Confidentiality and Non-Disclosure Agreement

This Confidentiality Agreement (the "**Agreement**"), effective as of [DATE] (the "**Effective Date**"), is entered into by and between [NAME OF PARTY 1], a [PARTY 1 JURISDICTION OF INCORPORATION/FORMATION] [corporation/limited partnership] having its principal place of business at [PARTY 1 BUSINESS ADDRESS] and [NAME OF PARTY 2], a [PARTY 2 JURISDICTION OF INCORPORATION/FORMATION] [corporation/limited partnership], having its principal place of business at [PARTY 2 BUSINESS ADDRESS] (together the "**Parties**", and each a "**Party**").

1. Recipient's Obligations. In connection with [DESCRIPTION OF PURPOSE] (the "**Purpose**"), either Party ("**Discloser**") may disclose Confidential Information (as defined below) to the other Party ("**Recipient**"). The Recipient shall use the Confidential Information solely for the Purpose and, subject to Section 2, shall not disclose the Confidential Information other than to its [affiliates and its or their] employees, officers[, directors][, shareholders][, partners][, agents][, independent contractors][, service providers][, sublicensees][, subcontractors], lawyers, accountants and financial advisors (collectively the "**Representatives**") who: (i) need access to such information for the Purpose; (ii) are informed of its confidential nature; and (iii) are bound by [written] confidentiality obligations no less protective of the Confidential Information than the terms contained herein.

The Recipient shall protect the Confidential Information from unauthorized use, access or disclosure using no less than a [commercially] reasonable degree of care. The Recipient will be responsible for any [material] breach of this Agreement caused by its Representatives.

The term "**Confidential Information**" means all non-public, proprietary or confidential information [of the Discloser/relating to the Discloser's [DESCRIPTION OF CONFIDENTIAL INFORMATION]], in oral, visual, written, electronic or other tangible or intangible form, [whether or not marked or designated as "confidential"/that, if disclosed in writing or other tangible form, is clearly labelled as "confidential," or if disclosed orally, is identified as confidential when disclosed and within [NUMBER] days thereafter, is summarized in writing and confirmed as confidential,] and all notes, analyses, summaries, reports and other materials prepared by the Recipient or any of its Representatives that contain, are based on or otherwise reflect, to any degree, any of the foregoing ("**Notes**"). [Confidential Information also includes: (x) the fact that the Parties are in discussions regarding the Purpose and that Confidential Information has been disclosed; (y) the existence of this Agreement; and (z) any terms, conditions or arrangements being discussed or negotiated by the Parties.]

Confidential Information as used herein shall not include information that:

* 1. is or becomes generally available to and known by the public (other than as a result of the Recipient's or its Representatives' [material] breach of this Agreement);
  2. is or becomes available to the Recipient [or its Representatives] from a source other than the Discloser or its Representatives, provided that such source, [to [the best of] the Recipient's knowledge [after reasonable inquiry]], was not and is not bound by a confidentiality agreement regarding the Discloser or its affiliates, or otherwise prohibited from disclosing such information [to the Recipient or its Representatives] by a legal, contractual or fiduciary obligation;
  3. was already known by or in the possession of the Recipient [or its Representatives] [as established by documentary evidence], prior to being disclosed by or on behalf of the Discloser pursuant to this Agreement; or
  4. has been or is independently developed by the Recipient [or its Representatives] [as established by documentary evidence], without violating any of its obligations under this Agreement or use of [or reference to], in whole or in part, any of the Discloser's Confidential Information.

1. Disclosure Required. If a Party or any of its Representatives (the Recipient) is required to disclose the other Party's Confidential Information by [applicable law or] valid court order, the Recipient shall notify the other Party of such requirements so that the other Party (the Discloser) may seek, at the Discloser's sole cost and expense, a protective order or other remedy, and the Recipient shall reasonably assist the Discloser therewith. If the Recipient remains legally compelled to make such disclosure, it shall:
   1. only disclose that portion of the Confidential Information that it is required to disclose; and
   2. use [commercially] reasonable efforts to ensure that such Confidential Information is afforded confidential treatment.
2. Return or Destruction of Confidential Information. On the Discloser's [written] request, the Recipient shall, at [its/the Discloser's] discretion, promptly return to the Discloser or destroy all of the Confidential Information in its and its Representatives' possession other than the Notes, and destroy all Notes[, and, at the Discloser's written request, certify in writing that the Confidential Information has been destroyed]; provided, however, that the Recipient may retain copies of the Confidential Information that are stored on the Recipient's information technology backup and disaster recovery systems until the ordinary course deletion thereof. Notwithstanding the return or destruction of the Parties' Confidential Information, the Parties and each of their Representatives shall continue to be bound by terms and conditions of this Agreement with respect to such retained Confidential Information.
3. No Obligation to Disclose or Negotiate; No Representations or Warranties. This Agreement imposes no obligation on or compels either Party to disclose any Confidential Information to the other Party or to negotiate for, enter into any business or contractual arrangement or otherwise pursue the Purpose. Neither Party nor any of its Representatives makes any representation or warranty, expressed or implied, as to the accuracy or completeness of its Confidential Information, and neither Party shall have any liability to the other Party relating to or resulting from the use of the Confidential Information of a Party or any errors therein or omissions therefrom.
4. Remedies. Each Party acknowledges and agrees that any breach of this Agreement by a Party will cause injury to the other Party for which monetary damages would be an inadequate remedy and that, in addition to remedies at law, the Discloser is entitled to equitable relief as a remedy for any such breach or threatened breach.
5. Term and Termination. The term of this Agreement shall commence on the Effective Date and terminate on that date which is [NUMBER] year[s] after the Effective Date. [Notwithstanding anything to the contrary herein, each Party's rights and obligations under this Agreement shall survive the expiration or termination of this Agreement for a period of [NUMBER] year[s] from the date of such expiration or termination, even after the return or destruction of each Party's Confidential Information by the other Party.]
6. No Transfer of Rights, Title or Interest. Each Party hereby retains its entire right, title and interest, including all intellectual property rights and all other rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, licence or other transfer of any such right, title or interest whatsoever to the other Party or any of its Representatives. Each Party specifically acknowledges and agrees that the other Party's Confidential Information is and shall remain the exclusive property of that Party and that it has no right, title or interest in or to the Confidential Information of the other Party.
7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the [Province/Territory] of [RELEVANT PROVINCE/TERRITORY] and the federal laws of Canada applicable therein. [The parties irrevocably attorn to the [exclusive/non-exclusive] jurisdiction of the courts of the [Province/Territory] of [RELEVANT PROVINCE/TERRITORY] for any actions, suits, litigation or proceedings arising out of or relating to the enforcement of this Agreement.]
8. Entire Agreement. This Agreement constitutes the sole and entire agreement between the Parties regarding the Confidential Information [and all other subject matters set forth herein,] and supersedes all prior and contemporaneous negotiations, understandings, representations and warranties and agreements between the Parties (both written and oral) with respect to such subject matters. No provision of this Agreement may be amended, modified, waived or changed unless made in writing and signed by the Parties.
9. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
10. Assignment. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by any Party without the prior written consent of the non-assigning Party. Any purported assignment without such consent shall be null and void and unenforceable. No assignment shall relieve the assigning Party of any of its obligations hereunder.
11. Waivers. No waiver by any Party of any of the provisions hereof is effective unless explicitly set forth in writing and signed by the Party so waiving. No waiver by any Party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different nature, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
12. Cumulative Remedies. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise[, except to the extent expressly provided in Section [NUMBER] to the contrary].
13. Successors and Assigns. This Agreement is for the sole benefit of the Parties hereto and their respective affiliates, subsidiaries and parent companies and each of their respective successors and [permitted] assigns and is binding upon the Parties, and their respective affiliates, subsidiaries and parent companies and their respective successors and [permitted] assigns.
14. Notice. Each Party shall deliver all notices, requests, consents, claims, demands, waivers and other communications under this Agreement [(other than routine communications having no legal effect)] (each, a "**Notice**") in writing and addressed to the other Party at the addresses set forth [on the first page of/in the preamble to] this Agreement (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). Notices sent in accordance with this Section will be conclusively deemed validly and effectively given: (a) on the date of receipt, if delivered by personal delivery, or by a nationally recognized same day or overnight courier (with all fees prepaid); (b) upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "read receipt" function, as available, return email or other form of written acknowledgment), if delivered by email [of a PDF document]; [(c) when sent, if sent by facsimile (with confirmation of transmission) on the date of transmission if a Business Day or if not a Business Day or after 5:00 p.m. on the date of transmission, on the next following Business Day;] or [(c)/(d)] on the [ORDINAL NUMBER] day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.
15. Counterparts. This Agreement may be executed in any number of counterparts and by each Party on separate counterparts. Each counterpart is an original and all counterparts taken together constitute one and the same instrument. A counterpart may be delivered by facsimile, e-mail attachment (PDF document), or other electronic means, which shall be as effective as hand delivery of the original executed counterpart. [The Parties agree that any counterpart electronically delivered will be followed by the delivery of the original executed counterpart within [NUMBER] [business] days following such electronic delivery.]

[signature page follows]

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

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| --- | --- |
|  | [PARTY 1 NAME] |
|  | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |

|  |  |
| --- | --- |
|  | [PARTY 2 NAME] |
|  | By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name:  Title: |