

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “**Agreement**”), dated and effective as of \_\_\_\_\_ is by and between \_\_\_\_\_, a \_\_\_\_\_ (the “**Company**”), and \_\_\_\_\_ (“**Recipient**”).

WHEREAS, the Company and Recipient intend to discuss a potential business arrangement between them; and

WHEREAS, in connection with such discussion, the Company may find it necessary or desirable to disclose to Recipient certain of its proprietary and confidential information (defined below as the “**Confidential Information**”);

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. Definition of Confidential Information. “**Confidential Information**” shall mean all tangible and intangible information, including, without limitation, technical, financial, commercial and proprietary information, know-how, and trade secrets of any description, whether created or produced by the Company, or any person on behalf of the Company, that concerns or relates to the business or technology of the Company or is otherwise acquired in anticipation of, during, or as a result of, or in any way connected with, this Agreement, regardless of whether such Confidential Information is marked as “Confidential.” The parties agree that this Agreement is not intended to restrict the use or disclosure of any portion of such information which:

- (a) is now or later made known to the public through legal means and no fault of Recipient;
- (b) Recipient can show was in his possession prior to the earliest disclosure by the Company, as evidenced by written documents in his files;
- (c) is rightfully received by Recipient from a third party having no obligation of confidentiality to the Company;
- (d) is independently developed by Recipient without access to the Confidential Information; or
- (e) is disclosed by Recipient after receipt of written permission from the Company.

2. Obligation of Confidentiality. Recipient agrees to hold in confidence and not publish or disclose to any third parties any of the Confidential Information without the prior consent of the Company. Recipient agrees to use the same degree of care (and in any event not less than reasonable care) to safeguard the confidentiality of the Confidential Information that it uses to protect its own secret information. Recipient agrees to limit any disclosure of the Confidential Information only to those of his outside professional advisors who have a need to

know and who are bound by confidentiality obligations and to advise such persons of Recipient's obligations under this Agreement.

3. Use of Confidential Information. Recipient agrees to use Confidential Information only (a) to evaluate his interest in pursuing the collaborative or business possibility with the Company, and (b) to pursue the collaborative or business opportunity after the parties have agreed to do so, but not for any other purpose.

4. Return of Information. All tangible materials received from the Company or generated by Recipient and containing Confidential Information shall be the property of the Company, and Recipient shall promptly deliver all such materials and all copies of the same to the Company upon the earlier of termination of this Agreement or the request of the Company.

5. Required Disclosure. If Recipient is requested or required by subpoena, court order, or similar process to disclose any Confidential Information, the parties agree that Recipient will provide the Company with prompt notice of such request(s) so that the Company may seek an appropriate protective order and/or waive Recipient's compliance with the provisions of this Agreement.

6. No License. Nothing contained herein shall be construed to grant Recipient any immunity or license under any intellectual property rights of the Company.

7. No Violation. Each party represents that its compliance with the terms of this Agreement will not violate any duty which such party may have to any other person or entity, including obligations concerning providing services to others, confidentiality of proprietary information, and assignment of inventions, ideas, patents, or copyrights.

8. Breach. In the event of a breach or threatened breach of this Agreement by Recipient, the Company shall have the right to (a) recover its damages incurred by reason of such breach or threatened breach, including, without limitation, its reasonable attorneys' fees and cost of suit, (b) obtain injunctive relief to prevent such breach or threatened breach or to otherwise enforce the terms of this Agreement, and (c) pursue any other remedy available at law or in equity.

9. General.

(a) This Agreement shall not be assigned by either party without the written consent of the other except in connection with the transfer of substantially all of the assets, stock, or business of such party. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties.

(b) This Agreement shall be construed and interpreted in accordance with the laws of the State of \_\_\_\_\_, without regard to its principles concerning the application of laws of other jurisdictions.

(c) This Agreement is the entire agreement between the parties concerning the disclosure of Confidential Information and supersedes all prior oral and written agreements between them with regard to the subject matter herein. No waiver, alteration, or cancellation of

any of the provisions of this Agreement shall be binding unless in writing and signed by the party to be bound.

(d) If any portion of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect without the invalid or unenforceable provisions.

(e) The parties hereby represent and warrant that the officials signing this Agreement have the power to do so on behalf of the parties.

IN WITNESS WHEREOF, the parties have executed this Confidentiality Agreement as of the date set forth above.

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By: \_\_\_\_\_

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By: \_\_\_\_\_

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