WHEREAS, Discloser has certain confidential information relating to Discloser's and its affiliates' businesses, which Recipient may gain access to in connection with exploring a possible business relationship, and Recipient is willing to receive the other party's information confidentially subject to the terms of this Agreement.

NOW THEREFORE, in consideration of the premises and mutual promises and covenants contained in this Agreement, and to assure the protection and preservation of the proprietary and/or confidential nature of the information to be disclosed or made available to each other, the parties hereto agree as follows:

### 1. Confidential Information

a. **Definition.** "Confidential Information" means any non-public information, whether disclosed orally or in tangible, machine readable, or electronic form, by either of the parties to the other, which the Discloser identifies at the time of disclosure as confidential, proprietary, secret, private, or the like, or which under the circumstances surrounding disclosure gives indicia that the information should be treated as confidential. Confidential Information includes, without limitation, any specification, layout, design, drawing, formula, technique, algorithm, computer program, know-how, sample product, test data, information related to engineering, manufacturing, sales, marketing, management or quality control, customer lists, financial information or other information related to the business operations of the Discloser.

b. **Exclusions.** Notwithstanding Section 1(a), Confidential Information shall not include: (i) information that at the time of disclosure is publicly available, or information which later becomes publicly available through no improper act or omission of the Recipient; (ii) information that Recipient independently developed without the use of Discloser's Confidential Information; or (iii) non-confidential information disclosed to Recipient by a third party not in violation of any obligations of confidentiality to Discloser.

**2. Use of Confidential Information.** The Recipient shall use Discloser's Confidential Information only in furtherance of its actual or contemplated business relationship with the Discloser, and shall make no use of Discloser's Confidential Information, in whole or in part, for any other purposes. Furthermore, Discloser's Confidential Information shall be used by Recipient solely in a manner that actually or potentially benefits the Discloser, or shall not be used in a manner detrimental to Discloser. Each Discloser represents that it has the right to

disclose Confidential Information to the Recipient for the Authorized Purpose(s) stated above.

**3. Protection of Confidential Information.** Recipient acknowledges that the Discloser's Confidential Information is a special, valuable and unique asset, and agrees that it shall: (a) not disclose the Confidential Information to any third party without written consent of Discloser, (b) restrict dissemination of Confidential Information to only its employees, contractors, or agents who are directly participating in the Authorized Purpose, who have a need to know the Confidential Information, and who are bound by a duty of confidentiality and non-use under terms no less restrictive than contained herein concerning the use of Confidential Information, and (c) use the same degree of care as for its own information of like importance, but at least reasonable care, in preventing disclosure of Confidential Information. Recipient further agrees not to reverse engineer, decompile, or disassemble any prototypes, software, hardware or other tangible objects or products provided hereunder which embody the Confidential Information of the Discloser.

**4. Required Disclosure.** In the event that the Recipient is required by subpoena, or other court order of competent jurisdiction, law or regulation to disclose any of Discloser's Confidential Information, the Recipient will (i) provide prompt notice of such request to the Discloser, (ii) provide the Discloser a reasonable opportunity to contest or limit the scope of such required disclosure, and (iii) reasonably cooperate with the Discloser toward this end.

**5. Term and Termination.** The period for disclosing Confidential Information shall terminate five (5) years after the effective date of this Agreement, and automatically renew for a one (1) year term every year thereafter. The Agreement may be terminated earlier by either party giving thirty (30) days written notice to the other party of its intention to terminate. The obligations of the Recipient with respect to non-disclosure and use of Confidential Information shall survive indefinitely. Upon

the termination of this Agreement and upon written request of the Discloser, Recipient shall delete or destroy all Confidential Information received from Discloser in its possession including, without limitation, all originals, copies, translations, notes, or any other form of said material, without retaining any copy or duplicates thereof. Each party may retain archival copies in its Legal Department to be used only in resolving a dispute concerning this Agreement or in accordance to its records retention policy.

**6. Rights and Remedies.** Each party acknowledges that the harm resulting from improper disclosure or use of Confidential Information may be irreparable therefore, the injured Party is entitled to seek equitable relief, including injunction and preliminary injunction, in addition to all other remedies.

**7. No Formal Business Relationship.** This Agreement is for the purpose of protecting Confidential Information only and shall not be construed to create any agency, partnership, joint venture or other such relationship between the parties, nor shall the exchange of Confidential Information represent any commitment by the parties to enter into any business relationship. If the parties desire to pursue business opportunities, the parties shall execute a separate written agreement to govern such business relationship.

**8. No Obligation to Disclose or Warranty.** Neither party has an obligation to supply Confidential Information hereunder. Confidential Information disclosed hereunder is provided on an "AS IS" basis, without any warranty, whether express, implied or otherwise, regarding its accuracy, usefulness or performance.

**9. No Transfer or License of Intellectual Property.** Except as expressly provided herein, nothing in this Agreement grants or transfers (by implication, estoppel, or otherwise) any rights to or license under the Confidential Information or under any patent, patent application, trademark, copyright, know-how, or other intellectual property.

**10. Assignment.** This Agreement and the rights and obligations hereunder may not be transferred or assigned by either party without the prior written approval of the other party hereto. Notwithstanding the foregoing, either party hereto may assign this Agreement and corresponding rights hereunder to a successor-in-interest (a) to all or part of the business unit to which this Agreement relates, and (b) that agrees to abide by all obligations herein.

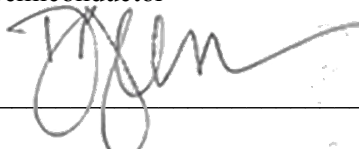
**11. Export Control Laws and Regulations.** Recipient agrees it will not, in any form, export, re-export, resell, ship or divert or cause to be exported, re-exported, re-sold, shipped or diverted, directly or indirectly, any product or technical data furnished hereunder, or the direct product of such technical data, to any country for which the United States Government requires an export license, or other approval, without first obtaining such license or approval.

**12. Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, U.S.A. excluding its choice of laws rules, and the parties irrevocably submit to the exclusive jurisdiction and venue of the California courts. The prevailing party in any action to enforce this Agreement shall be entitled to recover reasonable attorneys' fees and costs.

**13. Binding Effect.** This Agreement shall be binding upon each party, its affiliates, respective employees, agents, representatives, successors, and assigns. No change, modification, alteration, or addition to any provision hereof shall be binding unless in writing and signed by authorized representatives of both parties.

**14. Entire Agreement.** This Agreement contains the entire understanding between the parties relative to the protection of Confidential Information and supersedes all prior and collateral communications, reports, and understandings between the parties in respect thereto. If any provision is adjudicated to be unenforceable, it shall be severed and the remainder of this Agreement will continue in full force and effect.

Company \_\_\_\_\_  
Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

ElevATE Semiconductor  
Signature:  \_\_\_\_\_  
Name: David Kenyon  
Title: CEO  
Date: \_\_\_\_\_