

MUTUAL CONFIDENTIALITY AGREEMENT

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

WHEREAS, the parties hereto intend to discuss a potential business arrangement between them; and

WHEREAS, in connection with such discussion, either party (the “**Disclosing Party**”) may find it necessary or desirable to disclose to the other party and its employees, agents or representatives (the “**Receiving Party**”) certain of their respective 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 Disclosing Party, or any person on behalf of the Disclosing Party, that concerns or relates to the business or technology of the Disclosing Party 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 the Receiving Party;
- (b) the Receiving Party can show was in its possession prior to the earliest disclosure by the Disclosing Party, as evidenced by written documents in its files;
- (c) is rightfully received by the Receiving Party from a third party having no obligation of confidentiality to the Disclosing Party;
- (d) is independently developed by employees of the Receiving Party without access to the Confidential Information; or
- (e) is disclosed by the Receiving Party after receipt of written permission from the Disclosing Party.

2. Obligation of Confidentiality. The Receiving Party agrees to hold in confidence and not publish or disclose to any third parties any of the Confidential Information of the Disclosing Party without the prior consent of the Disclosing Party. The Receiving Party 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.

The Receiving Party agrees to limit any disclosure of the Confidential Information only to those of its employees and outside professional advisors who have a need to know and who are bound by confidentiality obligations and to advise such persons of the Receiving Party's obligations under this Agreement.

3. Use of Confidential Information.

(a) The Receiving Party agrees to use Confidential Information received from the Disclosing Party only (i) to evaluate its interest in pursuing the collaborative or business possibility with the Disclosing Party, and (ii) to pursue the collaborative or business opportunity after the parties have agreed to do so, but not for any other purpose. All Confidential Information furnished pursuant to this Agreement shall be returned promptly by the Receiving Party to the Disclosing Party upon request by the Disclosing Party.

(b) The Receiving Party further agrees that during the term of this Agreement and for the period of five (5) years from the date of the last disclosure under this Agreement, it will not, either directly or through others: (i) solicit or attempt to solicit any employee, independent contractor or consultant of the Disclosing Party to terminate his or her relationship with the Disclosing Party in order to become an employee, consultant or independent contractor to or for the Receiving Party, or any partner, affiliate, parent or subsidiary of the Receiving Party; or (ii) solicit or attempt to solicit any customer or partner of the Disclosing Party with whom the Receiving Party had contact because of the actions performed and disclosures made pursuant to this Agreement.

4. Return of Information. All tangible materials received from the Disclosing Party or generated by the Receiving Party and containing Confidential Information shall be the property of the Disclosing Party, and the Receiving Party shall deliver all such materials to the Disclosing Party upon the earlier of termination of this Agreement or the request of the Disclosing Party.

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

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

7. Term of Obligation. The parties' obligations concerning nondisclosure of Confidential Information contained in the above paragraphs shall continue for five (5) years from the date of each disclosure and then terminate.

8. 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.

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 Mutual Confidentiality Agreement on the date set forth above.