

# NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the "Agreement") is entered into by and between

\_\_\_\_\_ located at

\_\_\_\_\_, (the "Disclosing Party") and

\_\_\_\_\_ located at

\_\_\_\_\_, (the "Receiving

Party") on \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ for the purpose of preventing the unauthorized disclosure of Confidential Information as defined below. The parties agree to enter into a confidential relationship concerning the disclosure of certain proprietary and confidential information ("Confidential Information").

## 1. Confidential Information

For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business in which Disclosing Party is engaged. If Confidential Information is in written form, the Disclosing Party shall label or stamp the materials with the word "Confidential" or some similar warning. If Confidential Information is transmitted orally, the Disclosing Party shall promptly provide writing indicating that such oral communication constitutes Confidential Information.

## 2. Exclusions from Confidential Information

Receiving Party's obligations under this Agreement do not extend to information that is: (a) publicly known at the time of disclosure or subsequently becomes publicly known through no fault of the Receiving Party; (b) discovered or created by the Receiving Party before disclosure by Disclosing Party; (c) learned by the Receiving Party through legitimate means other than from the Disclosing Party or Disclosing Party's representatives; or (d) is disclosed by Receiving Party with Disclosing Party's prior written approval.

## 3. Obligations of Receiving Party

3.1 Receiving Party shall hold and maintain the Confidential Information in strictest confidence for the sole and exclusive benefit of the Disclosing Party.

3.2 Receiving Party shall carefully restrict access to Confidential Information to employees, contractors and third parties as is reasonably required and shall require those persons to sign non-disclosure restrictions at least as protective as those in this Agreement.

3.3 Receiving Party shall not, without the prior written approval of Disclosing Party, use for Receiving Party's benefit, publish, copy, or otherwise disclose to others, or permit the use by others for their benefit or to the detriment of Disclosing Party, any Confidential Information.

3.4 Receiving Party shall return to Disclosing Party any and all records, notes, and other written, printed, or tangible materials in its possession pertaining to Confidential Information immediately if Disclosing Party requests it in writing.

#### **4. Time Periods**

The non-disclosure provisions of this Agreement shall survive the termination of this Agreement and Receiving Party's duty to hold Confidential Information in confidence shall remain in effect until the Confidential Information no longer qualifies as a trade secret or until Disclosing Party sends Receiving Party written notice releasing Receiving Party from this Agreement, whichever occurs first.

#### **5. No Warranty**

All Confidential Information is provided by Disclosing Party "AS IS" and without any warranty, express, implied or otherwise, regarding the Confidential Information's completeness, accuracy or performance.

#### **6. Remedies**

Both parties to this Agreement acknowledge and agree that the Confidential Information hereunder this Agreement is of a unique and valuable nature, and that the unauthorized distribution and broadcasting of the Confidential Information could have the potential to destroy and, at the very least, diminish the value of such information. The damages that the Disclosing Party could sustain as a direct result of the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, both parties hereby agree that the Disclosing Party shall be entitled to claim injunctive relief that would prevent the dissemination of any Confidential Information that would be in violation of the terms set forth herein this Agreement. Any such injunctive relief provided shall be in addition to any other available remedies hereunder, whether at law or in equity. The Disclosing Party shall be entitled to recover any sustained costs and/or fees, including, but not limited to, any reasonable attorney's fees which may be incurred while attempting to obtain any such relief. Furthermore, in the event of any litigation which may be related to this Agreement, the prevailing party shall be entitled to recover any such reasonable attorney's fees and expenses incurred.

#### **7. Notice of Breach**

The Receiving Party shall immediately notify the Disclosing Party upon discovering any unauthorized use or disclosure of Confidential Information by the Receiving Party or its Representatives, or any other breach of this Agreement by the Receiving Party or its Representatives, and will cooperate with any efforts by the Disclosing Party to assist the Disclosing Party to regain the possession of its Confidential Information and thus prevent its further unauthorized use.

#### **8. Relationships**

Nothing contained in this Agreement shall be deemed to constitute either party a partner, joint venture or employee of the other party for any purpose.

## **9. Severability**

If a court finds any provision of this Agreement invalid or unenforceable, the remainder of this Agreement shall be interpreted so as best to affect the intent of the parties.

## **10. Integration**

This Agreement expresses the complete understanding of the parties with respect to the subject matter and supersedes all prior proposals, agreements, representations, and understandings. This Agreement may not be amended except in writing signed by both parties.

## **11. Waiver**

The failure to exercise any right provided in this Agreement shall not be a waiver of prior or subsequent rights.

## **12. Transfer or Assign**

This Agreement and each party's obligations shall be binding on the representatives, assigns and successors of such party. Each party has signed this Agreement through its authorized representative.

## **13. Miscellaneous**

Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the aforementioned effective date.

### **DISCLOSING PARTY**

Signature: \_\_\_\_\_

Name \_\_\_\_\_

Date: \_\_\_\_\_

### **RECEIVING PARTY**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Date: \_\_\_\_\_