

MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (this “**Agreement**”) is made as of this ____ day of _____, 2023 (the “**Effective Date**”) by and between JupiterOne, Inc. a Delaware corporation with its principal address at 600 Park Office Drive, Suite 250, Durham, NC 27709 and [COMPANY], a [JURISDICTION] [ENTITY TYPE] with its principal address at [ADDRESS, CITY, STATE, ZIP CODE] (each a “**Party**” and, collectively, the “**Parties**”).

In connection with the evaluation of a possible business transaction between the Parties (“**Purpose**”), each Party may disclose to the other certain Confidential Information (as defined below) subject to the terms of this Agreement. A Party disclosing Confidential Information under this Agreement is referred to herein as a “**Disclosing Party**”, and a Party receiving Confidential Information under this Agreement is referred to herein as a “**Receiving Party**”.

In consideration of furnishing the other Party with Confidential Information, the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party hereby agrees as follows:

1. **Definition of Confidential Information; Exclusions.** As used in this Agreement, the term “**Confidential Information**” shall mean all technical, business, financial and other information, whether oral, written, electronic or in any other form, furnished by or on behalf of a Disclosing Party to a Receiving Party, that is marked as “**Confidential**”, proprietary or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information includes but is not limited to the Parties’ discussion of the Purpose, all notes, analyses, compilations, studies, interpretations, discoveries, inventions (whether or not patentable), ideas, research, experimental work, concepts, know-how, processes, designs, specifications, drawings, sketches, blueprints, tracings, diagrams, models, samples, data, algorithms, computer programs, software source documents, financial information, business plans, sales plans, marketing plans, products, services, procurement requirements, customer information, pricing or other documents prepared by the Receiving Party or its Representatives (as defined below) which contain or are based upon, in whole or in part, the information disclosed by the Disclosing Party hereunder.

Notwithstanding the foregoing, Confidential Information shall not include information that the Receiving Party can demonstrate: (a) at the time of disclosure, or later becomes, generally available to the public through no fault of the Receiving Party; (b) was disclosed to the Receiving Party by a third party that had the unrestricted right to use and disclose such information; or (c) is or has been developed by the Receiving Party (as evidenced by the Receiving Party’s contemporaneously maintained written records) independently of the disclosures by the Disclosing Party.

2. **Limited Use and Disclosure of Confidential Information.** The Receiving Party shall (i) use such information solely for the Purpose, and not for the Receiving Party’s own or any third party’s benefit, without the prior written approval of an authorized representative of the Disclosing Party; (ii) use the same degree of care as the Receiving Party uses with its own Confidential Information, but no less than reasonable care, to protect Confidential Information and to prevent any unauthorized access, reproduction, disclosure, or use of any of the Confidential Information; and (iii) restrict access to the Confidential Information to its officers, directors, employees, contractors, agents, affiliates, consultants and representatives (collectively, the “**Representatives**”) who need to know such information for the Purpose and are bound by confidentiality obligations no less restrictive than those set forth in this Agreement; and (iv) not reverse engineer, decompile or disassemble any Confidential Information disclosed by the Disclosing Party. Each Party will be responsible for any acts or omissions by its respective Representatives. If the Receiving Party is required to disclose any Confidential Information to comply with law, the Receiving Party shall give the Disclosing Party prompt prior written notice (to the extent legally permitted) and provide reasonable assistance to permit the Disclosing Party to challenge or limit any such legally required disclosure.

3. **Ownership of Confidential Information.** Each Party agrees and acknowledges that all Confidential Information of a Disclosing Party hereunder shall remain the sole and exclusive property of the Disclosing Party. Nothing in this Agreement shall be deemed to grant a license or any other rights, either express or implied, to the Receiving Party to the Disclosing Party’s Confidential Information.

4. **Return of Confidential Information.** At the request of a Disclosing Party, the Receiving Party will promptly destroy, render inaccessible or return to the Disclosing Party all of the Disclosing Party’s Confidential Information, together with all copies thereof and all notes, drawings, abstracts and other information relating to the Confidential Information prepared by the Receiving Party or any of its Representatives, regardless of the medium in which such information is stored, and whether or not then in the possession of the Receiving Party or in the possession of any of the Representatives. Further, upon request of a Disclosing Party, the Receiving Party will provide the Disclosing Party with a statement, signed by a duly authorized representative of the Receiving Party, verifying that the Receiving Party has complied with the terms of this Agreement.

5. **No Warranty.** All Confidential Information disclosed under this Agreement is provided by the Disclosing Party on an “AS IS” basis without representation or warranty of any kind.

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6. **Term and Termination.** The term of this Agreement shall be one (1) year from the Effective Date unless earlier terminated by either party giving at least thirty (30) days' written notice of termination to the other party (the "Term"). Obligations of confidentiality and non-use with respect to Confidential Information disclosed by the Disclosing Party to the Receiving Party shall apply during the Term and for five (5) years thereafter. To the extent Confidential Information constitutes a trade secret(s) under applicable law, the Receiving Party shall protect such information for so long as it qualifies as a trade secret under applicable law.

7. **General Provisions.**

7.1 **Export Control Laws.** Each Party shall comply with all United States and foreign export control laws applicable to its performance under this Agreement.

7.2 **Injunctive Relief.** Each Party agrees that monetary damages may not be an adequate remedy for any breach of this Agreement and that a Disclosing Party shall be entitled to seek equitable relief, including an injunction and specific performance, in the event of any breach or threatened breach of this Agreement, in addition to any other remedies available to the Disclosing Party at law or in equity. Each Party waives the defense that an adequate remedy at law exists for any breach or threatened breach of this Agreement.

7.3 **Entire Agreement and Severability.** This Agreement constitutes the entire agreement between the Parties and supersedes all previous agreements, understandings and communications between the Parties related to the subject matter, and may be modified only in a writing signed by duly authorized representatives of each of the Parties. Failure or delay in enforcing any provision of this Agreement shall not be deemed waiver of such provision or any other provision hereof. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

7.4 **Assignment.** This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns; provided, however, that this Agreement may not be assigned by either Party without the prior written consent of the other Party except in connection with a merger, acquisition, or sale of all or substantially all of its assets not involving a direct competitor of the other Party.

7.5 **Governing Law.** This Agreement shall be governed by the laws of the State of Delaware, without regard to its conflict of law provisions.

7.6 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, DocuSign) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

7.7 **No Joint Venture or Partnership.** The execution of this Agreement shall not create any agency, partnership, joint venture, association or any other relationship between the parties other than as independent contracting parties.

7.8 **Notices.** All notices permitted or required under this Agreement shall be in writing and shall be delivered by personal delivery, electronic mail, or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices shall be sent to the addresses set forth in the first paragraph of this Agreement or such other address as either Party may specify in writing.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

JUPITERONE, INC.

[COMPANY NAME]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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