

NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (this “**Agreement**”) is entered into and made effective as of the date of the signature hereto (the “**Effective Date**”) between the individual, corporation, limited liability company or other entity or person (“**Discloser**”) delivering this Agreement to the undersigned individual, corporation, limited liability company or other entity or person (“**Recipient**”).

Discloser and Recipient desire to engage in discussions regarding a potential agreement or other transaction between the parties (the “**Purpose**”). In connection with such discussions, Discloser may disclose to Recipient certain confidential information or materials to enable the parties to evaluate whether to enter into such agreement or transaction.

In consideration of the foregoing, the parties agree as follows:

1. Confidential Information. For purposes of this Agreement, “**Confidential Information**” means any information or materials disclosed by or on behalf of Discloser to Recipient before, on or after the Effective Date that: (a) if disclosed in writing or in the form of tangible materials, is marked “confidential” or “proprietary” or with a similar designation at the time of such disclosure; (b) if disclosed orally or presented visually, is identified as “confidential” or “proprietary” at the time of such disclosure, and is summarized in a writing sent by Discloser to Recipient within thirty (30) days after any such disclosure; or (c) due to its nature or the circumstances of its disclosure, a person exercising reasonable business judgment would understand to be confidential or proprietary.
2. Obligations and Restrictions. Except as required by applicable law, neither party shall disclose, other than to its employees and consultants with a need to know for the Purpose, the existence of this Agreement, the Purpose, or the fact that the parties are engaged in discussions with respect thereto. Recipient agrees: (a) to maintain all Confidential Information in strict confidence; (b) not to disclose Confidential Information to any third parties; and (c) not to use any Confidential Information, or permit it to be accessed or used, for any purpose except for the Purpose. Recipient may disclose Confidential Information to its employees and consultants who have a bona fide need to know such Confidential Information solely for, and only to the extent necessary to pursue, the Purpose; *provided that* each such employee and consultant is bound by a written agreement that contains non-use and confidentiality obligations at least as protective of the Confidential Information as those set forth in this Agreement.
3. Exceptions. The obligations and restrictions in Section 2 will not apply to any information or materials that:
 - (a) were, at the date of disclosure, or have subsequently become, generally known or available to the public through no act or failure to act by Recipient;
 - (b) were rightfully known by Recipient prior to the disclosure of such information or materials from Discloser;
 - (c) are rightfully acquired by Recipient from a third party who has the right to disclose such information or materials without breach of any obligation of confidentiality or restricted use to Discloser; or
 - (d) are independently developed by Recipient without access to any Confidential Information.
4. Compelled Disclosure. Nothing in this Agreement will be deemed to restrict Recipient from disclosing Confidential Information to the extent required by any order, subpoena, law,

statute or regulation; *provided that* Recipient shall give Discloser sufficient advance notice of such required disclosure to enable Discloser to prevent or limit such disclosure, and will provide reasonable assistance in opposing such disclosure or seeking a protective order or other limitations on disclosure. Recipient shall disclose no more than that portion of the Confidential Information which such order, subpoena, law, statute or regulation specifically requires the recipient party to disclose.

5. Return of Confidential Information. Upon the completion or abandonment of the Purpose, or earlier upon Discloser's written request, Recipient will promptly return to Discloser or, at Discloser's option, destroy all tangible items and embodiments containing or consisting of Confidential Information and all copies thereof (including electronic copies), and any notes, analyses, compilations, studies, interpretations, memoranda or other documents (regardless of the form thereof) prepared by or on behalf of Recipient that contain or are based upon Confidential Information.

6. No Obligations. Discloser retains the right, in its sole discretion, to determine whether to disclose any Confidential Information to Recipient. This Agreement imposes no obligation on either party to negotiate or enter into any other agreements or arrangements with the other party, whether or not related to the Purpose.

7. No License. All Confidential Information remains the sole and exclusive property of Discloser. Recipient acknowledges and agrees that nothing in this Agreement will be construed as granting any rights to Recipient, by license or otherwise, in or to any Confidential Information, or any patent, copyright or other intellectual property or proprietary rights of Discloser, except for the limited right of use solely for the Purpose as specified in this Agreement.

8. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED BY DISCLOSER "AS IS" WITHOUT EXPRESS OR IMPLIED WARRANTIES OF ANY KIND. Discloser shall have no liability to Recipient resulting from the Confidential Information disclosed to Recipient or for its use or any error or omissions in it.

9. Term. This Agreement will remain in effect for a period of three (3) years from the Effective Date, at which time it will terminate, *provided that* Discloser may terminate this Agreement by giving written notice to Recipient, but Recipient's obligations under this Agreement with respect to any Confidential Information disclosed by Discloser shall survive for a period of three (3) years from the Effective Date except that, as to any Confidential Information that Discloser maintains as a trade secret, Recipient's obligations will remain in effect for as long such Confidential Information remains a trade secret under applicable law.

10. Equitable Relief. Recipient acknowledges that the unauthorized use or disclosure of any Confidential Information would cause Discloser to incur irreparable harm and significant damages for which there may be no adequate remedy at law. Accordingly, Recipient agrees that Discloser will have the right to obtain immediate equitable relief to enjoin any unauthorized use or disclosure of its Confidential Information, in addition to any other rights or remedies that it may have at law or otherwise.

11. Miscellaneous. This Agreement will be governed and construed in accordance with the laws of the principal place of business of Discloser, without giving effect to any principles of conflict of laws that would lead to the application of the laws of another jurisdiction. This Agreement is the complete and exclusive agreement between the parties with respect to its subject matter and supersedes all prior or contemporaneous agreements, communications and understandings, both oral and written, between the parties with respect to its subject matter. This Agreement may be amended or modified only by a written document executed by duly authorized representatives of both parties. If any provision of this Agreement is held invalid, illegal or

unenforceable, that provision will be enforced to the maximum extent permitted by law, given the fundamental intentions of the parties, and the remaining provisions of this Agreement will remain in full force and effect. Neither party may assign or transfer any rights or obligations under this Agreement, by operation of law or otherwise, without the other party's prior written consent, and any attempted assignment without such consent will be void. Notwithstanding the foregoing, Discloser may, without such consent, assign this Agreement to a third party that succeeds to all or substantially all of its business and assets relating to the subject matter of this Agreement, whether by sale, merger, operation of law or otherwise. Subject to the foregoing, this Agreement is binding upon and will inure to the benefit of each of the parties and their respective successors and permitted assigns. This Agreement may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal E-SIGN Act of 2000) or other transmission method and any document so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

IN WITNESS WHEREOF, Recipient has executed this Agreement by its duly authorized officer or representative, and Discloser, by delivering this Agreement to Recipient, hereby agrees and acknowledges to be bound by this Agreement upon receipt of the fully executed Agreement from Recipient.

RECIPIENT:

Company: _____

Signature: _____

Name: _____

Title: _____

Address: _____

Date: _____