



NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (“**Agreement**”) dated (MM/DD) _____, 201_ is agreed to by _____, a _____ corporation/LLC/LLP (“**XYZ**”) and Profound Networks LLC, a Washington limited liability company (“**Profound**”).

RECITALS

- A. The parties are exploring a transaction in which XYZ may study, purchase, analyze or license certain products or services of Profound Networks (the “**Potential Transaction**”).
- B. In connection with the Potential Transaction, the parties may disclose confidential information to each other.

AGREEMENT

SECTION 1 DEFINITIONS

“**Confidential Information**” means all information that the disclosing party discloses to the receiving party, including but not limited to business models, customer and supplier lists, marketing plans, financial and technical information, trade secrets, know-how, ideas, designs, drawings, specifications, techniques, programs, systems, processes, and computer software.

“**Representatives**” means directors, officers, managers, employees, subcontractors, agents, consultants, advisors, and other authorized representatives.

SECTION 2 OBLIGATIONS OF RECEIVING PARTY

2.1 Use Restrictions and Nondisclosure Obligations.

- (a) The receiving party will not use Confidential Information for any purpose without the disclosing party’s specific prior written authorization, except the receiving party may use Confidential Information to consider and complete the Potential Transaction.
- (b) The receiving party will not disclose the confidential information to any person without the disclosing party’s specific prior written authorization, except the receiving party may disclose Confidential Information:
 - (1) on a need-to-know basis, to Representatives of the receiving party who are informed by the receiving party of the confidential nature of the Confidential Information and the obligations of the receiving party under this Agreement; or
 - (2) in accordance with a judicial or other governmental order, but only if the receiving party promptly notifies the disclosing party of the order and complies with any applicable protective or similar order.



- (c) The receiving party will cause the receiving party's Representatives to comply with the provisions of this Section 2.

2.2 Notification and Assistance Obligations. The receiving party will:

- (a) promptly notify the disclosing party of any unauthorized use or disclosure of Confidential Information, or any other breach of this Agreement; and
- (b) assist the disclosing party in every reasonable way to retrieve any Confidential Information that was used or disclosed by the receiving party or a Representative of the receiving party without the disclosing party's specific prior written authorization and to mitigate the harm caused by the unauthorized use or disclosure.

2.3 Exceptions. The receiving party will not breach Section 2.1 or Section 2.2 by using or disclosing Confidential Information if the receiving party demonstrates that the information used or disclosed:

- (a) is generally available to the public other than as a result of a disclosure by the receiving party or a Representative of the receiving party;
- (b) was received by the receiving party from another person without any limitations on use or disclosure, but only if the receiving party had no reason to believe that the other person was prohibited from using or disclosing the information by a contractual or fiduciary obligation; or
- (c) was independently developed by the receiving party without using Confidential Information.

2.4 Return of Confidential Information. Upon the disclosing party's request, the receiving party will promptly return to the disclosing party all materials furnished by the disclosing party containing Confidential Information, together with all copies and summaries of Confidential Information in the possession or under the control of the receiving party.

SECTION 3 NO TRANSFER

This Agreement does not transfer any ownership rights to any Confidential Information.

SECTION 4 NO REPRESENTATIONS OR WARRANTIES

Neither party makes any representations or warranties, either express or implied, with respect to the accuracy or completeness of Confidential Information.

SECTION 5 EQUITABLE RELIEF

The parties acknowledge that the remedies available at law for any breach of this Agreement will, by their nature, be inadequate. Accordingly, each party may obtain injunctive relief or other equitable



relief to restrain a breach or threatened breach of this Agreement or to specifically enforce this Agreement, without proving that any monetary damages have been sustained.

SECTION 6 GENERAL

- 6.1 No Agency Relationship.** This Agreement does not create an agency relationship between the parties and does not establish a joint venture or partnership between the parties. Neither party has the authority to bind the other party or represent to any person that the party is an agent of the other party.
- 6.2 No Assignment.** Neither party may assign or delegate any of the party's rights or obligations under this Agreement to any person without the prior written consent of the other party, which the other party may withhold in the other party's sole discretion. An assignment includes but is not limited to a transfer of shares or other ownership interests of the party that results in a change in the person owning more than 50% of the shares or other ownership interests of the party, regardless of whether the transfer occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence.
- 6.3 Binding Effect.** This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.
- 6.4 Amendment.** This Agreement may be amended only by a written document signed by the party against whom enforcement is sought.
- 6.5 Notices.** All notices or other communications required or permitted by this Agreement must be delivered in writing.
- 6.6 Waiver.** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.
- 6.7 Severability.** If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.
- 6.8 Further Assurances.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement.
- 6.9 No Third-Party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party.
- 6.10 Remedies.** The parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.
- 6.11 Governing Law.** This Agreement is governed by the laws of the State of Washington, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.



- 6.12 Venue.** Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in King County, Washington. Each party consents and submits to the jurisdiction of any local, state, or federal court located in King County, Washington.
- 6.13 Attorney's Fees.** If any arbitration, action, suit, or proceeding is instituted to interpret, enforce, or rescind this Agreement, or otherwise in connection with the subject matter of this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind incurred in connection with the arbitration, action, suit, or proceeding, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.
- 6.14 Entire Agreement.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.
- 6.15 Signatures.** This Agreement may be signed in counterparts. An electronic transmission of a signature page will be considered an original signature page.

Dated effective as of the date first written above.

Company Name: _____

By: _____

Title: _____

Date: _____

Profound Networks LLC

By: _____

Title: _____

Date: _____