

MUTUAL NON-DISCLOSURE AGREEMENT

Standard Bilateral Business Confidentiality Agreement | TierFive Inc.

Effective Date	
Other Party	
TierFive Party	TierFive Inc.
Purpose / Project No.	

This Mutual Non-Disclosure Agreement ("Agreement") is entered into by and between the Other Party identified above and TierFive Inc. ("TierFive"), effective as of the Effective Date. Each party may disclose or receive Confidential Information and is therefore a "Disclosing Party" or "Receiving Party," as applicable. The parties wish to exchange information solely to evaluate, discuss, negotiate, perform, or support the Purpose and any related business relationship (the "Purpose").

1. Definitions.

- (a) "Confidential Information" means nonpublic information disclosed by or on behalf of a Disclosing Party, before or after the Effective Date, in any form, that is marked confidential or that a reasonable person would understand to be confidential given its nature or the circumstances of disclosure.
- (b) Confidential Information includes business plans, pricing, proposals, contract terms, customer and prospect information, vendor relationships, financial information, personnel information, processes, methods, software, source code, system architecture, security information, credentials, records, personal information, regulated data, intellectual property, trade secrets, and the existence or status of the parties' discussions.
- (c) "Representatives" means a party's directors, officers, employees, professional advisers, agents, affiliates, and subcontractors who have a need to know the information for the Purpose and are bound by confidentiality obligations at least as protective as this Agreement.
- (d) Information qualifying as a trade secret remains protected as a trade secret for so long as it qualifies under applicable law. No information is excluded merely because individual elements are publicly known if the confidential selection, arrangement, or combination is not publicly known.

2. Permitted Use and Confidentiality Obligations.

- (a) The Receiving Party will use Confidential Information solely for the Purpose and for no competing, personal, or unrelated purpose.
- (b) The Receiving Party will protect Confidential Information using at least reasonable care and no less than the degree of care it uses to protect its own information of similar sensitivity.
- (c) The Receiving Party may disclose Confidential Information only to Representatives with a need to know. The Receiving Party is responsible for its Representatives' compliance with this Agreement.
- (d) The Receiving Party will make only copies reasonably necessary for the Purpose and will preserve all confidentiality, ownership, and proprietary notices.
- (e) Except as authorized in writing, the Receiving Party will not reverse engineer, decompile, disassemble, benchmark, analyze, or otherwise attempt to derive the composition, design, source code, underlying ideas, or structure of any software, equipment, sample, prototype, or other tangible item supplied by the Disclosing Party, except to the extent a restriction is prohibited by applicable law.
- (f) The Receiving Party will not use Confidential Information to bypass or circumvent the Disclosing Party, or to contact or solicit a customer, prospect, affiliate, vendor, employee, or other relationship identified through the Confidential Information, except with written authorization or through an independently established relationship not derived from the Confidential Information.
- (g) The Receiving Party will promptly notify the Disclosing Party of any known or reasonably suspected unauthorized access, use, or disclosure and will take reasonable steps to contain, investigate, mitigate, and prevent recurrence.

3. Exclusions.

- (a) The obligations in Section 2 do not apply to information the Receiving Party can demonstrate through contemporaneous written records: (i) is or becomes public through no breach of this Agreement; (ii) was lawfully known to the Receiving Party without restriction before disclosure; (iii) is lawfully received from a third party without breach of an obligation; or (iv) is independently developed without use of or reference to the Confidential Information.
- (b) Information is not excluded merely because it is embraced by more general public information or because separate elements are publicly available. A specific combination, application, or compilation remains Confidential Information unless the combination itself meets an exclusion.
- (c) Information may be released to the extent expressly authorized in writing by the Disclosing Party and subject to any conditions stated in that authorization.

4. Required Disclosures.

- (a) If the Receiving Party is required by law, regulation, subpoena, court order, or governmental demand to disclose Confidential Information, it may disclose only the portion legally required.
- (b) To the extent legally permitted, the Receiving Party will give prompt written notice before disclosure so the Disclosing Party may seek a protective order or other relief. The Receiving Party will reasonably cooperate, at the Disclosing Party's expense, and will use reasonable efforts to obtain confidential treatment.

5. Security and Handling.

- (a) Each Receiving Party will maintain appropriate administrative, physical, and technical safeguards proportionate to the sensitivity of the Confidential Information and the risks of unauthorized access, use, alteration, loss, or disclosure.
- (b) Access will be limited to authorized persons and systems reasonably necessary for the Purpose. Neither party is required by this Agreement to disclose information it is prohibited from disclosing or to grant system access not otherwise agreed in writing.
- (c) If Confidential Information includes personal information, regulated records, or customer data, the parties will comply with any additional written data-protection, security, business associate, or services terms applicable to that information. Those specific terms control in the event of a conflict concerning that regulated information.

6. Ownership; No License; No Warranty.

- (a) Confidential Information and all permitted copies remain the property of the Disclosing Party or its licensors. No patent, copyright, trademark, trade secret, or other right or license is granted except the limited right to use Confidential Information for the Purpose.
- (b) All Confidential Information is provided "as is." Unless separately agreed in writing, the Disclosing Party makes no representation or warranty as to accuracy or completeness and has no obligation to update the information.
- (c) Neither this Agreement nor any disclosure obligates either party to enter into a transaction, purchase or provide services, disclose particular information, or continue discussions. Each party may independently pursue similar discussions or work so long as it does not misuse the other party's Confidential Information.

7. Return or Destruction.

- (a) Upon written request or termination of discussions, the Receiving Party will, within ten (10) business days, return or destroy Confidential Information in its possession or control and, if requested, confirm completion in writing.
- (b) The Receiving Party may retain copies required by law, professional standards, bona fide record-retention policies, dispute preservation, or routine backup systems that are not readily accessible. Retained information remains subject to this Agreement and may not be used for any other purpose.

8. Term and Survival.

- (a) This Agreement begins on the Effective Date and remains in effect for seven (7) years unless earlier terminated by either party on thirty (30) days' written notice. Termination does not affect obligations for information disclosed before termination.
- (b) The obligations of confidentiality and restricted use continue for seven (7) years from each disclosure. Trade secret obligations continue for as long as the information remains a trade secret under applicable law. Sections intended by their nature to survive also survive termination.

9. Remedies.

- (a) Unauthorized use or disclosure may cause irreparable harm for which monetary damages may be inadequate. The injured party may seek temporary, preliminary, and permanent injunctive or other equitable relief, in addition to any other remedies available at law or in equity.
- (b) No exercise or failure to exercise a remedy limits any other remedy. Any waiver of a bond or security requirement is effective only to the extent permitted by the court and applicable law.

10. Protected Disclosures and Legal Rights.

- (a) Nothing in this Agreement prohibits a party or individual from reporting a suspected violation of law to a governmental authority, cooperating with a lawful investigation, making a disclosure protected by law, or responding truthfully to legal process.
- (b) Nothing requires prior notice or authorization for a legally protected disclosure, and nothing limits rights or immunities that cannot lawfully be waived. A person making such a disclosure should take reasonable steps to avoid unnecessary disclosure of unrelated Confidential Information.

11. No Publicity or Use of Name.

- (a) Neither party may issue publicity, use the other party's name, trademarks, logos, customer names, or the existence of the relationship, or represent that the other party endorses it, without prior written consent, except for disclosures required by law or expressly permitted in a separate written agreement.

12. Miscellaneous.

- (a) **Governing Law and Venue.** This Agreement is governed by California law, without regard to conflict-of-law rules. Any action arising from this Agreement must be brought in the state or federal courts located in Los Angeles County, California, and each party consents to that jurisdiction and venue.
- (b) **Entire Agreement; Amendments.** This Agreement is the complete agreement concerning confidentiality for the Purpose and supersedes prior oral or written confidentiality understandings for the same Purpose. An amendment or waiver must be in writing and signed by authorized representatives of both parties.
- (c) **Order of Precedence.** A later services agreement, statement of work, data-protection agreement, or other written agreement controls only to the extent it expressly conflicts with this Agreement. More protective confidentiality or security obligations are cumulative unless the later agreement expressly states otherwise.
- (d) **Assignment.** Neither party may assign this Agreement without the other party's prior written consent, except in connection with a merger, reorganization, change of control, or sale of substantially all assets related to the Purpose, provided the assignee agrees in writing to be bound by this Agreement.
- (e) **Notices.** Notices must be in writing and delivered by personal delivery, nationally recognized courier, certified mail, or email to the notice information on the signature page. Notice is effective when received, except that email notice is effective when sent without an automated delivery failure message.
- (f) **Severability; Waiver.** If a provision is unenforceable, it will be modified to the minimum extent necessary or severed, and the remainder will remain effective. Failure to enforce a provision is not a waiver of that provision or any later breach.
- (g) **Counterparts and Electronic Signatures.** This Agreement may be signed in counterparts and by electronic signature, each of which is deemed an original and together constitute one agreement.
- (h) **No Third-Party Beneficiaries; Relationship.** This Agreement creates no third-party beneficiary rights, partnership, joint venture, agency, fiduciary duty, or exclusivity between the parties.



MUTUAL NON-DISCLOSURE AGREEMENT SIGNATURES

Effective Date: _____

Other Party	TierFive Inc.
Authorized Signature: _____	Authorized Signature: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
Date: _____	Date: _____
Notice Email: _____	Notice Email: contact@tierfive.com
Address: _____	Address: 7582 Las Vegas Blvd Suite 399 Las Vegas, NV 89123
Phone: _____	Phone: 800-215-1743

Electronic signatures and counterparts are permitted under Section 12(g).