

State of <STATE>

## NON -DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Non -Disclosure and Confidentiality Agreement (this "Agreement") is entered into as of  
(the "Effective Date") by and between:

Disclosing Party: , as a(n) (Check one) ☐ Individual

☐ Corporation ☐ Limited Liability Company ☐ Partnership ☐ Limited Partnership ☐

Limited

Liability Partnership ("Disclosing Party") and

Receiving Party: , as a(n) (Check one) ☐ Individual

☐ Corporation ☐ Limited Liability Company ☐ Partnership ☐ Limited Partnership ☐

Limited

Liability Partnership ("Receiving Party")

Disclosing Party and Receiving Party have indicated an interest in exploring a potential  
business

relationship relating to: (the "Transaction").

In connection with its respective evaluation of the Transaction, each party, their respective  
affiliates and

their respective directors, officers, employees, agents or advisors (collectively,  
"Representatives") may

provide or gain access to certain confidential and proprietary information. A party disclosing its  
Confidential Information to the other party is hereafter referred to as a "Disclosing Party." A party  
receiving the Confidential Information of a Disclosing Party is hereafter referred to as a "Receiving  
Party."

In consideration for being furnished Confidential Information, Disclosing Party and Receiving  
Party agree

as follows:

1. Confidential Information. Confidential information is: (Check one)

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I information shared by Disclosing Party. "Confidential Information" shall mean (i) all information

relating to Disclosing Party's products, business and operations including, but not limited to, financial

documents and plans, customers, suppliers, manufacturing partners, marketing strategies, vendors, products, product development plans, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, inventions, sales leads, sales data, customer lists, customer

profiles, technical advice or knowledge, contractual agreements, price lists, supplier lists, sales estimates, product specifications, trade secrets, distribution methods, inventories, marketing strategies, source code, software, algorithms, data, drawings or schematics, blueprints, computer programs and systems and

know-how or other intellectual property of Disclosing Party and its affiliates that may be at any time

furnished, communicated or delivered by Disclosing Party to Receiving Party, whether in oral, tangible,

electronic or other form; (ii) the terms of any agreement, including this Agreement, and the discussions, negotiations and proposals related to any agreement; (iii) information acquired during any tours of Disclosing Party's facilities; and (iv) all other non-public information provided by Disclosing Party

whosoever. All Confidential Information shall remain the property of Disclosing Party.

? Only information marked ?Confidential .? "Confidential Information," exchanged by the parties and entitled to protection hereunder, shall be identified or marked as such by an appropriate stamp or marking on each document exchanged designating the information as confidential or proprietary.

? Specific information. The term ?Confidential Information? as used in this Agreement shall mean any data or information that is competitively sensitive material and not generally known to the public, including, but not limited to, information relating to any of the following, which Disclosing Party considers confidential: (Check all that apply)

? 'Accounting Information' which includes all books, tax returns, financial information, financial forecasts, pricing lists, purchasing lists and memos, pricing forecasts, purchase order information, supplier costs and discounts, or related financial or purchasing information.

? 'Business Operations' which includes all processes, proprietary information or data, ideas or the like, either in existence or contemplated related to Disclosing Party?s daily and long- term plans for conducting Disclosing Party's business.

? 'Computer Technology' which includes all computer hardware, software or other tangible and intangible equipment or code either in existence or development.

? 'Customer Information' which includes the names of entities or individuals, including their affiliates and representatives, that Disclosing Party provides and sells its services or goods to, as well as any associated information, including but not limited to, leads, contact lists, sales plans and notes, shared and learned sales information such as pricing sheets, projections or plans, agreements, or such other data.

? 'Intellectual Property' which includes patents, trademarks, service marks, logos, trade names, internet or website domain names, rights in designs and schematics, copyrights (including rights in computer software), moral rights, database rights, in each case whether registered or unregistered and including applications for registration, in all rights or forms anywhere in the world.

? 'Marketing and Sales Information' which includes all customer leads, sales targets, sales markets, advertising materials, sales territories, sales goals and projections, sales and marketing processes or practices, training manuals or other documentation and materials related to the sales, marketing and

promotional activities of the Disclosing Party and its products or services.

? 'Proprietary Rights' which includes any and all rights, whether registered or unregistered, in and with respect to patents, copyrights, trade names, domain names, logos, trademarks, service marks, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, whether protected under contract or otherwise under law, and other similar rights or interests in intellectual property.

? 'Procedures and Specifications' which includes all procedures and other specifications, criteria, standards, methods, instructions, plans or other directions prescribed by Disclosing Party for the manufacture, preparation, packaging and labelling, and sale of its products or services.

? 'Product Information' which includes Disclosing Party's products which are being contemplated for sale, manufactured, marketed, listed, or sold, including any fixes, revisions, upgrades, or versions, of which consists of all data, software and documentation related thereto.

? 'Service Information' which means the services provided by Disclosing Party, including the method, details, means, skills and training, which consists of all data, software and

documentation

related thereto.

? 'Software Information' which means the proprietary computer programs of Disclosing Party, including all fixes, upgrades, new versions, new enhancements, modifications, edits, conversions, replacements, or the like, in machine readable form or documentation and materials, and all copies and translations of such computer programs, documentation and materials, regardless of the form or media of expression or storage.

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Other:

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2. Exclusions from Confidential Information. The obligation of confidentiality with respect to Confidential Information will not apply to any information:

a. If the information is or becomes publicly known and available other than as a result of prior unauthorized disclosure by Receiving Party or any of its Representatives;

b. If the information is or was received by Receiving Party from a third party source which, to the best

knowledge of Receiving Party or its Representatives, is or was not under a confidentiality obligation to

Disclosing Party with regard to such information;

c. If the information is disclosed by Receiving Party with the Disclosing Party's prior written permission

and approval;

d. If the information is independently developed by Receiving Party prior to disclosure by Disclosing

Party and without the use and benefit of any of the Disclosing Party's Confidential Information; or

e. If Receiving Party or any of its Representatives is legally compelled by applicable law, by any court, governmental agency or regulatory authority or by subpoena or discovery request in pending litigation but only if, to the extent lawful, Receiving Party or its Representatives give prompt written notice of

that fact to Disclosing Party prior to disclosure so that Disclosing Party may request a protective order

or other remedy to prevent or limit such disclosure and in the absence of such protective order or

other remedy, Receiving Party or its Representatives may disclose only such portion of the Confidential Information which it is legally obligated to disclose.

3. Obligation to Maintain Confidentiality. With respect to Confidential Information:

a. Receiving Party and its Representatives agree to retain the Confidential Information of the Disclosing Party in strict confidence, to protect the security, integrity and confidentiality of such information and to not permit unauthorized access to or unauthorized use, disclosure, publication or

dissemination of Confidential Information except in conformity with this Agreement;

b. Receiving Party and its Representatives shall adopt and/or maintain security processes and procedures to safeguard the confidentiality of all Confidential Information received by Disclosing Party

using a reasonable degree of care, but not less than that degree of care used in safeguarding its own

similar information or material ;

c. Upon the termination of this Agreement, Receiving Party will ensure that all documents, memoranda, notes and other writings or electronic records prepared by it that include or reflect any

Confidential Information are returned or destroyed as directed by Disclosing Party;

d. If there is an unauthorized disclosure or loss of any of the Confidential Information by Receiving Party or any of its Representatives, Receiving Party will promptly, at its own expense, notify Disclosing

Party in writing and take all actions as may be necessary or reasonably requested by Disclosing Party

to minimize any damage to the Disclosing Party or a third party as a result of the disclosure or loss;

and

e. The obligation not to disclose Confidential Information shall : (Check one)



? Survive the termination of this Agreement, and at no time will Receiving Party or any of its Representatives be permitted to disclose Confidential Information, except to the extent that such

Confidential Information is excluded from the obligations of confidentiality under this Agreement pursuant to Paragraph 2 above.

? Remain in effect until \_\_\_\_\_ (Check one) ? months ? years from the date hereof or

until the Confidential Information ceases to be a trade secret , except to the extent that such Confidential Information is excluded from the obligations of confidentiality under this Agreement pursuant to Paragraph 2 above.

4. Non- Disclosure of Transaction. Without Disclosing Party's prior written consent, neither Receiving

Party nor its Representatives shall disclose to any other person, except to the extent, the provisions of Paragraph 2 apply: (a) the fact that Confidential Information has been made available to it or that it has

inspected any portion of the Confidential Information; (b) the fact that Disclosing Party and Receiving

Party are having discussions or negotiation concerning the Transaction; or (c) any of the terms, conditions or other facts with respect to the Transaction.

5. Non- Compete. (Cross out if you do not want to include a non -compete clause)

Receiving Party agrees that at no time will Receiving Party engage in any business activity

which is

competitive with Disclosing Party, nor work for any company which competes with Disclosing party :

(Check one)

? During the term of Receiving Party's relationship with Disclosing Party .

? From the date of this Agreement until \_\_\_\_\_, 20\_\_\_\_.

6. Non- Solicitation. (Cross out if you do not want to include a non -solicitation clause)

Receiving Party agrees not to solicit any employee or independent contractor of Disclosing Party on

behalf of any other business enterprise, nor shall Receiving Party induce any employee or independent

contractor associated with Disclosing Party to terminate or breach an employment, contractual or other

relationship with Disclosing Party : (Check one)

? During the term of Receiving Party's relationship with Disclosing Party .

? From the date of this Agreement until \_\_\_\_\_, 20\_\_\_\_.

7. Representatives. Receiving Party will take reasonable steps to ensure that its Representatives

adhere to the terms of this Agreement. Receiving Party will be responsible for any breach of

this

Agreement by any of its Representatives.

8. Disclaimer. There is no representation or warranty, express or implied, made by Disclosing Party as

to the accuracy or completeness of any of its Confidential Information. Except for the matters set forth in

this Agreement, neither party will be under any obligation with regard to the Transaction. Either party

may, in its sole discretion: (a) reject any proposals made by the other party or its Representatives with respect to the Transaction; (b) terminate discussions and negotiations with the other party or its

Representatives at any time and for any reason or for no reason; and (c) change the procedures relating

to the consideration of the Transaction at any time without prior notice to the other party.

9. Remedies. Each party agrees that use or disclosure of any Confidential Information in a manner

inconsistent with this Agreement will give rise to irreparable injury for which: (a) money damages may not be a sufficient remedy for any breach of this Agreement by such party; (b) the other party may be entitled

to specific performance and injunction and other equitable relief with respect to any such breach; (c) such

remedies will not be the exclusive remedies for any such breach, but will be in addition to all other remedies available at law or in equity; and (d) in the event of litigation relating to this Agreement, if a court

of competent jurisdiction determines in a final non-appealable order that one party, or any of its

Representatives, has breached this Agreement, such party will be liable for reasonable legal fees and expenses incurred by the other party in connection with such litigation, including, but not limited to, any appeals.

10. Notices. All notices given under this Agreement must be in writing. A notice is effective upon receipt

and shall be sent via one of the following methods: delivery in person, overnight courier service, certified or registered mail, postage prepaid, return receipt requested, addressed to the party to be notified at the

below address or by facsimile at the below facsimile number or in the case of either party, to such other

party, address or facsimile number as such party may designate upon reasonable notice to the other party.

Disclosing Party

Name: \_\_\_\_\_

Representative name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

Receiving Party

Name: \_\_\_\_\_

Representative name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

Fax number: \_\_\_\_\_

11. Termination. This Agreement will terminate on the earlier of:

(a) the written agreement of the parties to terminate this Agreement;

(b) the consummation of the Transaction or

(c) \_\_\_\_\_ (Check one) ? months ? years from the date hereof.

12. Amendment. This Agreement may be amended or modified only by a written agreement signed by

both of the parties.

13. Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the

State of \_\_\_\_\_, without regard to the principles of conflict of laws. Each party consents to

the exclusive jurisdiction of the courts located in the State of \_\_\_\_\_ for any legal action,

suit or proceeding arising out of or in connection with this Agreement. Each party further waives any

objection to the laying of venue for any such suit, action or proceeding in such courts.

14. Miscellaneous. This Agreement will inure to the benefit of and be binding on the

respective

successors and permitted assigns of the parties. Neither party may assign its rights or delegate its duties

under this Agreement without the other party's prior written consent. In the event that any provision of this

Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall

not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or

unenforceable parts had not been included in this Agreement. Neither party will be charged with any

waiver of any provision of this Agreement , unless such waiver is evidenced by a writing signed by the

party and any such waiver will be limited to the terms of such writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written

above.

Disclosing Party:

Disclosing Party Signature    Disclosing Party Full Name

Disclosing Party Representative

Signature Disclosing Party Representative

Full Name and Title

Receiving Party:

Receiving Party Signature Receiving Party Full Name

Receiving Party Representative

Signature Receiving Party Representative

Full Name and Title