

Confidentiality Agreement

This CONFIDENTIALITY AGREEMENT (the " Agreement") is by and between _____ (hereinafter "Disclosing Party"), and the undersigned (hereinafter "Recipient").

WHEREAS, Recipient has requested information from Disclosing party in connection with consideration of a possible transaction or relationship between Recipient and Disclosing Party.

WHEREAS, in the course of consideration of the possible transaction or relationship, Disclosing Party may disclose to Recipient confidential, important, and/or proprietary trade secret information concerning Disclosing Party and his/its activities.

THEREFORE, the parties agree to enter into a confidential relationship with respect to the disclosure by Disclosing party to Recipient of certain information.

1. **Definitions.** 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 or prospective business of Disclosing Party. Confidential Information also includes all information of which unauthorized disclosure could be detrimental to the interests of Disclosing Party whether or not such information is identified as Confidential Information by Disclosing Party. By example and without limitation, Confidential Information includes, but is not limited to, the following:

_____ For purposes of this Agreement, the term "Recipient" shall include Recipient, the company he or she represents, and all affiliates, subsidiaries, and related companies of Recipient. For purposes of this Agreement, the term "Representative" shall include Recipient's directors, officers, employees, agents, and financial, legal, and other advisors.

2. **Exclusions.** Confidential Information does not include information that Recipient can demonstrate: (a) was in Recipient's possession prior to its being furnished to Recipient under the terms of this Agreement, provided the source of that information was not known by Recipient to be bound by a confidentiality agreement with or other continual, legal or fiduciary obligation of confidentiality to Disclosing Party; (b) is now, or hereafter becomes, through no act or failure to act on the part of Recipient, generally known to the public; (c) is rightfully obtained by Recipient from a third party, without breach of any obligation to Disclosing party; or (d) is independently developed by Recipient without use of or reference to the Confidential Information.
3. **Confidentiality.** Recipient and its Representatives shall not disclose any of the Confidential Information in any manner whatsoever, except as provided in paragraphs 4 and 5 of this Agreement, and shall hold and maintain the Confidential Information in strictest confidence. Recipient hereby agrees to indemnify Disclosing Party against any and all losses, damages, claims, expenses, and attorneys' fees incurred or suffered by Disclosing party as a result of a breach of this Agreement by Recipient or its Representatives.
4. **Permitted Disclosures.** Recipient may disclose Disclosing Party's Confidential Information to Recipient's responsible Representatives with a bona fide need to know such Confidential

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Information, but only to the extent necessary to evaluate or carry out a proposed transaction or relationship with Disclosing Party and only if such employees are advised of the confidential nature of such Confidential Information and the terms of this Agreement and are bound by a written agreement or by a legally enforceable code of professional responsibility to protect the confidentiality of such Confidential Information.

5. **Required Disclosures.** Recipient may disclose Disclosing Party's Confidential Information if and to the extent that such disclosure is required by court order, provided that Recipient provides Disclosing Party a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure.
6. ~. Recipient and its Representatives shall use the Confidential Information solely for the purpose of evaluating a possible transaction or relationship with Disclosing Party and shall not in any way use the Confidential Information to the detriment of Disclosing Party. Nothing in this Agreement shall be construed as granting any rights to Recipient, by license or otherwise, to any of Disclosing Party's Confidential Information.
7. **Return of Documents.** If Recipient does not proceed with the possible transaction with Disclosing Party, Recipient shall notify Disclosing Party of that decision and shall, at that time or at any time upon the request of Disclosing Party for any reason, return to Disclosing Party any and all records, notes, and other written, printed or other tangible materials in its possession pertaining to the Confidential Information immediately on the written request of Disclosing Party. The returning of materials shall not relieve Recipient from compliance with other terms and conditions of this Agreement.
8. **No Additional Agreements.** Neither the holding of discussions nor the exchange of material or information shall be construed as an obligation of Disclosing Party to enter into any other agreement with Recipient or prohibit Disclosing Party from providing the same or similar information to other parties and entering into agreements with other parties. Disclosing Party reserves the right, in its sole discretion, to reject any and all proposals made by Recipient or its Representatives with regard to a transaction between Recipient and Disclosing Party and to terminate discussions and negotiations with Recipient at any time. Additional agreements of the parties, if any, shall be in writing signed by Disclosing Party and Recipient.
9. **Irreparable Harm.** Recipient understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause Disclosing Party irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that Disclosing Party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Disclosing Party shall deem appropriate. Such right of Disclosing Party is to be in addition to the remedies otherwise available to Disclosing Party at law or in equity. Such right of Disclosing Party is to be in addition to the remedies otherwise available to Disclosing Party at law or in equity. Recipient expressly waives the defense that a remedy in damages will be adequate and any requirement in an action for specific performance or injunction for the posting of a bond by Disclosing party.

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10. **Survival.** This Agreement shall continue in full force and effect at all times.
11. **Successors and Assigns.** This Agreement and each party's obligations hereunder shall be binding on the representatives, assigns, and successors of such party and shall inure to the benefit of the assigns and successors of such party; provided, however, that the rights and obligations of Recipient hereunder are not assignable.
12. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of [~ .The parties hereby irrevocably consent to the jurisdiction of the state and federal courts located in [Q!Y], [~], in any action arising out of or relating to this Agreement, and waive any other venue to which either party might be entitled by domicile or otherwise.
13. **Attorney's Fees.** If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be awarded its attorneys' fees and costs incurred.
14. **Counterparts and Right.** This Agreement may be signed in counterparts, which together shall constitute one agreement. The person signing on behalf of Recipient represents that he or she has the right and power to execute this Agreement.
15. **Entire Agreement.** This Agreement expresses the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject matter. This Agreement is not, however, to limit any rights that Disclosing Party may have under trade secret, copyright, patent or other laws that may be available to Disclosing Party. This Agreement may not be amended or modified except in writing signed by each of the parties to the Agreement. This Agreement shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

Date: _____

Date: _____

_____ ("Disclosing Party")

_____ ("Recipient")

By: _____

By: _____

Title: _____

Title: _____