

CONFIDENTIALITY AGREEMENT

In connection with the Purpose (as defined below), the Parties may make available to each other certain Information (as defined below) and in consideration of that, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree:

1. The capitalized and bolded terms set out below, when used in this agreement, have the meanings given to them below.

Parties:	ABC Corporation	
	123 Corporation	
Effective Date:	August 13, 2018	
Term:	Two (2) years from the Effective Date	
Purpose:	The Parties wish to explore the opportunity to enter a business relationship with one another and may furnish information which is confidential and proprietary.	
Governing Law	for US – the State of New York and the federal laws of the United States applicable therein	
Address for Notice:	ABC Corporation	123 Corporation
	Address: 987 Jupiter Street Moon Landing, Alberta Canada R1R 1R1	456 Mercury Avenue Mars, Montana US 12345
Attention:	Contract Administrator	Contract Administration
Fax:	123-456-7890	789-456-1230
Email:	ContractAdmin@abccorp.com	ContractAdmin@123corp.com

2. This Agreement will remain in effect for the Term and the disclosure of any Information made by the Parties during the Term will be governed by the terms and conditions attached as Exhibit A to this agreement. Exhibit A attached hereto constitutes a part of this agreement and is incorporated herein. All references to this agreement, for all purposes, shall include and incorporate Exhibit A.

Agreed to by the Parties as of the Effective Date

ABC Corporation

123 Corporation

Per: _____

Per: _____

Name: John Smith

Name: Jane Jones

Title: SVP

Title: EVP

Exhibit A

Subject to the terms of this Agreement and to the extent to which a Party disclosing Information hereunder (the "**Discloser**") in its sole discretion considers advisable in the circumstances, the Discloser agrees to provide to the other Party (the "**Recipient**") certain information, on a non-exclusive basis, which is non-public, confidential, personal or proprietary in nature. In consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto agree to the following:

1. **Information** - For purposes of this Agreement, "Information" means any data or information which is furnished to the Recipient or its Representatives hereunder, either before or after the date hereof, whether in tangible or intangible form, in whatever medium provided, whether unmodified or modified by Recipient or its Representatives, whenever and however disclosed, including, but not limited to, any and all data or information relating to the Purpose or the Discloser, its business, affairs, financial position, assets, technology, operations, activities or proposed activities and prospects including, without limitation: (i) any commercial, legal, financial, strategic, tactical, regulatory or governmental information; (ii) information relating to existing or prospective partners or customers, acquisitions, divestitures or joint ventures; (iii) plans for products or services; (iv) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; (v) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; (vi) information provided for inspection or review in any physical, electronic and/or virtual data room established or to be established by or on behalf of the Discloser in relation to the Purpose; and (vii) any other information that should reasonably be recognized as confidential information of the Discloser or its Affiliates (as hereinafter defined). The term Information shall also include any summaries, notes, analyses, compilations, studies or other records generated by the Recipient or by its Representatives that contain, reflect, or are otherwise derived, in whole or in part, from the Information ("Derivative Information"). For greater certainty, the term "Information" shall include the fact that discussions are taking place between the parties with respect to the Purpose. Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated "Information". The Recipient acknowledges that the Information is proprietary to the Discloser, has been developed and obtained through great efforts by the Discloser and that the Discloser regards all of its Information as trade secrets.

Notwithstanding the foregoing, the term "Information" shall not include data or information to the extent that it:

- (a) is at the time of disclosure, or thereafter becomes, generally available to the public as part of the public domain other than as a result of an act or omission by the Recipient or its Representatives in violation of this Agreement;
- (b) was, as evidenced by its written records, in the lawful possession of the Recipient or any of its Affiliates without an obligation of confidentiality prior to its disclosure to the Recipient by or on behalf of the Discloser; or
- (c) is developed by the Recipient or any of its Affiliates independently of and without any reference to the Information received by or on behalf of the Discloser, as evidenced by the written records of the Recipient or its Affiliate, as the case may be.

If only a portion of any Information falls within one of the foregoing exceptions, the remainder shall continue to be subject to the prohibitions and restrictions set out in this Agreement.

2. **Non-Disclosure and Restricted Use** – The Recipient shall keep the Information in strict confidence and will not, without the Discloser's prior written consent, or as expressly provided in this Agreement, disclose the Information in any manner whatsoever, in whole or in part. The Recipient shall not use the Information, whether directly or indirectly, for any purpose other than for the Purpose. The Recipient will not use the Information so as to obtain any commercial advantage over the Discloser or its Affiliates or in any way which is, directly or indirectly, detrimental to the Discloser or its Affiliates. No other right or license, whether expressed or implied, in the Information is granted to the Recipient.
3. **Access Limited to Representatives** - The Recipient may disclose the Information without the prior written consent of the Discloser to its Representatives, provided in each case that the Recipient shall: (i) limit any such disclosure to its Representatives that reasonably need to know such Information for carrying out the Purpose, (ii) inform the Representatives of the confidential nature of the Information, (iii) direct the Representatives to hold the Information in the strictest confidence and to act in accordance with the terms and conditions of this Agreement.

The Recipient will take all necessary precautions or measures as may be reasonable in the circumstances to prevent improper access to the Information or improper use or disclosure of the Information by the Representatives and will be responsible for any breach of this Agreement by any of its Representatives. The Recipient will, in the event of a breach of this Agreement by the Recipient or any of its Representatives, through accident, inadvertence or otherwise, notify the Discloser of the nature of the breach promptly upon the discovery of the breach.

4. **Storage and Records** - The Recipient shall store the Information properly and securely and ensure that appropriate physical, technological and organizational measures are in place to protect the Information against unauthorized or unintended access, use or disclosure. The Recipient shall keep a record of the Information furnished to the Recipient, in any medium other than oral, and the location of such Information. The Recipient will provide the Discloser with the record of such Information forthwith after the Discloser requests same.
5. **No Disclosure of Purpose** – Except as provided in Section 3 above, the Recipient and its Representatives shall not, without the Discloser's prior written consent, disclose to any person the fact that the Information has been made available, that this Agreement has been entered into, that discussions or negotiations are taking place or have taken place concerning the Purpose or any of the terms, conditions or other facts with respect to the Purpose, including the status of evaluations and discussions related thereto.
6. **Required Disclosure** - In the event that the Recipient or any of its Representatives become legally compelled or are required by regulatory authorities having appropriate jurisdiction to disclose any of the Information, the Recipient will promptly provide the Discloser with written notice thereof so that the Discloser may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. The Recipient will cooperate with the Discloser to obtain a protective order or other remedy. In the event that such protective order or other remedy is not obtained or the Discloser waives compliance with the provisions of this Agreement, the Recipient will furnish only that portion of the Information which the Recipient is advised by written opinion of counsel addressed to the Discloser and to

the Recipient that is legally required to be disclosed and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Information so furnished. In the event the Recipient or any of its Representatives are legally compelled or required by regulatory authorities to issue a press release or make any other public statement or disclosure about the Purpose or that contains Information in accordance with this Section 6, it shall provide the Discloser prior notice thereof and the opportunity to review and comment upon such release, statement or disclosure, which comments shall not be unreasonably rejected or denied by the Recipient.

7. **Proprietary Rights** - The Recipient acknowledges that the Information is a proprietary asset of the Discloser and its Affiliates and agrees that as between the Discloser and the Recipient, the Discloser will retain proprietary rights in the Information and the disclosure of such Information to the Recipient shall not be deemed to confer upon the Recipient any rights whatsoever in respect of any Information. All use of Information by the Recipient shall be for the benefit of the Discloser and any modifications and improvements thereof by the Recipient shall be the sole property of the Discloser. Without limiting the generality of the foregoing, the Discloser shall not be restricted in any manner whatsoever by this Agreement from disclosing the Information to third parties.
8. **Return of Information** – At any time the Discloser may direct, in its sole discretion and for any reason whatsoever, the Recipient and its Representatives to, at their own expense, promptly return or destroy (at the election of the Recipient) all copies of the Information upon the Discloser's request (and, in any event, within twelve (12) business days after such request or notice), except for that portion of the Information which consists of Derivative Information which will be destroyed and in the case of Information stored in electronic form, which will be permanently erased. Notwithstanding the foregoing, the Recipient shall not be required to destroy electronic records that are periodic back-ups created in the ordinary course of business consistent with past practice and that are not readily accessible. Any information transmitted orally, visually or by other means, or that is not otherwise returned or destroyed, shall continue to be subject to this Agreement. Compliance pursuant to this Section 8 shall be certified in writing by an authorized officer of the Recipient. Notwithstanding the return or destruction of the Information, the Recipient and its Representatives shall continue to be bound by the confidentiality and other obligations hereunder.
9. **No Representation** - The Recipient acknowledges that neither the Discloser, its Affiliates nor any of their Representatives makes any express or implied representation or warranty as to the accuracy or completeness of the Information, and agrees that neither the Discloser nor the Discloser's Representatives shall have any liability, direct or indirect, to the Recipient or its Representatives relating to or resulting from the Information or the use thereof, errors therein or omissions therefrom except in accordance with any specific representations and warranties made in any definitive agreement entered into relating to the Purpose. For greater certainty, the Discloser assumes no obligation to update any of the Information that is made available to the Recipient or any of its Representatives after the date that such Information is disclosed to the Recipient or any of its Representatives.
10. **Relationship of the Parties** - Neither party (a) is an agent, employee, contractor, vendor, representative or partner of the other party, (b) shall owe a fiduciary duty to the other party, or (c) is capable, nor shall it hold itself out as capable, of binding the other party to any obligation or liability. The execution and delivery of this Agreement shall not create or constitute, or be deemed to require the creation of a partnership, joint venture or any other form of business organization or arrangement between the parties, unless so specified in a

subsequent writing executed by the parties. The parties expressly recognize and agree that this Agreement does not create any exclusive dealing arrangement between the parties with respect to the Purpose.

11. **Acknowledgement** - The Recipient acknowledges that receipt of the Information may subject the Recipient and those persons to whom Recipient discloses the Information to regulation under the securities laws of certain jurisdictions, including without limitation the United States and the provinces of Canada, which securities laws may impose restrictions on the ability of a person in possession of Information to buy, sell, trade or otherwise act with respect to the securities of the Discloser. The Recipient acknowledges and agrees that it is aware of such laws and agrees to fully comply with such laws. Recipient shall further advise all such persons to whom it discloses Information of such restrictions.

Recipient shall not be liable for a breach of this Agreement, or liable pursuant to tort (including negligence) or any other legal or equitable basis, for the release of Confidential Information if the release was the result of a 'cyberattack', 'hack' or other intentional data security breach performed by a hostile third-party, provided that Recipient took commercially reasonable measures to prevent the security breach.

12. **Certain Definitions** - In this Agreement, the term "Affiliate" shall mean a person directly or indirectly controlling, or controlled by, or under common control with, the Recipient or the Discloser, as the case may be, with "control" meaning the possession, directly or indirectly, or as trustee or executor, of the power to direct or cause the direction of the affairs or management of a person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise. The term "Representatives" shall mean, (i) in the case of the Recipient, any of its employees, officers, directors and agents or those of their Affiliates who are involved on a need-to-know basis in carrying out the Purpose, and (ii) in the case of the Discloser, any of the Discloser's employees, officers, directors, agents, consultants, financial advisors, lawyers, accountants or those of their Affiliates. The term "person" shall mean an individual, Discloser, partnership, limited partnership, limited liability company, joint venture, estate, association, trust, unincorporated organization or other entity of any kind or nature, as well as any person acting "jointly in concert" with such persons within the meaning of applicable securities laws. Finally, the terms "including" or "includes" shall be deemed to be followed by the words "without limitation".
13. **Governing Law and Dispute Resolution** - This Agreement (together with any non-contractual obligations arising out of or in connection with this Agreement) shall be governed by and construed in accordance with the Governing Law, excluding any choice of laws rules which would refer the matter to the laws of another jurisdiction. Each of the Parties irrevocably submits and attorns to the jurisdiction of the courts in the jurisdiction of Governing Law in respect of any matter arising hereunder or in connection herewith.
14. **Non-Waiver** - No waiver by the Discloser shall be effective unless in writing and any such waiver shall only affect the matter, and the occurrence thereof, specifically identified therein and shall not extend to any other matter or occurrence. No failure or delay by the Discloser in exercising any right, power or privilege under this Agreement will operate as a waiver thereof, nor will any single or partial exercise preclude any other or further exercise of any right, power or privilege under this Agreement.
15. **Notices** - Any notice, consent or approval required or permitted to be given in connection with this Agreement ("Notice") shall be in writing and shall be sufficiently given if delivered

(whether in person, by courier service or other personal method of delivery), or if transmitted by facsimile or e-mail in accordance with the address information set forth on the cover page hereof.

Any Notice delivered or transmitted as provided above shall be deemed to have been given and received on the day it is delivered or transmitted, provided that it is delivered or transmitted on a business day prior to 5:00 p.m. local time in the place of receipt. However, if the Notice is delivered or transmitted after 5:00 p.m. local time or if such day is not a business day then the Notice shall be deemed to have been given and received on the next business day. Both the Discloser and the Recipient may, from time to time, change their respective addresses by giving Notice to the other in accordance with the provisions of this Section 17.

16. **Injunctive Relief** - The Recipient acknowledges that disclosure of the Information or other breach of this Agreement would cause serious and irreparable damage and harm to the Discloser and that remedies at law would be inadequate to protect against breach of this Agreement, and agrees in advance to the granting of injunctive relief in the Discloser's favour for any breach of the provisions of this Agreement and to the specific enforcement of the terms of this Agreement, without proof of actual damages, and without the requirement to post a bond or other security, in addition to any other remedy to which the Discloser would be entitled.
17. **Severability** - If any term or provision of this Agreement is contrary to or conflicts with any requirement of applicable law, such term or provision shall be stricken from this Agreement and the remainder of this Agreement shall continue in full force and effect to the fullest extent possible, and shall bind the parties in all other respects.
18. **Entire Agreement and Binding Effect** - No prior or contemporaneous written or oral agreement(s) between the parties with respect to the subject matter hereof shall be binding upon either party. This Agreement constitutes the sole and entire understanding and agreement between the parties with respect to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, heirs and assigns.
19. **Amendment** - This Agreement may be amended only by mutual written agreement of the parties hereto.
20. **Headings** - The headings of the paragraphs of this Agreement are for convenience only and shall not constitute a part hereof or affect in any way the meaning or interpretation of this Agreement.
21. **Term** - Termination or expiration of this Agreement shall not relieve either Party from its obligations to protect the confidentiality of Confidential Information obtained hereunder, it being understood and agreed that all obligations relating to confidentiality and protection of Confidential Information shall survive expiration or termination of this Agreement.
22. **Assignment** - This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.

23. **Execution** - This Agreement may be executed and delivered by facsimile or electronic mail. A facsimile or other electronic signature shall have the same legal effect as a manual signature. This Agreement may be validly executed in any number of counterparts, all of which taken together shall constitute one and the same Agreement and each of which shall constitute an original.

