**NONDISCLOSURE AGREEMENT**

This Nondisclosure Agreement (“**Agreement**”) is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 202\_\_, by [ ● ], LLC, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ limited liability company (“**Disclosing Party**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Receiving Party**”).

WHEREAS, the parties hereto desire to engage in discussions regarding a potential transaction or other relationship between the Receiving Party and the Disclosing Party (“**Proposed Transaction**”);

WHEREAS, pursuant to such discussions, Disclosing Party intends to provide to Receiving Party certain confidential and proprietary information regarding the Disclosing Party, its assets and business;

NOW THEREFORE, in consideration of the foregoing premises that are hereby incorporated as a part of this Agreement, and in consideration of the disclosure by the Disclosing Party to the Receiving Party, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

# **Certain Definitions**. The term “**Evaluation Material**” means (i) all information including without limitation, all financial information and financial data, customer, employee, marketing and sales information, pricing, technical data, information, technology, trade secrets, and summaries concerning Disclosing Party (whether prepared by Disclosing Party, its Advisors or otherwise) which is furnished to the Receiving Party, whether prior to or after the execution hereof, and whether or not designated as “**confidential**” and (ii) all analyses, forecasts, compilations, studies or other documents, whether prepared by or for the Receiving Party, which contain such information. The term “**Advisors**” means, with respect to each of the parties hereto, such party’s members, managers, shareholders, directors, officers, employees, agents, attorneys, advisors, accountants, consultants and representatives.

# **Confidentiality Obligations**.

## The Receiving Party hereby agrees that the Evaluation Material will be used solely for the purpose of evaluating the Proposed Transaction, and that such Evaluation Material will be kept confidential and not disclosed by the Receiving Party and the Receiving Party’s Advisors for whose conduct the Receiving Party will be strictly responsible as provided in this Agreement; provided, however, that any such information may be disclosed only to the Receiving Party’s Advisors who need to know such information for the purpose of evaluating the Proposed Transaction and such Advisors shall be informed of the confidential nature of the Evaluation Material and that the Receiving Party shall instruct such Advisors to receive and hold the Evaluation Material in accordance with the terms of this Agreement and to agree to be bound by the terms and conditions of this Agreement. The Evaluation Material shall be treated by the Receiving Party and all other persons subject to the confidentiality obligations set forth herein with no less than the degree of care to avoid disclosure as the Receiving Party treats its own confidential information, but not less than a reasonable standard of care. Neither the Receiving Party nor the Receiving Party’s Advisors shall take or omit to take any action which shall have the effect of circumventing the Receiving Party’s obligations hereunder or shall use any Evaluation Materials to compete with the Disclosing Party or for personal benefit or for any purpose other than evaluating the Proposed Transaction.

## In the event that the Receiving Party or any of its Advisors becomes legally compelled (by deposition, interrogatory, request of documents, subpoena, civil investigative demand or other legal order or process) (“**Legal Process**”) to disclose any of the Evaluation Material of the Disclosing Party, that party or person from whom such information is being sought shall, to the extent permitted by Legal Process, provide the Disclosing Party with prompt prior written notice of such requirement so that the Disclosing Party whose information is subject to such disclosure 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 if such Disclosing Party waives compliance with the provisions hereof, the Receiving Party and its Advisors agree to furnish only that portion of the Evaluation Material which is legally required to be furnished.

## None of the parties hereto will (and each of the parties hereto will direct that its Advisors will not) disclose to any person either the fact that discussions or negotiations are taking place concerning a Proposed Transaction between the parties or any of the terms, conditions or other facts with respect to any such possible Proposed Transaction.

## The Receiving Party shall not contact any employee of the Disclosing Party without the written consent of the Disclosing Party.

## The foregoing obligations of confidentiality, non-use and non-disclosure shall not apply to Evaluation Material which (i) is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or its Advisors (information included in the Evaluation Material shall not be deemed to be generally available to the public merely because it is embodied in more general information available to the public), (ii) is or becomes available to the Receiving Party on a non-confidential basis from a source other than the Disclosing Party or its Advisors, provided that the Receiving Party reasonably believes that such source is not bound by a confidentiality agreement with, or other obligation of secrecy to, the Disclosing Party, or (iii) information that is rightfully and legally in the possession of the Receiving Party prior to disclosure hereunder, as demonstrated by files in existence at the time of disclosure.

# **Accuracy of Information**. The Receiving Party acknowledges and agrees that neither the Disclosing Party nor any of its Advisors has made or makes any representation or warranty as to the accuracy or completeness of all or any portion of the Evaluation Material.

# **Return of Evaluation Materials**. In the event that the parties do not enter into a formal agreement evidencing the Proposed Transaction within six (6) months after the date hereof or upon the termination of negotiations regarding the Proposed Transaction, the Receiving Party shall, at the request of Disclosing Party, (i) redeliver to the requesting Disclosing Party all Evaluation Material obtained from such Disclosing Party and destroy any other written material containing or reflecting any information in the Evaluation Material (whether prepared by the Disclosing Party, its Advisors or otherwise), and (ii) not retain any copies, extracts or other reproductions, in whole or in part, of any such material. The Receiving Party agrees to destroy all documents, memoranda, notes and other writings whatsoever prepared by the Receiving Party or its Advisors based on the information contained in the Evaluation Material, and to have an authorized officer certify in writing to the Disclosing Party that such destruction has been completed. Redelivery or destruction of Evaluation Material does not abrogate the continuing obligations of the Receiving Party under this Agreement.

# **Equitable Remedies**. The Receiving Party agrees that the Evaluation Material has competitive value and significant damage could result if it were disclosed or used in violation of this Agreement. The Receiving Party acknowledges that, in the event of any breach of this Agreement, the Disclosing Party may be irreparably harmed and may not be made whole by monetary damages alone. For this reason, the Receiving Party agrees that in the event of any breach or threatened breach of this Agreement by the Receiving Party or any of its Advisors, the Disclosing Party shall be entitled to injunctive relief and/or to compel specific performance of this Agreement, without being required to post any bond or to prove any actual damages from any such breach or threatened breach, in addition to any damages or any other remedy to which it may be entitled at law or in equity. The Receiving Party also agrees to reimburse the Disclosing Party for all reasonable costs and expenses incurred by it in any proceeding commenced in connection with enforcing its rights hereunder, provided the Disclosing Party in such proceeding is successful in establishing a breach or threatened breach of this Agreement.

# **Term**. The term of this Agreement shall commence on the date first set forth above and shall continue in full force and effect for a period of three (3) years thereafter. Each covenant and agreement contained herein shall remain in full force and effect for the entire term of this Agreement.

# **No Obligation to Proceed**. Nothing contained herein shall imply any obligation of either party to proceed with the Proposed Transaction or any other transaction between the parties, and each party reserves the right to terminate the discussions contemplated hereunder, with or without cause, without liability for such termination.

# **Ownership**. Evaluation Material furnished by the Disclosing Party is and shall at all times remain the Disclosing Party’s property. No right or license under any patent, copyright or trademark of the Disclosing Party is granted, or is construed to be granted, to the Receiving Party by the terms and conditions of this Agreement.

# **Waiver**. No failure or delay by any party hereto in exercising any right, power or privilege hereunder shall operate as a waiver of such right, power or privilege, nor shall any single or partial exercise thereof preclude any other or further exercise of such right, power or privilege or of any other right, power or privilege. All rights, remedies, undertakings or obligations contained in this Agreement shall be cumulative, and none of them shall be in limitation of any other right, remedy, undertaking or obligation of any party hereto.

# **Assignment**. This Agreement shall not be assigned by either of the parties hereto without the prior written consent of the other party, and any purported assignment in violation hereof shall be null and void. This Agreement shall inure to the benefit of, and shall be binding upon, the successors of each of the parties.

# **Governing Law; Jurisdiction and Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflict of laws principles. Each of the parties hereto irrevocably consent to the jurisdiction and venue of the State courts and federal courts located in the State of California.

# **Merger**. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, discussions and understandings of the parties, whether oral or written. This Agreement may be amended, modified or waived only by a separate written agreement executed by the parties expressly amending, modifying or waiving this Agreement as provided therein.

# **Enforceability**. Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable by any court or tribunal of competent jurisdiction, such determination shall not affect the remaining provisions hereof, which shall remain in full force and effect.

# **Counterparts**. This Agreement may be executed in counterparts and exchanged by email, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument.

IN WITNESS WHEREOF, each party has caused a duly authorized representative thereof to execute this Agreement as of the date first above written.

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| **Disclosing Party:**  **[●], LLC**,  a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ limited liability company  By:  Name:  Its: | **Receiving Party:**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**,  a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  By:  Name:  Its: |