

## MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (this “Agreement”), dated as of **[Effective Date]** (the “Effective Date”), is by and between **[Disclosing Party]** and **[Receiving Party]** (each, a “Party” and collectively, the “Parties”). The Parties wish to discuss, on a confidential basis, a potential transaction (the “Potential Transaction”). In connection with the Potential Transaction, either Party (the “Disclosing Party”) may, but shall not be obligated to, disclose or make available to the other Party (the “Recipient”) or its Representatives certain Evaluation Material (as defined below). For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, each Party acknowledges and agrees that (i) this Agreement, (ii) the fact that discussions are taking place with respect to the Potential Transaction and (iii) any plans, proposals or other information regarding the Potential Transaction or the Disclosing Party (including, without limitation, any information that a reasonable person would consider confidential or proprietary, including information about the Disclosing Party’s identity, assets, plans or proposals or any data, reports, interpretations, forecasts, business plans and records (financial or otherwise)), that may be disclosed by or on behalf of the Disclosing Party to the Recipient, or any Representative of the Recipient on or after the date hereof, irrespective of whether transmitted orally or in writing, and any Evaluation Material contained in any notes, data, reports, analyses and/or other materials, ideas or information prepared, generated or developed by the Recipient, and/or any Representative of the Recipient (all collectively, “Evaluation Material”), is confidential, proprietary, sensitive and valuable business information belonging to the Disclosing Party, the use and/or disclosure of which the Recipient acknowledges and agrees is prohibited except as expressly provided herein.

**1. Confidentiality.** The Recipient shall hold and treat the Evaluation Material in confidence and shall not disclose to any person any part of the Evaluation Material, except (i) to employees, members, agents, partners, representatives, officers, directors, financing sources, accountants, attorneys and other advisors of the Recipient or the Recipient’s affiliates (the “Representatives”) who have a need to know such Evaluation Material to assist the Recipient with the evaluation, negotiation and consummation of the Potential Transaction and only after informing such Representative(s) of the confidential nature of such information and instructing such Representative(s) to adhere to the terms hereof as if they were a direct party and (ii) in accordance with “Required Disclosure” provisions. Exceptions apply for information that becomes public, was rightfully received from a third party, or independently developed without reference to the Evaluation Material.

**2. Use of Materials.** The Recipient will use the Evaluation Material solely in connection with its evaluation, negotiation and consummation of the Potential Transaction, and not for any other purpose. Upon written request of the Disclosing Party, the Recipient and its Representatives will return or destroy all Evaluation Material and confirm completion.

**3. Required Disclosure.** Required Disclosure is permitted if compelled by law, regulation, court order, governmental authority, or regulatory request. Recipient must promptly notify the Disclosing Party (to the extent permissible) and cooperate with attempts to limit or obtain confidential treatment.

**4. Remedies.** Breach of this Agreement may cause irreparable harm for which monetary damages may be insufficient. Disclosing Party is entitled to seek specific performance, injunctive relief, and other equitable remedies without posting a bond.

**5. No Warranty.** Except as expressly set forth in any definitive executed agreement regarding the Potential Transaction, the Disclosing Party makes no representation or warranty—express or implied—as to the accuracy or completeness of any Evaluation Material.

**6. No Obligation to Proceed.** Until execution of a definitive agreement, no Party shall have any legal obligation of any kind whatsoever with respect to any transaction (including the Potential Transaction).

Either Party may terminate discussions at any time, with or without cause.

**7. No Waiver.** No failure or delay by the Disclosing Party in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude further exercise.

**8. Term.** This Agreement becomes effective on the Effective Date and terminates on the earlier of (i) two (2) years from the Effective Date or (ii) execution of a definitive agreement. Confidentiality obligations survive for two (2) years from each disclosure.

**9. Governing Law.** This Agreement shall be governed by the laws of the State of **[Governing Jurisdiction]**, without regard to conflict of law principles. Each Party irrevocably consents to exclusive jurisdiction in the state and federal courts located therein and waives any right to trial by jury.

**10. Severability.** If any provision is determined invalid or unenforceable, the remainder continues in full force, and a suitable substitute provision shall be applied to reflect the original intent.

**11. Entire Agreement.** This Agreement represents the entire understanding between the Parties regarding confidentiality relating to the Potential Transaction. It may only be amended in writing signed by both Parties. It may be executed in counterparts, including electronically, each of which shall be deemed an original.

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

**[Disclosing Party]**

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

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

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

**[Receiving Party]**

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

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

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