相互保密协议

**MUTUAL NONDISCLOSURE AGREEMENT**

本相互保密协议（“协议”）由双方于下述生效日期订立并生效。

This Mutual Nondisclosure Agreement (the “Agreement”) is made and entered into as of the Effective Date set forth below, by and between the Parties.

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| **双方**  **Parties:** | “北京清醒异构科技有限公司”  “The Wake Systems Co.Ltd”  北京市海淀区东升科技园北街6号院10号楼7层710  No. 6 North Street, Dongsheng Science and Technology Park, Haidian District, Beijing, China, 7th Floor, Building 10, Room 710  “公司”  “Company” |
| **有效日期:**  **Effective Date:** | 年 月 日 |
| **保密信息的定义： Definition of Confidential Information:** | “保密信息”系指在本协议有效期内由一方或其关联方或其代表披露的任何非公开信息  （定义见下文）（“披露方”）向另一方或其关联方（“接收方”）披露，但须遵守下文第3条中的排除条款，即(a)标记为“机密”或“专有”或带有类似说明的；(b)以任何其他方式披露并在披露时被认定为机密的信息；(c)通过任何基于网络或电子门户访问；(d)作为访问一方设施的结果而得知的；和/或(e) 在披露或提供的情况下，接收方应合理理解信息为保密的（无论是否如此标记）。  “Confidential Information” means any non-public information disclosed during the term of this Agreement by or on behalf of a Party or its Affiliates (as defined below) (“Discloser”) to the other Party or its Affiliates (“Recipient”), subject to the exclusions in Section 3 below, that is (a) marked “confidential” or “proprietary” or with a similar legend; (b) disclosed in any other manner and identified as confidential at the time of disclosure; (c) accessed through any web based or electronic portal; (d) learned as a result of a visit to a Party’s facilities; and/or (e) is disclosed or provided under circumstances by which the Recipient should reasonably understand the information to be confidential (whether or not so marked) |
| **容许使用机密信息**  **Permissible Use of**  **Confidential Information:** | “允许使用”是指接收方仅为内部评估或测试而使用披露方的机密信息，和/或考虑与披露方建立业务关系。  “Permissible Use” means the Recipient’s use of the Discloser’s Confidential Information solely for the internal evaluation or testing thereof, and/or to consider a business relationship with the Discloser. |
| **期限和终止**  **Term and**  **Termination:** | 本协议自生效日起生效，并将持续至终止。任何一方均可在提前三十（30）天书面通知另一方后，以任何理由或无理由终止本协议  This Agreement begins on the Effective Date and will continue until terminated. Either Party may terminate this Agreement for any or no reason upon thirty (30) days prior written notice to the other Party |
| **保密期限:**  **Confidentiality Period:** | 对于根据本协议的任何特定机密信息协议中，“保密期限”指自收到保密信息之日起5年。  With respect to any particular Confidential Information pursuant to this Agreement, the “Confidentiality Period” means five 5 years from the date of receipt of Confidential Information. |

**1.协议范围 Scope of Agreement.**

**本协议管理在本协议期限内，披露方和接收方之间交换的机密信息。“关联方”是指控制、被控制或与本协议一方共同受控的任何实体；其中“控制”意味着控制方直接或间接拥有超过百分之五十（50%）的股份或其他有权选举董事或同等管理机构的权益，或以其他方式拥有指导或导致被控制实体的一般管理方向的权力。只有在控制存在的情况下，实体才被视为关联方。**

This Agreement governs Confidential Information exchanged between Discloser and Recipient during the term of this Agreement. “Affiliate” shall mean any entity that controls, is controlled by or is under common control with a Party hereto; where “control” means that the controlling party directly or indirectly has the beneficial ownership of more than fifty percent

(50%) of the stock or other equity interests entitled to vote for the election of directors or an equivalent governing body, or otherwise has the power to direct or cause the direction of the general management of the controlled entity**.** An entity is an Affiliate only so long as such control exists.

1. **注意义务Duty of Care.**

**在保密期内，接收方应：(a)保护披露方的防止未经授权的访问、使用、披露、传播或出版的机密信息（“安全事件”），采取与防范涉及其自身性质类似的机密信息的安全事件所采取的同等但不低于合理的谨慎程度；(b)如果接收方发现任何实际的或合理怀疑的安全，应及时通知披露方事件（及个人信息（定义见下文））在任何情况下，接收方均不得向披露方应在接收方发现安全事件后的三(3)个日历日内披露；但如情况需要，或法律规定须更立即通知，则须更立即通知；(c)就该等安全事件的调查提供一切必要和合理的合作，并采取适当的补救措施针对涉及安全事件的接收方系统采取的措施，并向披露方报告这种正在进行的补救工作的现状；(d)避免使用“保密”用于许可用途以外的任何目的的信息；及(e)保持所有机密保密信息，不得向任何第三方披露机密信息，但不得向其本人或本人披露其联属公司的雇员和承包商有合法的需要知道，以促进被允许的使用，并且对接收方负有至少与本协议中包含的保密义务一样严格的保密义务，但接收方应对任何保密义务负责其及其关联方的雇员和承包商未能遵守本协议条款，就好像该等未能遵守本协议条款是接受方的过错一样。此外，接收方不得对包含机密信息的任何产品、原型、软件或其他有形物体进行逆向工程、反汇编或反编译，也不得使用任何其他过程获取机密信息底层设计信息或任何对象或可执行代码的源代码，加密或其他混淆的信息，原型，样品或实物披露。双方在本协议项下收到与自然人有关的信息（“个人信息”）在本协议中，各方应遵守作为本协议一部分接收或处理的所有个人信息相关的所有适用的隐私和数据保护法律。**

Recipient shall, for the Confidentiality Period: (a) protect Discloser’s Confidential Information against unauthorized access, use, disclosure, dissemination or publication(“Security Incident”) by using the same degree of care, but no less than a reasonable degree of care, that it uses to prevent a Security Incident involving its own confidential information of a like nature;(b) promptly notify Discloser if Recipient discovers any actual or reasonably suspected Security Incident (and for Personal Information (defined below) in no event shall Recipient’s notification to Discloser be later than three (3) calendar days after Recipient discovers the Security Incident;provided, however, that more immediate notification shall be given as the circumstances warrant or if more immediate notification is required by law); (c) provide all necessary and reasonable cooperation with respect to the investigation of such Security Incident, undertake appropriate remediation measures with respect to Recipient’s systems involved in the Security Incident, and report to Discloser the status of such remediation efforts on an ongoing basis; (d) refrain from using Confidential Information for any purpose other than for the Permissible Use; and (e) maintain all Confidential Information in confidence and not disclose Confidential Information to any third party except to its and its Affiliates’ employees and contractors with a legitimate need to know for furtherance of the Permissible Use and who are bound by confidentiality obligations with Recipient at least as restrictive as those contained in this Agreement, provided that Recipient shall be responsible and liable for any failure of its and its Affiliates’ employees’ and contractors' adherence to the terms of this Agreement as if such failure to adhere to the terms was a failure of Recipient. Further, Recipient shall not reverse engineer, disassemble, or decompile any products, prototypes, software, or other tangible objects that embody Confidential Information, nor will Recipient use any other process to gain access to the underlying design information or source code of any object or executable code, encrypted or other obfuscated information, prototype, sample or tangible object disclosed hereunder. In the event that the Parties receive information related to natural individuals (“Personal Information”) under this Agreement, each Party shall comply with all applicable privacy and data protection laws in respect of all Personal Information that is received or processed as part of this Agreement.

1. **排除和强制披露Exclusions and Compelled Disclosure.**

**除了个人信息外，本协议不对接收方施加任何义务，如果接收方能够合理证明机密信息：(a) 在从披露方接收之前或之时，已在接收方的合法拥有中，且无需保密义务；(b) 由于接收方无过错而成为或变成公共知识；(c) 从第三方合法接收，且无需保密义务；(d) 经披露方书面授权批准发布；或 (e) 由接收方独立开发，且未使用、受益或参考披露方的机密信息。如果接收方收到有管辖权的法院或授权政府机构发出的请求、要求、传票或命令，要求披露全部或任何部分机密信息，接收方只有在满足以下条件时才能遵守此类请求或要求：在披露机密信息之前（除非适用法律禁止此类通知），及时书面通知披露方任何此类要求，并合理配合披露方的努力（如果有的话），以保护任何此类披露，通过保护令和/或减少所需披露的范围。接收方只能根据法院或机构的要求披露机密信息的必要部分。**

Except with respect to Personal Information, this Agreement imposes no obligation upon Recipient with respect to Confidential Information that Recipient can reasonably demonstrate (a) was in Recipient's rightful possession on or before receipt from Discloser and without a duty of confidentiality; (b) is or becomes a matter of public knowledge through no fault of Recipient; (c) is rightfully received by Recipient from a third party without a duty of confidentiality; (d) is approved for release by written authorization of Discloser; or (e) is independently developed by Recipient without use of, benefit from, or reference to Confidential Information of the Discloser. If Recipient receives a request, demand, subpoena or order issued by a court of competent jurisdiction or authorized governmental agency to disclose all or any part of Confidential Information, Recipient may comply with such request or demand only if Recipient promptly notifies Discloser in writing of any such requirement prior to the disclosure of Confidential Information (except where such notification is prohibited by applicable law) and reasonably cooperates with Discloser regarding Discloser’s efforts, if any, to protect against any such disclosure with a protective order and/or a reduction in the scope of the required disclosure. Recipient may release only that portion of the Confidential Information as required by the court or agency.

1. **保密资料的归还或销毁Return or Destruction of Confidential Information.**

**在披露方提出书面请求后的十五（15）天内，接收方应自行决定安全永久销毁或归还所有机密信息，但保留在接收方标准备份中的副本除外系统在正常业务过程中；只要任何保密信息保留在标准备份系统仍受本协议条款的约束。本协议项下提供的硬件的销毁应符合所有适用法律。**

Within fifteen (15) days of Discloser’s written request, Recipient shall, at Discloser’s discretion, destroy securely and permanently or return all Confidential Information except for those copies that are retained in Recipient’s standard backup

system in the normal course of business; provided that any Confidential Information retained in a standard backup system shall remain subject to the terms of this Agreement. Destruction of hardware provided under this Agreement shall be in compliance with all applicable laws.

1. **无其他权利No Other Rights.**

**披露方的机密信息及其所有副本，仍归保密方所有披露人的属性。没有任何专利、版权、商标或面具作品的权利或许可在此授予或传达。接受方并未在本协议项下获得任何其他知识产权，但在本协议有效期内，保密信息的有限使用权除外。**

Discloser’s Confidential Information, and all copies thereof, remain the property of Discloser. No right or license under any patent, copyright, trademark or mask work is granted or conveyed hereby. Recipient does not acquire any other intellectual property rights under this Agreement except the limited right to use Confidential Information for the Permissible Use during the term of this Agreement.

1. **保证和免责声明Warranty and Disclaimers.**

**披露方保证其有权根据本协议向接收方披露其机密信息。除了上述保证外，所有机密信息均按“现状”提供，不对其准确性、完整性、可操作性、适用于特定目的、适销性、无侵权性提供任何形式的保证或担保。不侵犯第三方权利，或任何其他明示、暗示或法定的保证。披露方对接收方的任何损害、损失、费用或任何类型或性质的损失索赔（包括但不限于直接、间接、后果性、示范性、惩罚性、特殊、附带或依赖损害）所造成的直接或间接后果，均不承担责任，这些损害是由于接收方使用或依赖机密信息而引起的。**

The Discloser warrants that it has the right to disclose its Confidential Information to Recipient under this Agreement. EXCEPT FOR THE FOREGOING, ALL CONFIDENTIAL INFORMATION IS PROVIDED “AS IS” WITHOUT WARRANTY OR GUARANTEE AS TO ITS ACCURACY, COMPLETENESS, OPERABILITY, FITNESS FOR PARTICULAR PURPOSE, MERCHANTABILITY,NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR ANY OTHER WARRANTY, EXPRESS, IMPLIED, OR STATUTORY. THE DISCLOSER SHALL NOT BE LIABLE TO THE RECIPIENT FOR ANY DAMAGE, LOSS, EXPENSE, OR CLAIM OF LOSS OF ANY KIND OR CHARACTER (INCLUDING WITHOUT LIMITATION DIRECT, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL OR RELIANCE DAMAGES) ARISING DIRECTLY OR INDIRECTLY FROM THE RECIPIENT’S USE OF OR RELIANCE ON THE CONFIDENTIAL INFORMATION.

1. **独立发展Independent Development.**

**披露方承认，接收方目前或将来可能在内部开发信息，或从第三方接收类似的信息披露方的机密信息。本协议中的任何内容均不禁止接收方开发或已为其开发类似或竞争的产品、概念、系统或技术与产品、概念、系统或技术有关保密信息，前提是接受方不违反其在本协议项下的任何义务与这种发展有关的协议。任何一方均无义务因其人员接触机密文件而限制或限制其人员的分配信息。**

The Discloser acknowledges that Recipient may currently or in the future develop information internally, or receive information from a third party that is similar to Discloser’s Confidential Information. Nothing in this Agreement will prohibit Recipient from developing or having developed for it products, concepts, systems or techniques that are similar to or compete

with the products, concepts, systems or techniques contemplated by or embodied in Discloser’s Confidential Information provided that Recipient does not violate any of its obligations under this Agreement in connection with such development. Neither Party shall have any obligation to limit or restrict the assignment of its personnel as a result of their having had access to Confidential Information.

1. **无其他义务No Other Obligations.**

**本协议对任何一方购买、出售、许可、转让或以其他方式处置任何技术、服务或产品没有任何义务、承诺或限制产品，或进入任何进一步的任何类型的协议。**

This Agreement imposes no obligation, commitment or restriction on either Party to purchase, sell, license, transfer or otherwise dispose of any technology, services or products, or to enter into any further agreements of any kind.

1. **适用法律Governing Law.**

**本协议是根据中国法律制定的，并应根据中国的法律进行解释，不包括法律冲突规则。**

This Agreement is made under and shall be construed according to the laws China, excluding conflicts of law rules.

1. **公平的补救措施Equitable Remedies.**

**接收方承认其违反本协议可能会造成无法弥补的损害，而金钱救济可能不足以弥补，并同意披露方应有权根据本协议寻求禁令救济，以及有管辖权的法院可能给予的进一步救济。**

Recipient acknowledges that its breach of this Agreement may cause irreparable damage for which monetary relief may be inadequate and agrees that Discloser shall be entitled to seek injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction.

1. **一般规定General Provisions.**

**未经另一方事先书面同意，任何一方不得转让本协议（包括但不限于与合并、收购或其他控制权变更有关的协议），任何此类企图均属无效。本协议可多份签署副本，每份副本均构成经签署的原件。本协议的任何传真或电子图像或本协议所引用的书面内容在所有目的下均应与原件一样有效和可接受。双方不打算建立任何代理、合伙或信托关系双方通过本协议达成协议。本协议的每一条款应按下列方式解释在适用法律下有效和有效的方式。但是，如果本协议的任何条款成为或被任何有管辖权的法院宣布不可执行，则该条款应被视为已删除，本协议的其余部分应保持完全有效。本协议的所有条款将在本协议终止或期满后继续有效但为明确起见，本协议第2条中的任何义务均应永久保留明确仅在保密期限内有效的，在保密期限届满时终止到期。本合同项下的任何通知必须以书面形式发出，并在向接收方投标时视为已发出并生效。所有通知的副本应按本协议规定的地址送交双方的法务部。**

Neither Party may assign this Agreement (including without limitation in connection with a merger, acquisition, or other change of control) without the prior written consent of the other, and any attempt to do so is void. This Agreement may be executed in multiple counterparts, each of which shall constitute a signed original. Any facsimile or electronic image of this Agreement or writing referenced herein shall be valid and acceptable for all purposes as if it were an original. The Parties do not intend that any agency, partnership or fiduciary relationship be created between them by this Agreement. Each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, in the event that any provision of this Agreement becomes or is declared unenforceable by any court of competent jurisdiction, such provision shall be deemed deleted and the remainder of this Agreement shall remain in full force and effect. All provisions of this Agreement will survive termination or expiration of this Agreement in perpetuity, provided however for purposes of clarity any obligations in Section 2 of this Agreement that explicitly last only for the Confidentiality Period shall expire when

the Confidentiality Period expires. Any notice to be given hereunder must be in writing and shall be deemed given and effective upon tender to Recipient. Copies of all notices shall be directed to each party’s Legal Department at the address stated herein.

1. **整个协议Entire Agreement.**

**本协议规定了完整的协议和谅解双方就本协议有效期内披露的保密信息的保护达成一致，并取代和合并所有先前的口头和书面协议、讨论和双方就本协议主题事项达成的谅解。尽管有上述规定，本协议不应取代双方之间现有的任何包含比本协议更严格条款的保密或保密协议。没有弃权或对本协议任何条款的修改，除非以书面形式作出并经双方授权代表签字，否则均具有约束力。本协议双方通过其正式授权代表签署了本协议。**

This Agreement sets forth the entire agreement and understanding between the Parties as to the protection of the Confidential Information disclosed during the term of the Agreement and supersedes and merges all prior oral and written agreements, discussions and understandings between them regarding the subject matter of this Agreement. Notwithstanding the foregoing, this Agreement shall not supersede any existing nondisclosure or confidentiality agreement between the Parties which contains terms more restrictive than those herein. No waiver or modification of any provision of this Agreement shall be binding unless made in writing and signed by an authorized representative of each Party.

The Parties hereto by their duly authorized representatives have executed this Agreement.

北京清醒异构科技有限公司

**The wake Systems Co.Ltd.**

|  |  |
| --- | --- |
| *授权签字人*  *Authorized Signature* | |
| *职位*  *Title* |  |

*日期*

*Date*

公司

**Company**

|  |  |
| --- | --- |
| *授权签字人*  *Authorized Signature* | |
| *职位*  *Title* |  |

*日期*

*Date*