



MUTUAL CONFIDENTIALITY AGREEMENT

November 20, 2017

THIS MUTUAL CONFIDENTIALITY AGREEMENT ("Agreement") is made and entered into as of _____, 2017 by and among Fishtech Group, LLC ("**Company**"), and the undersigned company and/or individual(s) (collectively, "**Undersigned**"). For purposes of this Agreement, Company and Undersigned are each a "**Party**" and collectively the "**Parties**."

RECITALS

WHEREAS, the Parties wish to explore a possible business transaction between them ("**Transaction**");

WHEREAS, in connection with exploring the Transaction, each Party will have access to certain Confidential Information (as defined herein) concerning the business of the other Party;

WHEREAS, the Confidential Information is proprietary and valuable to the Parties and the disclosure or inappropriate use of such Confidential Information could be detrimental to the business of each Party; and

WHEREAS, to protect the Confidential Information of the Parties, their assets and the rights and interests of their customers, the Parties desire to disclose such Confidential Information pursuant to and in reliance on this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, it is hereby agreed between the Parties, as follows:

1. Definitions.

a. "**Confidential Information**" shall mean: (a) all information, data, reports, analyses, compilations, records, notes, summaries, discussions, studies, sketches, graphs, designs, photographs, drawings and other materials (in whatever form or media maintained) containing or reflecting information relating to a Party (in each case, "**Disclosing Party**"), assets, liabilities, properties, accounts, financial information, budgets, operations, marketing studies, plans and materials, services, products, processes, trade secrets, intellectual property or other proprietary rights, know-how, concepts, ideas, inventions, discoveries, research and development, business plans, models or strategies, manufacturing or distribution methods, processes or systems, software and related documentation, object code, source code, database technologies, systems, structures, architectures, customers, customer lists, customer requirements, vendors, suppliers, advertisers, personnel, training techniques, pricing and other proprietary information, that may hereafter be disclosed, provided or made available to another Party (in each case, "**Recipient**") or its Representatives (as defined herein), or to which Recipient or its Representatives otherwise become aware or gain access or possession; (b) all data, reports, analysis, compilations, extracts, summaries, writings, studies, interpretations, forecasts, records or other materials (whether documentary, electronic or otherwise) prepared by or on behalf of the Disclosing Party or any of its Representatives, that relate to or are based on or contain any of the information listed in (a) above or that reflect a summary or review or evaluation of any of the business, plans, operations, data, documents or customers and advertisers of the Disclosing Party; (c) the existence of any discussions or negotiations between the Parties; and/or (d) any other information which is marked or expressly designated as "Confidential" by the Disclosing Party or its Representatives, or by reason of its nature would reasonably be concluded to be of a confidential nature. The term Confidential Information shall not include any information that: (i) is or becomes generally available to the public other than as a result of a breach of this Agreement by Recipient or its Representatives; (ii) was known by the Recipient or its Representatives prior to the receipt from the Disclosing Party (except for any information provided to it by the Disclosing Party in contemplation of this Agreement) or lawfully received by the Recipient from a third party free of confidentiality

obligations; or (iii) is independently developed by the Recipient or its Representatives without any use of, or reference to, the Confidential Information and by individuals who have not been exposed to the Confidential Information, provided that the Recipient can demonstrate such independent development by documentary evidence prepared contemporaneously with such independent development.

b. "Representatives" shall refer to all of each respective Party's partners, officers, directors, shareholders, employees, members, accountants, attorneys, independent contractors, temporary employees, agents or any other representatives or persons that may from time to time be employed, retained by, working for, or acting on behalf of, such Party.

2. Confidentiality and Non-Use. Except as otherwise provided herein, each Recipient shall (and shall cause its Representatives to): (a) use all Confidential Information of the Disclosing Party solely in connection with exploring a Transaction and for the specific purposes for which it is disclosed and not for any competitive or other purpose; (b) hold all Confidential Information of the Disclosing Party in confidence and not disclose Confidential Information to anyone without the written approval of the Disclosing Party; (c) protect the confidentiality of and take commercially reasonable steps to prevent disclosure or unauthorized use of Confidential Information of the Disclosing Party in order to prevent it from falling into the public domain or the possession of persons not generally bound to maintain its confidentiality; and (d) advise the Disclosing Party in writing (within three (3) days) in the event such Recipient becomes aware of any misappropriation or misuse of Confidential Information of the Disclosing Party by any person, and provide reasonable assistance to the Disclosing Party in any proceeding or lawsuit related thereto. Confidential Information may be disclosed by Recipient to its Representatives who need to know such information for the purpose of evaluating a possible Transaction or performing the Transaction (it being understood that such Recipient will maintain corresponding written agreements from such Representatives containing confidentiality obligations substantially similar to the obligations in this Agreement). Each Recipient shall be responsible for any breach of this Agreement as a result of any action or disclosure by it or any of its Representatives (including any Representative who may hereafter cease to be employed by, acting for, or otherwise associated with, such Recipient). Each Party shall take all reasonably necessary measures to restrain any Representative or former Representative of such Party from any unauthorized disclosure or use of any Confidential Information of a Disclosing Party. Recipient shall be entitled to release the Disclosing Party's Confidential Information in order to prosecute or defend any claim under this Agreement, in a manner consistent with securities legislation, stock exchange and securities commission rules, or pursuant to applicable law or an order of a court or government agency; provided, however, in the case of release pursuant to this sentence, Recipient shall limit the release to the greatest extent reasonably possible under the circumstances and shall provide the Disclosing Party with sufficient advance notice as reasonably permitted under the circumstances to permit the Disclosing Party to seek a protective order or other order protecting its Confidential Information from such disclosure.

3. Copies of Confidential Information. Anything furnished to Recipient or any of its Representatives, as well as all copies, compilations, notes or memoranda relating to the Confidential Information, are and shall remain the property of the Disclosing Party and shall, upon such Disclosing Party's request, be promptly returned to the Disclosing Party, or, at the Disclosing Party's sole option, be destroyed with a written affidavit certifying such destruction executed by a person having authority to bind the Recipient.

4. Term. The term of this Agreement shall be a period of five (5) years from the date of this Agreement. The Parties agree that all confidentiality obligations hereunder shall survive the expiration or termination of this Agreement for such period any of the Confidential Information may be protected by applicable state or federal law.

5. Limited Warranty. Each Party warrants that it has the right to disclose all Confidential Information that it has disclosed to a Recipient pursuant to this Agreement. The Parties hereby acknowledge that no Party, nor any of their respective Representatives, affiliates or assigns makes any representations or warranties whatsoever, either express or implied, concerning the accuracy, completeness or correctness of the Confidential Information disclosed by such Party hereunder, nor will such representation or warranty be implied. Each Party expressly disclaims any and all liability that may be based on its Confidential Information, errors therein or omissions therefrom, other than its right to disclose the Confidential Information. Subject to such limitations and restrictions as may be specified therein, only those representations and warranties that are made pursuant to a definitive agreement for a Transaction, when, as and if executed, or in a separate agreement between the Parties will have any legal effect. Except as set forth herein or in a separate agreement between the Parties, each Recipient receives and utilizes Confidential Information of the Disclosing Party at its sole cost, risk and exposure, and Recipient agrees that the Disclosing Party shall not have any liability resulting from any use of or reliance upon the Confidential Information. At all times hereunder, the Disclosing Party shall retain ownership of all Confidential Information disclosed to a Recipient and any intellectual property rights relating thereto.

6. No Obligations. Neither this Agreement, nor the disclosure of Confidential Information under this Agreement, nor the ongoing discussions and correspondence between the Parties or their respective Representatives, shall create any obligation of a Party to furnish information to any other Party or its affiliates or Representatives, or to enter into any binding commitment or Transaction regarding the subject matter of the Confidential Information. If in the future the Parties elect to enter into a binding commitment regarding a Transaction or the subject matter of the Confidential Information, such Transaction or commitment will be explicitly stated in a separate written agreement executed by the Parties, and the Parties hereby affirm that they do not intend their discussions, correspondence, and other activities to be construed as forming a contract regarding the subject matter of the Confidential Information or any other Transaction between them without execution of such separate written agreement.

7. Enforcement. The Parties acknowledge and agree that a breach of this Agreement will cause irreparable injury and damage to the non-breaching Parties. The Parties, therefore, expressly agree that the non-breaching Parties shall be entitled to seek injunctive and other equitable relief to prevent a breach of this Agreement, or any part thereof by Undersigned or its Representatives, and to secure its enforcement, in addition to any other remedy to which the non-breaching Parties might be entitled. The Parties expressly waive the posting of any bond or surety required prior to the issuance of an injunction hereunder. Any and all remedies for the breach of this Agreement shall be cumulative and the pursuit of one remedy shall not be deemed to exclude any other remedy with respect to the subject matter hereof. Each Recipient agrees to indemnify and hold the Disclosing Party and its Representatives harmless from any damages, loss, cost or liability (including legal fees and the cost of enforcing this indemnity) arising out of or resulting from any disclosure by Recipient or Recipient's Representatives of the Confidential Information other than as expressly permitted by this Agreement.

8. Governing Law; Jurisdiction and Venue. The construction and interpretation of this Agreement shall at all times and in all respects be governed by the laws of the State of Missouri. The parties agree that the sole and exclusive jurisdiction and venue for all disputes arising under this Agreement shall be in the federal and state courts sitting in or exercising jurisdiction over Jackson County, Missouri, and each party hereby submits to the personal jurisdiction of such courts.

9. Public Disclosures/Press Releases. Neither Party shall issue any press release or disclosure to the general public that discussions or negotiations are taking place concerning a Transaction or a possible Transaction without the prior written consent of the other Party.

10. Miscellaneous. The relationship of the Parties established by this Agreement shall be solely that of independent contractors, and nothing herein shall create or imply a joint venture or any other relationship. This Agreement represents the entire agreement between the Parties with respect to the subject matter herein, supersedes all prior written or oral agreements concerning the subject matter herein, and may be executed in one or more separate counterparts, all of which shall constitute one and the same Agreement and may be amended only in writing executed by both Parties. The failure of either Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term or condition of this Agreement, and this Agreement and each of its provisions shall remain at all times in full force and effect. If any portion of this Agreement is found by the proper authority to be unenforceable, that provision shall be severed and the remainder of this Agreement will continue in full force and effect. No amendment, modification and/or discharge of this Agreement shall be valid or binding on the Parties unless made in writing and signed on behalf of each of the Parties by their respective duly authorized officers or Representatives. Any person signing below on behalf of an entity represents and warrants that he/she has the authority to bind such entity. The prevailing Party in any action to enforce this Agreement shall be entitled to all costs, expenses and reasonable attorneys' fees incurred in bringing such action. All notices hereunder shall be in writing and mailed, telefaxed or otherwise delivered to the Parties at their principal place of business, unless the Party to whom notice is to be given has provided a change of address to the other Party in writing (and then to such changed address), and shall be effective upon receipt or on the fifth (5th) business day after posting if by first class U.S. mail. Confirmation of execution by electronic transmission or a facsimile signature (in counterparts or otherwise) shall be binding upon any Party so confirming.

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IN WITNESS WHEREOF, the Parties have made and executed this Agreement effective as of the date and year first written above.

Fishtech Group, LLC

Authorized Signature

Printed Name

Title

UNDERSIGNED: _____ BeyondTrust Software, Inc.

DocuSigned by:

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Authorized Signature Rochelle Landry

Printed Name VP, Legal

Title