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**NON-DISCLOSURE AGREEMENT**

This **NON-DISCLOSURE AGREEMENT** (this “Agreement”) is made as of [INSERT FULL DATE] (the “Effective Date”) by and between [FULL LEGAL NAME OF DISCLOSER], a [STATE OF FORMATION][TYPE OF ENTITY] (the “Discloser”), and the undersigned (the “Recipient”; Recipient and Discloser shall be referred to individually as a “Party” and jointly as the “Parties”), with reference to the following recitals:

1. Recipient has requested certain information from Discloser in connection with [PROVIDE DESCRIPTION OF PURPOSE] (the “Purpose”);
2. Some or all of the information requested by Recipient may constitute confidential, important, or proprietary trade secret information of Discloser; and
3. To permit the disclosure of information to Recipient in connection with and in furtherance of the Purpose, the Parties desire to enter into this Agreement to provide for the confidentiality and protection of Confidential Information (defined below) as provided in this Agreement.

**NOW, THEREFORE,**in consideration of the covenants contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Confidential Information.** “Confidential Information” shall mean any and all information, documentation, and data in any form or description (including oral, written, graphic, or machine-readable information) with respect to Discloser and/or any of its business activities provided by or on behalf of Discloser, whether before or after the Effective Date, to any Recipient Party (defined below) in connection with negotiations, due diligence, transactions, and/or relationships related to the Purpose.Confidential Information includes, without limitation, the information, documentation, and data described in **Appendix CI** hereto. For greater certainty,Confidential Information includes any derivations of, or any information that incorporates or analyzes, any Confidential Information prepared by or on behalf of any Recipient Party.Notwithstanding the foregoing, Confidential Information does not include any of the following (in each case as proven by Recipient with clear and convincing evidence): (a) any information that has become part of the public domain (other than through any action or omission by or through any Recipient Party); (b) any information that was in Recipient’sactual possession prior to its disclosure by or on behalf of Discloserto any Recipient Party; (c) any information lawfully was received by Recipientfrom a third party without such information being subject to any confidentiality agreement, confidentiality or fiduciary obligation, or obligation of trust; or (d) any information that was independently developed by Recipient without use of, reliance on, or in derivation of any Confidential Information.
2. **Confidentiality.**Recipient shall keep all Confidential Information strictly confidential and shall not disclose any Confidential Informationto any person or entity except in accordance with this Agreement. Recipient shall not use any Confidential Information for any purpose other than the Purpose (including incidental due diligence), and Recipient shall only use Confidential Information in a manner that complies with applicable laws, regulations, and other legal requirements. For greater certainty, the use restriction in this Section prohibits Recipient from creating, copying, or re-creating any Confidential Information through reverse engineering or other process. This Agreement grants no right or license to any Recipient Party other than the limited right to use Confidential Information in accordance with this Agreement.
3. **Permitted Disclosures.**
   1. **Recipient Parties.**Notwithstanding the provisions of Section 2 to the contrary, Recipient may disclose Confidential Information to a Recipient Party provided that such disclosure is made by Recipient in good faith on a need-to-know basis to a Recipient Party who is providing services to or is otherwise engaged by Recipient in furtherance of, and solely to the extent required to further, the Purpose. For the express benefit of Discloser, Recipient shall cause each Recipient Party to timely and fully comply with all obligations of Recipient under this Agreement with respect to any Confidential Information that such Related Party receives under this Agreement. Recipient shall be responsible to Discloser for all breaches, actions, and omissions of any Recipient Party with respect to any Confidential Information. As used herein, a “Recipient Party” means Recipient and the following: (i) a direct subsidiary company or direct parent company of Recipient; (ii) a director, officer, or employee of Recipient or any company described in subpart (i); and (iii) a lawyer, accountant, or other independent professional providing services to Recipient or any company described in subpart (i).
   2. **Compelled Disclosure.**Recipient may disclose Confidential Information if and to the extent that such disclosure is required by court order, subpoena, lawful discovery request, or binding lawful governmental inquiry (each, a “Disclosure Requirement”), provided that Recipient immediately provides Discloser a complete copy in writing of each Disclosure Requirement, reasonably cooperates with Discloser’s endeavors to lawfully prevent or limit the disclosure of such Confidential Information in connection with a Disclosure Requirement, and provides Discloser a reasonable opportunity to review the disclosure before it is made pursuant to the Disclosure Requirement.
4. **“AS IS”; Sole Risk.** DISCLOSER, ITS AFFILIATED AND RELATED ENTITIES, AND ITS AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS MAKE NO REPRESENTATION OR WARRANTY WHATSOEVER AS TO THE NON-INFRINGEMENT, COMPLETENESS, ACCURACY, OR FITNESS FOR USE FOR ANY PURPOSE OF ANY OF THE CONFIDENTIAL INFORMATION, WHICH IS DELIVERED “AS IS” WITH ALL FAULTS. ANY USE OF, OR RELIANCE ON, ANY CONFIDENTIAL INFORMATIONBY ANY RECIPIENT PARTY OR ANY OTHER PERSON IS AT ITS SOLE RISK.
5. **Return/Destruction.**Upon at least ten (10) calendar days prior written notice to Recipient, Discloser may require all Recipient Parties to return to Discloser (or, if specifically approved in writing by Discloser, to destroy) all physical or tangible Confidential Information (including all copies thereof) and to permanently delete all non-tangible Confidential Information (including all copies thereof). If required by Discloser, an officer of Recipient shall certify in writing that all Recipient Parties have complied with their respective obligations under this Section. Any return, deletion, or destruction of Confidential Information shall not relieve or otherwise excuse any Recipient Party from the performance of its obligations under this Agreement.
6. **Remedies.**
   1. **Injunctive and Equitable Relief.**Recipient acknowledges and agrees that any actual or threatened breach of this Agreement may cause Discloser irreparable harm, the amount of which may be difficult to ascertain. Accordingly, Recipient acknowledges and agrees that Discloser may apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such actual or threatened breach of this Agreement,and for such other relief as Discloser deems appropriate. Such remedies shall be in addition to, and cumulative with, the remedies otherwise available to Discloser at law or in equity. Recipient expressly waives any defense that damages will be an adequate remedy and any requirement that Discloser post any bond or undertaking in connection with such relief.
   2. **Indemnity.** Recipient shall indemnify, defend, protect, and hold Discloser harmless from and against any and all actions, claims, costs, expenses, liabilities, losses, and proceedings (including, without limitation, attorneys’ fees and litigation expenses) arising from or related to any actual or alleged breach of this Agreement by any Recipient Party.
   3. **Attorneys’ Fees.**If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be awarded its reasonable attorneys' fees and costs incurred.
   4. **Time of Essence.** Time is of the essence with respect to the Recipient’s performance of its obligations under this Agreement.
7. **Miscellaneous.** 
   1. **Representations and Warranties.**Recipient represents and warrants to Discloser as follows:
      1. [IF RECIPIENT IS LEGAL ENTITY: Recipient is a [TYPE OF LEGAL ENTITY],duly formed, registered, and organized and validly existing under the laws of the State of [STATE], United States of America, and in good standing and validly registered to do business under the laws of all states and countries in which Recipient does business.]
      2. Recipient has full corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution and delivery of this Agreement by Recipient (and the person(s)/entity(ies) signing for and on behalf of it) and itsperformance of all obligations under this Agreement have been duly and validly authorized by all necessary corporate action. This Agreement constitutes a legal, valid, and binding obligation of Recipient, enforceable against it in accordance with the terms of this Agreement, except as enforcement may be limited by applicable bankruptcy or similar laws affecting creditors’ rights generally and by general principles of equity.
      3. The execution, delivery, and performance of this Agreement by Recipient does not and will not: (a) conflict with or violate any provision of the organizational documents of Recipient; (b) conflict with or violate any laws, regulations, or legal requirements applicable to Recipient or by which any property or asset of Recipient is bound or affected; or (c) conflict with, result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, or require any consent of any person or entity pursuant to, any contract or agreement to which Recipient is a party.
   2. **No Additional Agreements.**No contract or agreement (other than this Agreement) relating to any of the potential transactions connected with the Purpose shall be deemed to exist as a result of the execution of this Agreement or the disclosure of Confidential Information hereunder unless and until a subsequent definitive written agreement with respect to such potential transaction(s) (a “Definitive Agreement”) is duly executed. Unless and until such Definitive Agreement has been duly executed, no person shall have any legal obligation or duty (save for those obligations and duties expressly set forth in this Agreement) with respect to any transaction by virtue of this Agreement, the disclosure of Confidential Information hereunder, or otherwise. Except as expressly provided in this Agreement or in any Definitive Agreement, this Agreement does not create any principal-agent, joint venture, partnership, or other relationship between or among the (i) Discloser, its affiliated and related entities, and its and their respective officers, directors, employees, and agents, on one hand, and (ii) any Recipient Party, its affiliated and related entities, and its and their respective officers, directors, employees, and agents, on the other hand.
   3. **Notices.**All notices under this Agreement shall be in writing and shall be deemed duly given (i) on the date of delivery if delivered personally, or (ii) the earlier of (a) the date of actual receipt or refusal of delivery, or (b) (1) two (2) calendar daysafter the date of dispatch for deliveries by reputable overnight courier services (e.g. FedEx, UPS, or DHL) (delivery expenses pre-paid with proof of delivery or refusal thereof), or (2) seven (7) calendar days after the date of dispatch for deliveries by registered or certified U.S. Mail (postage pre-paid with proof of delivery or refusal thereof). All notices under this Agreement to Discloser shall be sent and addressed as follows: [FULL LEGAL NAME OF DISCLOSER], [FULL ADDRESS OF DISCLOSER FOR DELIVERIES], Attention: [DISCLOSER PERSON/TITLE TO RECEIVE NOTICES]. All notices under this Agreement to Recipient shall be sent and addressed as follows: [FULL LEGAL NAME OF RECIPIENT], [FULL ADDREESS OF RECIPIENT FOR DELIVERIES], Attention: [RECIPIENT PERSON/TITLE TO RECEIVE NOTICES]. A Party may change its address for notice purposes upon at least ten (10) calendar days prior written notice to the other Party.
   4. **Successors and Assigns.**This Agreement and its provisions shall inure to the benefit of and be binding upon the Parties and their respective permitted successors and assigns. Recipient shall not assign, subcontract, delegate, or otherwise transfer its rights, duties, or obligations under this Agreement or with respect to any Confidential Information in whole or in part without the prior written consent of Discloser, which consent may be withheld or conditioned in Discloser’s sole and absolute discretion. Any such assignment, subcontracting, delegation, or other transfer without such prior written consent of Discloser shall be null and void *ab initio.* Discloser may assign, delegate, or otherwise transfer this Agreement and any rights hereunder in whole or in part to any person or entity without Recipient’s consent.
   5. **Retroactivity.**If the date on which this Agreement is executed is later than the Effective Date or the date on which Confidential Information is first disclosed to any Recipient Party (the “First Disclosure Date”), this Agreement shall bind the Parties, and take effect retroactively as of and from, the earlier ofthe Effective Date or the First Disclosure Date.
   6. **Governing Law; Venue.**This Agreement shall be governed by and construed in accordance with the laws of the State of [NAME OF STATE], without application of its principles of conflicts of law. The Parties hereby irrevocably consent and submit to the jurisdiction of the state and federal courts located in the City of [FILL CITY], [NAME OF STATE]in any action arising out of or relating to this Agreement, and irrevocably waive any objection (including, without limitation, *forum inconveniens*) to such courts.
   7. **Entire Agreement; Construction.**This Agreement is the product of both Parties, constitutes their entire agreement regarding the subject matter hereof, and supersedes all prior oral or written drafts, negotiations, discussions, agreements, and understandings of the Parties regarding the subject matter hereof. All headings and titles are for convenience of reference purposes only and shall not affect the meaning or interpretation of this Agreement. As this Agreement has been drafted and negotiated by both Parties, this Agreement shall be construed fairly, in accordance with its provisions, and without application of the*contra proferentum* doctrine. If any deadline for performance or deemed receipt under this Agreement falls on a weekend or legal holiday when such performance or delivery is to be rendered, such deadline automatically shall be deemed to be moved to the next following calendar day that is not a weekend or legal holiday.
   8. **Amendment; Waiver.**No failure by Discloser to promptly exercise its rights under this Agreement will be deemed a waiver of those rights. No single or partial exercise of any right shall preclude further exercise of that right, or the exercise of any other right under this Agreement. No alteration, waiver, amendment, change, or supplement to this Agreement shall be binding or effective unless the same is set forth in writing signed by a duly authorized representative of each Party.
   9. **Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable, such provision shall be severed from this Agreement to the minimum extent necessary so that the remaining provisions of this Agreement and the Parties’ intent thereby shall remain in full force and effect.
   10. **Survival.**The Recipient’s obligations under this Agreement shall survive indefinitely.
   11. **Counterparts.**This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument. Counterparts may be delivered by facsimile or other electronic means (including, without limitation, by e-mail) and each such facsimile- or electronically-transmitted counterpart shall be an original.

*[Remainder of Page Intentionally Left Blank]*

**APPENDIX CI**

Confidential Information includes, without limitation, the following:

[TO BE PROVIDED BY DISCLOSER AND RECIPIENT]

**IN WITNESS WHEREOF,** the Parties execute this Agreement as of the Effective Date.

|  |  |
| --- | --- |
| **DISCLOSER:** | **RECIPIENT:** |
| [FULL LEGAL NAME OF DISCLOSER], a [STATE OF FORMATION][TYPE OF ENTITY] | [FOR LEGAL ENTITY:] [FULL LEGAL NAME OF RECIPIENT], a [STATE OF FORMATION][TYPE OF ENTITY]  [FOR INDIVIDUAL:] [FULL LEGAL NAME OF RECIPIENT] |
| By:       Name:  [FULL LEGAL NAME OF PERSON]      Title:  [TITLE OF AUTHORIZED PERSON UNDER ORGANIZATIONAL DOCUMENTS] | [FOR LEGAL ENTITY:]  By:       Name:  [FULL LEGAL NAME OF PERSON]      Title:  [TITLE OF AUTHORIZED PERSON UNDER ORGANIZATIONAL DOCUMENTS]  [FOR INDIVIDUAL:]  By: |
| Date of Execution: | Date of Execution: |