

Mutual Non-Disclosure Agreement

Version 2024-A

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**MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

**Date:** The day and year last written below

**Parties: \_\_\_\_\_\_\_\_\_**

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

In consideration of the mutual covenants expressed herein, and the performance hereof, the sufficiency of which is acknowledged, the parties agree as follows:

**1.**            Each party has certain written and/or oral confidential or proprietary information relating to their respective businesses and business practices (“Information”) to disclose to each other to determine their interest in entering into a business transaction (the “Purpose”), but for no other purpose.

**2.**            Each party agrees to maintain in confidence the Information disclosed to it by the other party, in writing or orally, and to not disclose the Information to anyone except to such of its directors, officers, managers, employees, attorneys, accountants, consultants, and agents as may be necessary to make the determination contemplated by this Agreement. Each party will require all persons receiving the Information from it to hold the Information in accordance with this Agreement.  This Agreement shall not be construed to grant to either party any license or rights except those specifically granted herein.  Each party shall protect the Information from loss, theft, interference, corruption, destruction, and unauthorized reproduction or access.

**3.**            Each party agrees not to disclose, use, or appropriate the Information for any purpose other than making the determination contemplated by this Agreement, except for so much of the Information that is part of the public domain, becomes a part of the public domain not due to an unauthorized act by or omission of the party, is independently developed by the party prior to the date of this Agreement, or is disclosed to the party by a third party who has the right to make such disclosure.  The Information shall not be deemed to be within the foregoing exceptions merely because portions of the Information or more general information are in the public domain or in the possession of one of the parties.

**4.**            If requested by one of the parties, the other party will return or destroy all material furnished by the requesting party that contains any part of the Information, as well as any copies thereof, except one copy which may be retained for archival purposes.  A senior officer of the receiving party shall certify in writing, on behalf of the receiving party, that all Information required to be returned or destroyed has been returned or destroyed. The return or destruction of the Information shall not affect either party’s continuing obligation to treat the Information as confidential.

**5.**            The parties make no representation that the confidential disclosure herein described will be exclusive. Each party acknowledges that the other party may be involved in making such confidential disclosures to other persons.

**6.**            The parties agree that unless a written agreement between the parties with respect to the Purpose is executed, if any, and except for the matters specifically agreed to herein, neither party will be under any legal obligation of any kind whatsoever with respect to the Purpose or otherwise by virtue of this Agreement or any written or oral expression with respect to the Purpose.

**7.** The parties acknowledge and agree that a party’s breach of this Agreement will result in immediate and irreparable harm to the other party, that damages may not be an adequate remedy for such a breach, and that the damaged party shall be entitled to immediate interlocutory injunctive relief without bond, preserving all other legal or equitable remedies. Each party agrees that the provisions of this Section are fair and reasonable in accordance with the commercial circumstances of this Agreement, and that neither party would have entered into this Agreement but for the provisions of this Section.

**8.** In the event a party may be compelled by law, regulation, or an order from a court or administrative body of competent jurisdiction to disclose any of the Information, that party shall be entitled to disclose such Information to the extent that it complies with, and is within the constraints of, this Section. Before making the disclosure, the disclosing party shall provide the other party with prompt prior written notice of its obligation to disclose so that the other party may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that the other party waives compliance with the provisions hereof, the disclosing party agrees to furnish only that portion of the Information which it is legally required to disclose and to exercise best efforts to obtain assurances that the Information will be treated in confidence.

**9.** This Agreement is binding upon and inures to the benefit of the Parties’ successors. Neither of the parties, nor their successors, may assign this Agreement without the prior written consent of the other party. This Agreement may only be amended by written agreement duly executed by authorized representatives of the parties. No modification or waiver of any provision of this Agreement shall be valid unless in writing and signed by the parties. If any provision contained in this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not impair or affect the validity, legality, or enforceability of the remaining portions of this Agreement, and each provision or portion hereof is declared to be separately severable and distinct and shall be valid and enforceable to the extent permitted by law.

**10.**            The undersigned warrant that this Agreement is made with the authority of and binds the referenced party. This Agreement is made in and shall be governed by the laws of the State Commonwealth of\_\_\_\_\_\_. The exclusive jurisdiction for any claim arising out of or invoking this Agreement shall be in \_\_\_\_ County, \_\_\_\_\_. In every proceeding arising out of or invoking this Agreement, the prevailing party will be entitled to recover its reasonable attorney fees and other fees, costs, and expenses of every kind incurred in connection with the litigation, any appeal, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court. This Agreement constitutes the parties’ complete and exclusive statement of the terms and conditions between them with respect to the subject matter hereof.

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*In witness whereof*, the parties have entered into and executed this Agreement.

[Name of Company] [Name of Company]

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By [Name of signer], [Signer's title] By [Name of signer], [Signer's title]

Date Date