

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

In consideration of disclosures of confidential and/or proprietary information to be made by _____ (“_____”) to _____, an individual (“Recipient”), in connection with a proposed transaction relating to _____ between _____ or an affiliate and Recipient (the “Business Purpose”), and other good and valuable consideration, the parties hereby agree to all of the following terms and conditions:

1. **Definitions**

1.1. “Agreement” means this Confidentiality and Non-Disclosure Agreement by and between _____ and Recipient.

1.2. "Discloser" means _____, any affiliated entity that directly or indirectly controls, is controlled by, or is under common control with any of them and their respective employees, officers and directors, agents, consultants or independent contractors who disclose information for the purposes of this Agreement.

1.3. "Confidential Information" means all technical, marketing, financial and other business information and material that is confidential and/or proprietary to Discloser, whether or not marked as "confidential" or "proprietary", that is, was or will be disclosed to or obtained by the Recipient, whether in oral, written, electronic or other form, and all reports, notes analyses, compilations, studies or other documents whether prepared by Recipient, which contain or otherwise reflect or are prepared based on any such information. Confidential Information includes, but is not limited to, all information and materials related to the Business Purpose. Confidential Information does not include any information which: (a) the Recipient can demonstrate was in the lawful and unrestricted possession of the Recipient prior to its disclosure by the Discloser; (b) is or becomes generally available to the public by acts other than those of the Recipient after receiving it; (c) is or has been received lawfully and in good faith by the Recipient from a third party who is not known by the Recipient, after inquiry, to be bound by any obligations of confidentiality relating to such information; or (d) has been independently developed by Recipient or any other third party without any use of, reliance on, or reference to any Confidential Information, and the Recipient can present proof thereof.

2. **Obligations**

2.1. Recipient shall hold in complete confidence and shall not, and shall not permit any third party to, disclose, produce, publish, permit access to, or reveal any Confidential Information without the express prior written consent of the Discloser; provided, however, that such Confidential Information may be disclosed to Recipient’s directors, officers, employees, agents, advisors or other representatives (collectively “Representatives”) who need to know such information solely in connection with the Business Purpose; provided that all such Representatives shall be informed by Recipient of the confidential nature of such Confidential Information and shall agree to be bound by the terms of this Agreement. Recipient shall be responsible for any breach of this Agreement by its Representatives.

2.2. Recipient shall not, and shall not permit any third party to, copy, photograph, photocopy, alter, modify, disassemble, reverse engineer, decompile, or in any other manner reproduce any materials containing or constituting Confidential Information without the express prior written consent of the Discloser and will return or destroy, at Discloser's option, all Confidential Information, together with any copies thereof in Recipient's and/or its Representatives' possession, promptly upon conclusion of the Business Purpose. In addition, upon request of the Discloser, Recipient will destroy materials prepared by it that contain Confidential Information. Recipient shall also, within ten (10) days of a written request by Discloser, certify in writing that it has satisfied its obligations under this paragraph.

2.3. Disclosure of Confidential Information is not precluded if such disclosure is in compliance with a valid subpoena or order of a court or other governmental body of the United States or any political subdivision thereof; provided that Recipient will first give advance notice to the Discloser of any such request for disclosure as promptly as feasible in order that Discloser may, at its discretion, seek a protective order or such other appropriate remedy as the Discloser deems necessary. If, failing the entry of a protective order, the Recipient is, in the opinion of its counsel, compelled to disclose the Confidential Information, the Recipient shall disclose only that portion of the Confidential Information as is legally required without liability hereunder.

2.4. Recipient shall use Confidential Information only in connection with the Business Purpose. Except as otherwise provided herein, Recipient shall not disclose Confidential Information to any third party (including subcontractors) without first obtaining the Discloser's written consent. Recipient shall promptly notify the Discloser of any items of Confidential Information used or disclosed in violation of this Agreement.

2.5 Without the prior written consent of the Discloser, Recipient shall not, and shall direct its Representatives not to, disclose to any person the fact that Confidential Information has been made available to Recipient or that Recipient has inspected any portion of the Confidential Information, the fact that discussions or negotiations between Recipient and Discloser are taking place concerning the Business Purpose or a possible transaction between them, or other facts with respect to those discussions or negotiations including the status thereof.

3. **Reservation of Rights**

3.1. Discloser hereby retains its entire right, title and interest in and to all Confidential Information and all copyright, trademark, patent, trade secret and other proprietary rights therein, and nothing in this Agreement shall be construed to transfer or convey any such right, title or interest to Recipient.

3.2. Nothing in this Agreement shall be construed to obligate Discloser to disclose any Confidential Information to Recipient, or to preclude Discloser from disclosing any Confidential Information to any third party. DISCLOSER MAKES NO REPRESENTATIONS OR WARRANTIES

OF ANY KIND WITH RESPECT TO THE CONFIDENTIAL INFORMATION OR OTHERWISE UNDER THIS AGREEMENT, AND HEREBY DISCLAIMS ALL IMPLIED WARRANTIES.

3.3. Discloser shall be under no obligation to keep as confidential any information or materials that Recipient voluntarily discloses in connection with the Business Purpose.

4. **Injunctive Relief**

The Confidential Information has been developed or obtained by the investment of significant time, effort and expense by the Discloser. Accordingly, if the Recipient fails to perform any of its obligations hereunder or otherwise fails to comply with any terms or conditions hereof, the Discloser will suffer immediate, irreparable harm for which monetary damages are not adequate compensation. Accordingly, the Discloser shall be entitled, in addition to any other remedies available to it at law or in equity, to injunctive relief to specifically enforce the terms of this Agreement. It is further understood and agreed that no failure or delay by the Discloser in exercising any right, power or privilege hereunder shall operate as a waiver hereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

5. **General**

5.1. This Agreement sets forth the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings. This Agreement may only be amended or modified by a writing signed in advance by the parties.

5.2. No rights or obligations other than those expressly recited herein are to be implied from this Agreement. No license is hereby granted, directly or indirectly, to any of the Confidential Information.

5.3. If any provision of this Agreement is held to be illegal, invalid or unenforceable, such provision shall be eliminated or limited to the minimum extent such that the legality, validity and enforceability of the remaining provisions will not be affected or impaired.

5.4. This Agreement is binding upon the successors, assigns and legal representatives of the parties, and protects Confidential Information of any successors or assigns of Discloser.

5.5. This Agreement will be governed by and construed in accordance with the laws of the State of Arizona without reference to its choice of law rules and as if wholly performed within the State of Arizona. Any litigation regarding the interpretation, breach, or enforcement of this Agreement will be filed in and heard by the state or federal courts with jurisdiction to hear such disputes in Phoenix, Arizona, and both parties hereby submit to the jurisdiction of such courts.

5.6. If any litigation is brought by either party regarding the interpretation or enforcement of this Agreement, the prevailing party will recover from the other all costs, attorneys' fees and other expenses incurred by the prevailing party.

5.7. This Agreement and all of the terms, conditions and provisions hereof will terminate in their entirety two (2) years following the termination of the Business Purpose except that protection for Confidential Information which is identified by Discloser as trade secret will not terminate until such time as trade secret protection ceases.

The signatory hereto warrants and represents that s/he has the authority to enter into this Agreement on behalf of the party listed above the signatory's name.

Accepted and Agreed to this _____ day of _____, 2021.

RECIPIENT:

By: _____
Printed Name: _____
Title: _____

By: _____
Printed Name: _____
Title: _____