

# BUSINESS SALE NON-DISCLOSURE AGREEMENT

This BUSINESS SALE NON-DISCLOSURE AGREEMENT (hereinafter known as the "Agreement") is entered into between \_\_\_\_\_ (hereinafter known as the "Company") and \_\_\_\_\_ (hereinafter known as the "Potential Buyer") for the purpose of sharing operational, financial and other information relating to the Company for the purpose of pursuing or establishing a business relationship or negotiating a contract between the parties. The Agreement is effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (hereinafter known as the "Effective Date").

## Article I: Conditions

The Company agrees to share trade secrets and confidential, proprietary and protected information not generally disclosed to the public (hereinafter known as "Confidential Information") on the condition that the Potential Buyer acts in accordance with the provisions of this Agreement and agrees to use the Confidential Information solely for the consideration of a potential purchase transaction or strategic alliance. Although the Company will use all reasonable efforts to include materials which they believe to be reliable and relevant, the Company makes no representation or warranty as to the accuracy or completeness of the Confidential Information except as may be set out in a definitive agreement which may be entered into by both parties in connection with a potential transaction.

## Article II: Confidential Information

**A. Definitions.** For the purposes of this Agreement, Confidential Information refers to the Company's businesses, operations and assets (whether in written, electronic or other form) including, but not limited to, current, future or proposed products, formulas, designs, devices, drawings, specifications, technical memoranda and correspondence, computer code, programs and algorithms, product development agreements and other related agreements.

**B. Property Rights.** Confidential Information is and will, at all times, remain the property of the Company, and the Company reserves the right to disclose the Information to other persons or entities in connection with other possible transactions or for any other purpose.

## Article III: Non-Disclosure

**A. Transaction.** The Potential Buyer understands and agrees that under no circumstances (except as provided in subsection (D) of this section) shall they disclose information regarding any potential transaction or any of the terms, conditions or other facts relating to this Agreement.

**B. Information.** The Potential Buyer shall only disclose Confidential Information to representatives within their organization who are required to know the Information for the purposes of furthering a potential transaction. Confidential Information is to be kept strictly confidential, and the Potential Buyer and their representatives shall not (i) make any public comment, statement or communication or otherwise disclose to any person in any manner whatsoever the Confidential Information, or (ii) use the Information for any purpose other than to evaluate and implement a potential transaction. The Potential Buyer shall not use any Confidential Information with respect to any of the financial affairs of the Company in

furtherance of the Recipient's own business, or the business of anyone else, whether or not in competition with the Company, or for any other purpose whatsoever.

**C. Representatives.** It is the responsibility of the Potential Buyer to stress confidentiality to each representative with whom Confidential Information has been disclosed, and to take all reasonable, necessary and appropriate steps to safeguard the Confidential Information from disclosure.

**D. Exceptions.** The Company understands and agrees that the Potential Buyer may be compelled to disclose Confidential Information, information relating to a potential transaction or terms or conditions relating to this Agreement if required by law (subpoena, civil investigative demand or similar legal process). It is the duty and responsibility of the Potential Buyer to give prompt notice to the Company so they may seek a protective order or other appropriate remedy in response to the disclosure of Confidential Information. Furthermore, the Potential Buyer is not restricted from disclosing Confidential Information if one of the following instances applies:

(i) the information was in the Potential Buyer's possession before such information was disclosed by the Company, with no obligation to keep it confidential;

(ii) the information is or becomes public knowledge or lawfully available through a source other than the Potential Buyer, and through no breach of agreement on their part; or

(iii) the Company provides written approval for the Potential Buyer to disclose said information.

#### **Article IV: Period of Non-Disclosure**

**A. Term.** This Agreement and the Potential Buyer's duty not to disclose Confidential Information shall remain in effect until the Company sends written notice releasing the Potential Buyer from this Agreement or Confidential Information ceases to be a trade secret.

**B. Non-Acquisition.** In the event of non-acquisition by the Potential Buyer, the confidentiality and other obligations described in this Agreement continue in full force and effect for a period of \_\_\_\_ years from the Effective Date.

**C. Return of Materials.** Upon the Company's request, or upon termination of this Agreement or the occurrence of a potential transaction, the Potential Buyer shall promptly return to the Company or destroy all original and copied materials (including electronic format) constituting or containing Confidential Information. Any information or materials the Company allows the Potential Buyer to retain shall be kept confidential and shall not be disclosed or given to any third party for any purpose.

#### **Article V: General Provisions**

**A. Remedies.** The Potential Buyer understands and acknowledges that failure to act in accordance with the provisions set forth in this Agreement could cause irreparable harm to the Company, and Potential Buyer agrees that the Company is entitled to injunctive relief (or a similar remedy) to seek damages and to specifically enforce the provisions of this Agreement in addition to any other remedy available to it at law or in equity.

**B. Entire Agreement.** This Agreement contains the entire agreement between the parties concerning matters set out within, and no amendment to this Agreement or waiver of its terms is binding upon the parties unless approved in writing by each of them.

**C. Non-Agreement.** Except as specifically set out in this Agreement, no party is under any legal obligation with respect to a potential transaction unless a definitive agreement between the parties has been signed.

**D. Severability.** If a court of competent jurisdiction finds any provision within this Agreement to be invalid, illegal or unenforceable, that provision will be severed from the Agreement and the remaining provisions shall continue in full force and effect, without amendment.

**E. Governing Law.** This Agreement shall be governed in accordance with the laws of the State of \_\_\_\_\_.

**F. Fees/Expenses.** In a dispute arising out of or related to this Agreement, the prevailing party shall have the right to collect from the other party its reasonable costs, attorney fees, and necessary expenditures.

**G. Notice.** Any notice required by or given in connection with this Agreement shall be in writing and shall be given to the appropriate party by personal delivery or by certified mail, postage prepaid or recognized overnight delivery services to the following addresses:

Company's Address

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Recipient's Address

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IN WITNESS WHEREOF, the parties hereto acknowledge that by signing this agreement, they agree to hold all matters strictly confidential and abide by all the terms and conditions therein.

**Company**

Representative Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Representative Printed Name: \_\_\_\_\_ Representative Title: \_\_\_\_\_

**Potential Buyer**

Potential Buyer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Potential Buyer Printed Name: \_\_\_\_\_