CLEAN TEAM CONFIDENTIALITY AGREEMENT

This Clean Team Confidentiality Agreement (this “Agreement”) is made and entered into as of [DATE] (the “Effective Date”), by and between [BUYER], a [STATE] [TYPE OF ENTITY] (on behalf of itself and its direct and indirect subsidiaries and controlled affiliates) (collectively, the “Recipient”) and [SELLER], a [STATE] [TYPE OF ENTITY] and its direct and indirect subsidiaries and affiliates (collectively, the “Company”) (referred to herein, collectively, as the “Parties” and, individually, as a “Party”) in connection with the Recipient’s evaluation of a potential acquisition of the Company and related due diligence, valuation, synergy development, integration planning and/or preparation of necessary regulatory filings (the “Purpose”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the CDA (as defined below).

On [DATE], Recipient executed a confidentiality agreement (the “CDA”), which, among other things, governs the terms of the sharing of Confidential Information. In connection with the sharing of such Confidential Information, the Company intends to provide access to or disclose certain portions of certain highly confidential Confidential Information to the Recipient and its Clean Team Representatives (as defined in Section 1). Such information, which is proprietary, secret and confidential to the Company, is hereinafter referred to as Highly Confidential Information (as defined in Section 1) and will be disclosed to the Recipient and its Clean Team Representatives only on the following terms and conditions:

1. Definitions.

“Highly Confidential Information” shall mean the following information: (i) customer-specific pricing information, (ii) supplier-specific pricing information, (iii) margin or granular cost data by product, (iv) revenue forecasts relating to products and markets in which the Recipient currently competes or may compete, (v) strategy plans relating to the launch of competing or potentially competing products, (vii) forward-looking pricing plans, and detailed marketing and strategic planning documents and information, (viii) trade secrets or other proprietary intellectual property or (ix) any other proprietary, secret and confidential information of the Company, in each case which is expressly marked “***Clean Team Material***” at the time of disclosure (or solely made available in any “***Clean Room***” or similarly designated folder in the electronic data room maintained in connection with the Purpose) or, if the disclosure is verbal, information which is so identified as “Highly Confidential Information” at the time of disclosure. [MODIFY AS NECESSARY]

For avoidance of doubt, “Highly Confidential Information” shall not include any information that the Recipient can demonstrate is not subject to the confidentiality restrictions set forth in the CDA.

“Clean Team Representatives” shall mean those employees and Representatives of the Recipient who are identified in Exhibit A, as may be updated from time to time by mutual agreement of the Parties.

1. Agreement and Clean Team Representatives. Prior to receiving or reviewing any Highly Confidential Information, the Recipient shall make its Clean Team Representatives aware of the terms and conditions of this Agreement and instruct such Clean Team Representatives to abide by such terms and conditions. The Recipient agrees to be responsible for any breach of this Agreement by any of its Clean Team Representatives.
2. CDA. This Agreement is intended by the Parties to supplement the terms of the CDA so as to avoid violations of laws with respect to competition and to provide enhanced protection of the Company’s commercially sensitive information by providing for the procedures specified herein with respect to the treatment of Highly Confidential Information. Except as expressly provided in this Agreement, the Parties intend that the CDA shall continue in full force and effect and shall continue to govern the relationship of the Parties with respect to the treatment and use of Confidential Information; *provided*, *however*, that the additional safeguards contained in this Agreement shall apply with respect to the treatment and use of Confidential Information that constitutes Highly Confidential Information.
3. Disclosure Only to Clean Team Representatives and Acknowledgement by Clean Team Representatives. The Company is willing to disclose the Highly Confidential Information only on reliance of the terms and conditions set forth herein. Except as otherwise provided in this Agreement, the Recipient shall limit disclosure of and access to any Highly Confidential Information that it receives from the Company solely to its Clean Team Representatives (or, at the Company’s request, to a sub-set of the Recipient’s Clean Team Representatives that shall exclude employees). Each employee and an authorized individual on behalf of each Clean Team Representative listed in Exhibit A shall execute and deliver to the Company an executed version of the agreement in Exhibit B attached hereto prior to such Clean Team Representative’s review of any Highly Confidential Information.
4. Limitations on Use. Highly Confidential Information will be used by the Clean Team Representatives only in connection with the Purpose. No other use will be made by the Recipient or the Clean Team Representatives of the Highly Confidential Information. The Company reserves all rights in and to its Highly Confidential Information not expressly granted herein. The Recipient hereby represents that each Clean Team Representative has no sales, marketing, strategy or collective bargaining responsibilities, including bidding or pricing responsibilities, for any person or entity that competes with the Company’s business and is not otherwise employed in and not expected or planned to be employed in any segment of the Recipient’s business with such responsibilities (including being a director or officer of Recipient) from the date they are appointed as a Clean Team Representative until the consummation of the transaction contemplated hereby.
5. Reports. After receiving Highly Confidential Information from the Company, the Clean Team Representatives may prepare one or more reports summarizing the results of any analysis involving the Highly Confidential Information in the context of the Purpose that, subject to the provisions of this Section 6 and the CDA, may be shared with the Recipient’s directors, officers, employees and agents who are not Clean Team Representatives (each, a “Report”). A Report may include analyses based on the Company’s Highly Confidential Information, but a Report shall not disclose specific details of the Highly Confidential Information that Recipient’s outside antitrust counsel deems to be competitively sensitive. Prior to any Report being distributed to any persons who are not Clean Team Representatives, the Clean Team Representatives shall provide such portion of the Report that is based on the Highly Confidential Information to Recipient’s outside antitrust counsel, who will promptly review and determine whether or not the disclosure of such Report (or the relevant portion thereof) is in compliance with the requirements of this Agreement and applicable antitrust laws. Once the Clean Team Representatives have provided a Report (or the relevant portion thereof) to Recipient’s outside antitrust counsel, and such outside antitrust counsel has determined that the disclosure of the Report (or the relevant portion thereof) is in compliance with the requirements of this Agreement and applicable antitrust law, the Clean Team Representatives shall be deemed to have fulfilled the requirements of, and their obligations under, this Section 6 with respect to such Report (however, for the avoidance of doubt, such Report will continue to be subject to all applicable requirements and obligations of the CDA). If Recipient’s outside antitrust counsel determines, in its sole but reasonable discretion, that a Report (or the relevant portion thereof) requires redaction or other modification (including, without limitation, in order to avoid the disclosure of specific details of the Highly Confidential Information that are deemed to be competitively sensitive), the Report shall be redacted by the Clean Team Representative in accordance with such outside antitrust counsel’s instructions and provided to such outside antitrust counsel for its further review, prior to the Report being provided to any persons who are not Clean Team Representatives. For the avoidance of doubt, the purpose of this “Clean Team” process and of this Agreement is to prevent the disclosure of the Company’s sensitive information to Recipient beyond what is truly necessary for the Purpose. This Agreement should be construed in a manner consistent with that overall purpose. The Parties acknowledge that Recipient and the Company share a common interest in ensuring Highly Confidential Information is handled appropriately.
6. Effectiveness; Term. This Agreement is effective as of the Effective Date and shall terminate and be of no further force and effect on the earlier of the consummation of transaction related to the Purpose or two (2) years after the date hereof.
7. Equitable Remedies. The Parties understand and agree that money damages would not be a sufficient remedy for any breach of this Agreement and that the non-breaching Party shall be entitled, without posting bond or other security, to seek injunctive or other equitable relief to forestall any such breach or threatened breach, including without limitation, specific performance, a temporary restraining order, or a temporary or permanent injunction. Such remedy shall not be deemed to be the exclusive remedy for any breach of this Agreement but shall be in addition to all other rights and remedies available at law or in equity.
8. No Obligation. Unless and until there is a definitive agreement between the Parties with respect to a transaction related to the Purpose, no Party intends to be, nor shall any Party be, under any legal obligation of any kind whatsoever with respect to the Purpose or otherwise, by virtue of any written or oral expressions by such Party’s Representatives with respect to such Purpose, except for the matters specifically agreed to in this Agreement and the CDA.
9. Miscellaneous. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement.
10. Governing Law. This Agreement shall be governed by and con­strued and enforced in accordance with the laws of the State of Delaware, United States of America, without regard to its choice of law provisions.

[***Signature Page Follows***]

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

 [BUYER]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

Title:

 [SELLER]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Name:

Title:

**EXHIBIT A**

**Clean Team Representatives**

*Recipient Employees and Representatives*

*(with names as provided to the Company’s counsel from time to time)*

Recipient Representatives

Outside Investment Bank Representatives

Legal Advisors

**EXHIBIT B**

**Clean Team Representative Acknowledgement**

This Acknowledgement (“Acknowledgement”) is executed as of [DATE], by the undersigned (the “Clean Team Representative”) pursuant to the terms of that certain Clean Team Confidentiality Agreement dated as of [DATE] by and between [BUYER] and [SELLER] (the “Agreement”). Capitalized terms used, but not defined, in this Acknowledgment shall have the respective meanings ascribed to such terms in the Agreement. By the execution of this Acknowledgement, the Clean Team Representative acknowledges and agrees as follows:

1. I have read the Agreement for the protection and exchange of Highly Confidential Information of the Company and I agree to be bound by its terms and conditions;
2. I agree not to disclose to any person or entity any Highly Confidential Information, other than in strict accordance with the terms of the Agreement;
3. I agree not to make any copies of any Highly Confidential Information furnished to me, except in strict accordance with the terms of the Agreement; and
4. I agree that any Highly Confidential Information furnished to me will be used by me only for the Purpose as set forth in the Agreement, and for no other purpose, and will not be imparted by me in any manner to any other person or entity, other than in strict accordance with the terms of the Agreement.

 The Clean Team Representative hereby agrees to be bound by and subject to the terms of the Agreement applicable to the Clean Team Representative.

**Clean Team Representative**

 [REPRESENTATIVE NAME]

 By:

Name:

Title: