

## CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “Agreement”), made and effective the \_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”) by and between ....., a ..... company, for itself and any relevant affiliates, and ..... for itself and any relevant affiliates.

WHEREAS, the parties desire to disclose certain Confidential Information (defined below) to each other for the purpose of determining whether they are willing and able to enter into a possible business relationship involving the parties and their respective businesses;

NOW THEREFORE, each party is willing to disclose its Confidential Information as the “Disclosing Party” to the other party (the “Receiving Party”) only in reliance on the premises and subject to the following terms and conditions:

1. Confidential Information; Restrictions on Use. Each party is in possession of valuable confidential, proprietary, technical or commercial information and documentation whether or not designated as “confidential”, “proprietary” or “trade secret” and whether or not disclosed on or after the Effective Date (collectively referred to as “Confidential Information”) including without limitation discoveries, ideas, designs, drawings, specifications, techniques, models, data, computer programs, strategies, documentation, processes, know-how, customer lists, marketing plans, research, development, plans or contemplated actions, trade secrets, and financial and technical information which are deemed by a party to be confidential or proprietary to such party and which are not generally known to the party’s competitors or the public, and which give to the party a competitive advantage over others who do not possess such information and in addition, particularly for the purpose of this Agreement, such Confidential Information relating to each party’s business and the parties’ interest in a possible transaction or business relationship. Each party including without limitation its officers, directors, employees, advisors, agents and representatives (collectively, “Representatives”) will (a) hold in trust and maintain confidential; (b) not disclose or make available to any third party, whether orally, electronically, on disk, in writing or otherwise, without prior written approval of the other party; (c) not advertise, publish or disclose the fact that the parties are discussing a possible transaction or the fact the parties have entered into this Agreement without written permission of the other party; and (d) not use for itself or for any third party (other than a use by a party for the purposes stated herein) any Confidential Information received from the other party. The parties hereby acknowledge and agree that the terms and conditions of this Agreement, including all communications by and between the parties in connection herewith, shall be deemed Confidential Information and maintained in confidence pursuant to the terms of this Agreement. Each party will strictly limit access to Confidential Information received hereunder to its Representatives who require such Confidential Information for the purpose stated above, who know of that party’s obligations hereunder, and who are under like obligations with respect to Confidential Information received hereunder by virtue of their employment or other relationship with the Receiving Party. The Receiving Party agrees it will be liable to the Disclosing Party for any disclosure of Confidential Information by a Representative of the Receiving Party in violation of the terms hereof.

2. Exceptions. The obligations established herein will not apply to Confidential Information to the extent the Receiving Party demonstrates that such Confidential Information:

- (a) was known or in its possession prior to disclosure by the Disclosing Party hereunder;
- (b) is or becomes generally known to the public through no wrongful act of the Receiving Party;
- (c) is or becomes available from a third party that is lawfully in possession of such information and not prohibited from disclosing such information to the Receiving Party;

(d) is independently developed by the Receiving Party or its Representatives without the benefit of any Confidential Information; or

(e) is disclosed as and only to the extent required by law or by a court or regulatory authority (as evidenced by advice of counsel); provided, however, if the Receiving Party must disclose any Confidential Information pursuant to this clause, the Receiving Party shall, to the extent reasonably practicable, give the Disclosing Party written notice of said disclosure requirement and a copy of the written demand therefor so that the Disclosing Party may take action as it deems necessary or proper to protect its interest in and with respect to Confidential Information.

3. Term. Each party's obligations hereunder shall remain in effect (a) with respect to a "trade secret," which is marked as such, for so long as such information remains and is treated by the Disclosing Party as a trade secret; and (b) for all other Confidential Information, for a period of eighteen (18) months following the Effective Date. The opportunity to receive Confidential Information under this Agreement may be terminated at any time by written notice from either party.

4. Ownership and Return of Confidential Information; No Grant of Rights. Each party agrees that Confidential Information of the Disclosing Party (including all documents and materials to the extent containing Confidential Information disclosed hereunder) is and shall remain the sole and exclusive property of the Disclosing Party. Upon written request by the Disclosing Party, the Receiving Party shall promptly return or destroy all written documents or other materials embodying Confidential Information provided by the Disclosing Party and all copies, excerpts, abstracts or materials made by the Receiving Party utilizing Confidential Information. Notwithstanding the foregoing, the Receiving Party (a) may retain archival copies of Confidential Information in accordance with legal, regulatory and internal document retention policies, provided that such information retained may only be accessed for the legal, regulatory or compliance purpose that gave rise to such retention, (b) will not be obligated to destroy electronically stored Confidential Information to the extent that it is contained in an archived computer system backup in accordance with its security or disaster recovery procedures so long as such data or records, to the extent not permanently deleted or overwritten in the ordinary course of business, are not accessible in the ordinary course of business or used except as required for backup or data recovery purposes, and (c) may retain one (1) copy of any Confidential Information in its legal files or other secure location to the extent required to defend or maintain any litigation relating to this Agreement or the Disclosing Party's Confidential Information; provided, however, that any such Confidential Information so retained shall continue to be held confidential pursuant to the terms of this Agreement for so long as such Confidential Information is so retained. This Agreement shall not in any way constitute a grant of any patent, copyright or other right or license of any kind to the Receiving Party or any similar right to use Confidential Information except for the limited purpose described herein.

5. No Representations or Warranties. The parties understand and acknowledge that neither the Disclosing Party nor any of its Representatives makes any representation or warranty, express or implied, as to accuracy or completeness of Confidential Information or other material provided hereunder. Neither party shall have any liability to the other relating to or resulting from the use of the material provided hereunder or any errors therein or omissions therefrom. Only those representations and warranties which are made in a final agreement regarding a negotiated transaction, when and if a final agreement between the parties is executed (and subject to such limitations and restrictions as may be specified therein), shall have any legal effect. Notwithstanding the above, the Disclosing Party represents and warrants that it has the full right and permission to disclose Confidential Information to the Receiving Party, that the Receiving Party is authorized to use Confidential Information for the specific purpose of this Agreement, and that the Disclosing Party will be liable for any breach of this representation.

6. Remedies. Each party agrees that money damages may not be a sufficient remedy for a breach or a threatened breach of this Agreement and that each party shall be entitled to seek specific performance and injunctive or other equitable relief without the posting of a bond or other security as a remedy for any such breach or threatened breach, in addition to all other remedies available at law or in equity. Such injunctive or other equitable relief shall be available without the obligation to prove any damages underlying such breach or threatened breach. No failure or delay by a party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, 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. In the event of any legal proceedings for the enforcement of this Agreement, the reasonable costs and expenses incurred by the prevailing party and its Representatives in connection with such proceedings, including attorney fees and disbursements, shall be reimbursed by the non-prevailing party. No right or remedy conferred by this Agreement is intended to be exclusive of any other right or remedy, and all rights and remedies now or hereafter existing at law or in equity shall be available to both parties.

7. Securities Law Restrictions. Each party acknowledges that: (a) Confidential Information of the Disclosing Party may contain material non-public information regarding such party and its affiliates; (b) it is aware of the restrictions imposed by applicable securities laws, and the rules and regulations promulgated thereunder, on persons in possession of material non-public information; and (c) it will not (and it will instruct its Representatives to not), directly or indirectly, use or allow any other person to use, any Confidential Information of the other party in contravention of any applicable securities laws. Nothing herein shall constitute an admission by either party that any Confidential Information disclosed hereunder contains material non-public information regarding it or any of its affiliates.

8. General Terms. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, both written and oral, between the parties concerning its subject matter. Neither party shall, without prior written consent of the other party, issue or make any press release, or other public or promotional statement concerning this Agreement or the proposed relationship. Neither party shall use any name, logo, trademark or other intellectual property of the other party without prior written consent of the other party. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns; provided, however, neither party may assign or delegate any of its rights or obligations under this Agreement without the prior written consent of the other party. If any provision of this Agreement is declared void or unenforceable, then such provision shall be deemed amended to the minimum extent required to make it valid and enforceable and effect its intent, and all other provisions shall remain in full force and effect. The waiver of a breach shall not operate or be construed as a waiver of any subsequent breach. This Agreement may be executed in any number of counterparts (including by means of facsimile or electronic mail) which together shall constitute one agreement. All questions concerning the validity, construction, administration and enforcement of this Agreement shall be determined under the laws of the ..... and settled by ..... EACH PARTY HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT.

\* \* \*

IN WITNESS WHEREOF, the parties have duly executed this Agreement to be effective as of the Effective Date.

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By: \_\_\_\_\_  
Name: .....  
Title: .....

By: \_\_\_\_\_  
Name:  
Title: