MUTUAL non-disclosure and confidentiality agreement

**THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT** (this “Agreement”) is executed as of the [DATE] day of [MONTH], 20[YEAR], (the “Effective Date”), by and between IDEAL INDUSTRIES LIGHTING LLC, dba Cree Lighting, A company of IDEAL INDUSTRIES, INC. (“IDEAL”), and [SUPPLIER COMPANY NAME], a [STATE OF LEGAL ORGANIZATION] [TYPE OF LEGAL ENTITY] (the “Company”).

Each party hereto would like to protect the confidentiality of, maintain their respective rights in and prevent the unauthorized use and disclosure of their valuable confidential information. Accordingly, IDEAL and Company hereby agree as follows:

1. Proposed Transaction. IDEAL and/or one of its subsidiaries and Company intend to engage in discussions and negotiations concerning the establishment of a relationship under which IDEAL would enter into a business relationship with Company or explore potential business opportunities. In the course of such discussions and negotiations, it is anticipated that each party (the “Disclosing Party”) may disclose or deliver to the other party (the “Receiving Party”) and its officers, employees, directors and agents certain confidential technical, proprietary, business, financial and other information, for the purpose of enabling the Receiving Party to evaluate the feasibility of such a business relationship or business opportunity.
2. Confidential Information. In connection with their evaluation of the Proposed Transaction, IDEAL and the Company will receive information about each other that the Disclosing Party considers to be confidential or proprietary. The Receiving Party agrees to treat all such information it receives (“Confidential Information”) about the Disclosing Party, whether furnished before, on or from time to time after the Effective Date, in accordance with the terms and provisions of this Agreement. As used in this Agreement, the term “Confidential Information” means any non-public information disclosed under this Agreement that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential. Confidential Information includes, without limitation (i) nonpublic information relating to the Disclosing Party’s technology, trade secrets, customers, business plans, promotional and marketing activities, finances and other business affairs, (ii) third-party information that the Disclosing Party is obligated to keep confidential, and (iii) the nature, content and existence of this Agreement and any discussions or negotiations between the parties.
3. Exclusions. “Confidential Information” does not include information which (i) was or becomes generally available to the public other than as a result of a breach of any agreement of confidentiality or disclosure by Receiving Party or its representatives, (ii) was or becomes available to Receiving Party on a non-confidential basis from a third party, provided that such source is not bound by a confidentiality agreement with Disclosing Party, (iii) the Receiving Party can demonstrate was in its possession at the time of disclosure, and was not acquired, directly or indirectly, from the other party, its associates, or from a third party subject to an obligation of confidence, (iv) is independently developed by the Receiving Party without use of, reference or reliance upon the Confidential Information; or (v) is the subject of a written permission to disclose provided by the Disclosing Party.
4. Persons and Affiliates. As used in this Agreement: (i) the term “person” means any entity, individual or group of individuals, including without limitation, any corporation, the Company, group, syndicate or partnership; and (ii) the term “affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or under common control, with, a specified person.
5. Use of Confidential Information. The Receiving Party may use Confidential Information only in pursuance of its business relationship with the Disclosing Party. Except as expressly provided in this Agreement, the Receiving Party will not disclose the Disclosing Party’s Confidential Information to anyone without the Disclosing Party’s prior written consent. The Receiving Party shall not reverse engineer, disassemble or decompile any software or other tangible objects which embody the Disclosing Party’s Confidential Information. The Receiving Party will take all reasonable measures to avoid disclosure, dissemination or unauthorized use of Confidential Information, including, at a minimum, those measures it takes to protect its own confidential information of a similar nature.
6. Permitted Disclosures. The Receiving Party may disclose Confidential Information only to persons within its organization, employees, consultants, representatives, or its Affiliates (“Representatives”), who have a need to know such Confidential Information in the performance of their duties and who are bound to protect the confidentiality of such Confidential Information, each of whom shall be notified of the restrictions on use of Confidential Information. The Receiving Party shall be responsible for any breach of this Agreement by such persons. The Receiving Party shall immediately notify the Disclosing Party in the event of any unauthorized use or disclosure.
7. Notice of Unauthorized Use. The Receiving Party will notify the Disclosing Party promptly upon discovery of any unauthorized use or disclosure of Confidential Information or any breach of this Agreement by the Receiving Party. The Receiving Party will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of such Confidential Information and prevent its further unauthorized use and disclosure.
8. Compelled Disclosure. In the event Receiving Party is requested to disclose any part of the Confidential Information, Receiving Party shall notify Disclosing Party promptly of such requests, to the extent permitted by law, and the documents requested thereby, so that Disclosing Party may seek an appropriate protective order and/or waive in writing Receiving Party’s obligation not to disclose the Confidential Information. The parties further agree that, if in the absence of a protective order or the receipt of a waiver hereunder, Receiving Party is nonetheless, in the reasonable opinion of its counsel, compelled to disclose all or part of the Confidential Information or else stand liable for contempt or suffer other censure or penalty from any tribunal or governmental or similar authority, Receiving Party may disclose such information without liability hereunder; provided however, that Receiving Party shall deliver to Disclosing Party written notice of the information to be disclosed as far in advance of its disclosure as is practicable, and Receiving Party shall use its best efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information required to be disclosed.
9. Return or Destruction of Confidential Information. The Receiving Party will return or destroy all Confidential Information (in any form and including, without limitation, all summaries, copies and excerpts of Confidential Information) promptly following the Disclosing Party’s written request; provided, that the Receiving Party shall not be required to return or destroy copies of any electronic records or files containing the Confidential Information, which have been created pursuant to automatic archiving or back-up procedures, that would be unreasonably burdensome to return or destroy. At the Disclosing Party’s option, the Receiving Party will acknowledge in writing its compliance with this Section.
10. Ownership. Each party agrees that the Disclosing Party is and shall remain the exclusive owner of its Confidential Information and all patent, copyright, trade secret, trademark and other related intellectual property rights. No license or conveyance of such rights to the Receiving Party is granted or implied under this Agreement.
11. No Obligation. IDEAL and the Company acknowledge and agree that each reserve the right, in its sole and absolute discretion, to reject any or all proposals and to terminate discussions and negotiations with, or indirectly involving, the other at any time. IDEAL and the Company each acknowledges that the other may conduct discussions and negotiations with other persons with respect to potential transactions and that nothing in this Agreement shall in any way restrict the manner in which IDEAL and the Company each conducts such discussions and negotiations or otherwise operates its business. Neither party to this Agreement shall have any affirmative obligation to disclose to the other party any Confidential Information, or to complete, revise or update any Confidential Information.
12. Warranty. Any information (confidential or otherwise) disclosed hereunder is provided “AS IS”, and no warranties are given for the information as well as any use thereof. Receiving Party acknowledges that the Disclosing Party makes no express or implied representation or warranty as to the completeness or accuracy of the Confidential Information, and that the Disclosing Party shall have no liability whatsoever to Receiving Party or any of its Representatives relating to or arising from their review or use of the Confidential Information. Each party warrants that it has the right to make the disclosures under this Agreement.

1. Exports. Confidential Information may include items subject to U.S. export controls. It is the sole and exclusive responsibility of Receiving Party to understand, verify, and comply with all applicable export or re-export requirements relevant to commodities, software or technologies, including without limitation Confidential Information in the form of technical data, received from the other party. Receiving Party will not export or re-export, directly or indirectly, any commodity, software or technology, including without limitation any item incorporating such commodity, software or technology, to any country, destination or individual for which the U.S. Government or any agency thereof requires an export license or other approval for export or re-export, without first obtaining such license or approval.
2. Term. This Agreement will terminate automatically upon the earlier of (i) the termination of the parties’ business relationship, (ii) two (2) years from the Effective Date provided however, that the Receiving Party’s obligations with respect to the Confidential Information shall continue to be binding for a period of five (5) years from the date of such early termination or expiration of the term of this Agreement. Obligations of confidentiality accruing under this Agreement with respect to a trade secret shall remain in effect as long as the information remains a trade secret.
3. Equitable Remedies. The parties agree that owing to the nature of this Agreement and the Confidential Information, money damages would not be a sufficient remedy for any breach of this Agreement, and the Receiving Party acknowledges that disclosure or use of Confidential Information in violation of this Agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or an inadequate remedy. The Receiving Party therefore agrees that the Disclosing Party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of this Agreement.
4. Waiver, Assignment and Amendment. No failure or delay by either party in exercising its rights hereunder shall operate as a waiver or preclude any further or other exercise of such rights. No provision of this Agreement may be waived or amended unless such waiver or amendment is in writing, designated as a waiver or amendment to this Agreement, and if an amendment, signed by both parties. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof. Neither party may assign this Agreement without the prior written consent of the other party. To the extent such consent is granted, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.
5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, without giving effect to the conflict of laws principles thereof, and the parties hereto consent to the jurisdiction of Illinois courts.
6. Counterparts. This Agreement may be executed in one or more counterparts, and by facsimile, PDF or other type of electronic copy of original signatures, each of which shall be an original document, and all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the parties have executed this Agreement by their respective authorized signatories.

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| IDEAL INDUSTRIES LIGHTING LLC, dba Cree  Lighting, A company of IDEAL INDUSTRIES, INC. | [SUPPLIER COMPANY NAME] |
| By: | By: |
| Name: | Name: [SUPPLIER SIGNER NAME] |
| Title: | Title: [SUPPLIER SIGNER TITLE] |
| Date: | Date: |
|  |  |
| Notice Address: | Notice Address: |
| Cree Lighting, A company of IDEAL INDUSTRIES, INC. | [SUPPLIER COMPANY NAME] |
| Attn: Legal Department | Attn: [SUPPLIER CONTACT NAME] |
| 9201 Washington Ave | [SUPPLIER STREET ADDRESS] |
| Racine, WI 53406 | [SUPPLIER CITY, STATE ZIP] |
|  |  |
| With copy to: |  |
| Cree Lighting, A company of IDEAL INDUSTRIES, INC. |  |
| Attn: |  |
| 9201 Washington Avenue |  |
| Racine, WI 53406 |  |