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## Non-Disclosure Confidentiality Agreement

This Non-Disclosure Confidentiality Agreement (hereinafter, the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between \_\_\_\_\_, a \_\_\_\_\_ (Entity Type and State of Incorporation/Organization), with offices at \_\_\_\_\_ (Address) (hereinafter "Discloser"), and \_\_\_\_\_, a \_\_\_\_\_ (Entity Type and State of Incorporation/Organization), with offices at \_\_\_\_\_ (Address) (hereinafter "Recipient"), collectively hereinafter the "Parties".

### RECITALS:

1. The Parties desire to enter into discussions and/or negotiations regarding the following matters:  
  
(Define the topics of, and purposes of, preliminary discussions)
2. In the course of such discussions it may be necessary for the Parties to disclose certain information which they deem to be confidential.
3. The Parties (the party disclosing the Confidential Information, including its officers, agents, and employees, and the party receiving same, including its officers, agents, and employees, hereinafter referred to as "Discloser" and "Recipient", respectively) desire to protect such information from unauthorized disclosure and use.

NOW, THEREFORE, the Parties mutually agree and covenant as follows:

1. As used in this Agreement, the term "Confidential Information" shall mean any oral or written information received from Discloser which is not generally known to the public, including, without limitation, information relating to the business and technical plans of the Discloser.

The term "Confidential Information" shall mean any oral, written, or electronic information of either Party that is disclosed to the other relating to information which is not generally known to the public, including, but not limited to, information of a

business, financial, legal, or technical nature. Confidential Information includes, without limitation, information of a technical nature including, without limitation, trade secrets as defined by applicable state law; devices or manufacturing processes; techniques, data, formulae, inventions (whether or not patentable); specifications and characteristics of current products or products under development; research subjects, methods, and results; matters of a business nature including, without limitation, costs, margins, pricing policies and schedules, markets, sales, forecasts, suppliers and customers; product, marketing or strategic plans; business plans; client lists; intellectual property holdings; correspondence, both internal and external in nature; email, computer files, proprietary software, licensing agreements, financial information; legal information and contracts; and other information of a similar nature which the Parties would reasonably understand to be confidential and which has, or may potentially have, economic value to the Discloser.

2. The Recipient shall not be liable for any unauthorized disclosure of Confidential Information provided the Recipient exercises the same reasonable degree of care in safeguarding the Confidential Information that it takes with its own confidential or proprietary information.
3. Recipient shall not, directly or indirectly, disclose or use Confidential Information, in whole or in part, for any purpose other than the purposes listed in Section 1 of the Recitals of this Agreement, without the prior written approval of the Discloser.
4. The restrictions on Recipient's disclosure and use of Confidential Information shall not apply to the extent that such information (i) was already known to Recipient prior to receipt from Discloser; (ii) is or becomes public knowledge without breach of Recipient's obligations under this Agreement; (iii) is rightfully acquired by Recipient from a third party without restriction on disclosure or use; (iv) was or is disclosed by Discloser to a third party prior to or after the date of this Agreement without restriction on use; (v) is independently developed by Recipient without resort to Discloser's disclosure; or (vi) is disclosed or used following Recipient's receipt of express written consent from an officer of Discloser, provided, however, that Recipient shall have the burden of proof respecting any of these events on which Recipient relies in order to relieve it of any restrictions under this Agreement.
5. The furnishing of Confidential Information shall not constitute or be construed as a grant of any express or implied license or other right, or a covenant not to sue or forbearance from any other right of action (except as to activities expressly permitted by this Agreement), nor as a grant of a license by Discloser to Recipient under any of Discloser's patents or other intellectual property rights.
6. The Agreement shall commence on the date set forth above and shall continue until the later to occur of the running of a period of \_\_\_\_\_ years, or until the matters contemplated in Section 1 of the Recitals of this Agreement are completed and all material retained under Section 7 of this Agreement is returned to the Discloser or destroyed (the "Term" of this Agreement).

7. Upon Discloser's request, Recipient shall immediately return all written, graphic, or other tangible forms of the Confidential Information and all copies, electronic or otherwise, provided however that one copy, electronic or otherwise, may be retained for record retention purposes only. All material retained shall remain subject to the disclosure and use restrictions of this Agreement, in accordance with the provisions of Section 6 of this Agreement.
8. Discloser does not warrant that all relevant information will be disclosed. Discloser shall have no liability to Recipient as a result of the use of the Confidential Information by Recipient. Only those specific representations and warranties, which may be made in a definitive agreement with respect to the proposed business relationship when, as and if such an agreement is executed, shall have any legal effect.
9. The Parties acknowledge that monetary damages alone would not be a sufficient remedy for any breach of this Agreement and that a party shall be entitled, in addition to any other right it may possess under law, to equitable relief (including, but not limited to, an injunction or specific performance) in the event of any breach or threatened breach of the provisions of this Agreement.
10. Except as otherwise provided in this Agreement, this Agreement does not in any way constitute a binding commitment between the Parties with respect to the proposed business relationship. This Agreement shall not be construed to constitute a joint venture or partnership between the Parties.
11. In the event that the Parties enter into a subsequent written agreement, the terms of such agreement concerning confidentiality of information shall supersede any conflicting terms of this Agreement.
12. This Agreement contains the entire agreement of the Parties relating to its subject matter and supersedes all prior or contemporaneous oral or written agreements. This Agreement may not be amended except by mutual written agreement of the Parties.
13. This Agreement shall be governed by and construed in accordance with the laws of the State of \_\_\_\_\_, and any dispute relating to it shall be brought in the appropriate state and federal courts located in \_\_\_\_\_ County. The prevailing Party in any such action shall be entitled to recovery of reasonable attorneys' fees and costs from the other Party.

***"Discloser"***

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

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

***"Recipient"***

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

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

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