

## **NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

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This Non-Disclosure and Confidentiality Agreement (this "Agreement") is entered into as of \_\_\_\_\_, 20\_\_\_\_ (the "Effective Date") by and between:

**Disclosing Party:** \_\_\_\_\_, as a(n) (Check one)

Individual

Corporation  Limited Liability Company  Partnership  Limited Partnership  Limited Liability Partnership ("Disclosing Party") and

**Receiving Party:** \_\_\_\_\_, as a(n) (Check one)

Individual

Corporation  Limited Liability Company  Partnership  Limited Partnership  Limited Liability Partnership ("Receiving Party")

Disclosing Party and Receiving Party have indicated an interest in exploring a potential \_\_\_\_\_ business \_\_\_\_\_ relationship \_\_\_\_\_ relating to:

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

(the "Transaction").

In connection with its respective evaluation of the Transaction, each party, their respective affiliates and their respective directors, officers, employees, agents, or advisors (collectively, "Representatives") may provide or gain access to certain confidential and proprietary information. A party disclosing its Confidential Information to the other party is hereafter referred to as a

“Disclosing Party.” A party receiving the Confidential Information of a Disclosing Party is hereafter referred to as a “Receiving Party.” In consideration for being furnished Confidential Information, Disclosing Party and Receiving Party agree as follows:

1. **Confidential Information.** Confidential information is: (Check one)

**All information shared by Disclosing Party.** "Confidential Information" shall mean (i) all information relating to Disclosing Party's products, business and operations including, but not limited to, financial documents and plans, customers, suppliers, manufacturing partners, marketing strategies, vendors, products, product development plans, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, inventions, sales leads, sales data, customer lists, customer profiles, technical advice or knowledge, contractual agreements, price lists, supplier lists, sales estimates, product specifications, trade secrets, distribution methods, inventories, marketing strategies, source code, software, algorithms, data, drawings or schematics, blueprints, computer programs and systems and know-how or other intellectual property of Disclosing Party and its affiliates that may be at any time furnished, communicated or delivered by Disclosing Party to Receiving Party, whether in oral, tangible, electronic or other form; (ii) the terms of any agreement, including this Agreement, and the discussions, negotiations and proposals related to any agreement; (iii) information acquired during any tours of Disclosing Party's facilities; and (iv) all other non-public information provided by Disclosing Party whosoever. All Confidential Information shall remain the property of Disclosing Party.

**Only information marked 'Confidential.'** "Confidential Information," exchanged by the parties and entitled to protection hereunder, shall be

identified or marked as such by an appropriate stamp or marking on each document exchanged designating the information as confidential or proprietary.

**2. Exclusions from Confidential Information.** The obligation of confidentiality with respect to Confidential Information will not apply to any information:

- a. If the information is or becomes publicly known and available other than as a result of prior unauthorized disclosure by Receiving Party or any of its Representatives.
- b. If the information is or was received by Receiving Party from a third party source which, to the best knowledge of Receiving Party or its Representatives, is or was not under a confidentiality obligation to Disclosing Party with regard to such information;
- c. If the information is disclosed by Receiving Party with the Disclosing Party's prior written permission and approval.
- d. If the information is independently developed by Receiving Party prior to disclosure by Disclosing Party and without the use and benefit of any of the Disclosing Party's Confidential Information; or
- e. If Receiving Party or any of its Representatives is legally compelled by applicable law, by any court, governmental agency or regulatory authority or by subpoena or discovery request in pending litigation but only if, to the extent lawful, Receiving Party or its Representatives give prompt written notice of that fact to Disclosing Party prior to disclosure so that Disclosing Party may request a protective order or other remedy to prevent or limit such disclosure and in the absence of such protective order or other remedy, Receiving Party or its Representatives may disclose only such portion of the Confidential Information which it is legally obligated to disclose.

**3. Obligation to Maintain Confidentiality.** With respect to Confidential Information:

- a. Receiving Party and its Representatives agree to retain the Confidential Information of the Disclosing Party in strict confidence, to protect the security, integrity and confidentiality of such information and to not permit unauthorized access to or unauthorized use, disclosure, publication or dissemination of Confidential Information except in conformity with this Agreement;
- b. Receiving Party and its Representatives shall adopt and/or maintain security processes and procedures to safeguard the confidentiality of all Confidential Information received by Disclosing Party using a reasonable degree of care, but not less than that degree of care used in safeguarding its own similar information or material;
- c. Upon the termination of this Agreement, Receiving Party will ensure that all documents, memoranda, notes and other writings or electronic records prepared by it that include or reflect any Confidential Information are returned or destroyed as directed by Disclosing Party;
- d. If there is an unauthorized disclosure or loss of any of the Confidential Information by Receiving Party or any of its Representatives, Receiving Party will promptly, at its own expense, notify Disclosing Party in writing and take all actions as may be necessary or reasonably requested by Disclosing Party to minimize any damage to the Disclosing Party or a third party as a result of the disclosure or loss.

Disclosing Party

Name: \_\_\_\_\_

Representative name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

Receiving Party

Name: \_\_\_\_\_

Representative name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

14. **Miscellaneous.** This Agreement will inure to the benefit of and be binding on the respective successors and permitted assigns of the parties. Neither party may assign its rights or delegate its duties under this Agreement without the other party's prior written consent. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement. Neither party will be charged with any waiver of any provision of this Agreement, unless such waiver is evidenced by a writing signed by the party and any such waiver will be limited to the terms of such writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

Disclosing Party:

\_\_\_\_\_  
**Disclosing Party** Signature

\_\_\_\_\_  
**Disclosing Party** Full Name

\_\_\_\_\_  
**Disclosing Party Representative**  
Signature

\_\_\_\_\_  
**Disclosing Party Representative**  
Full Name and Title

Receiving Party:

\_\_\_\_\_  
**Receiving Party** Signature

\_\_\_\_\_  
**Receiving Party** Full Name

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**Receiving Party Representative**  
Signature

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**Receiving Party Representative**  
Full Name and Title