**NON-DISCLOSURE AGREEMENT**

**This Non-Disclosure Agreement** (this “**Agreement**”) is entered into between [COMPANY NAME], a [STATE OF ORGANIZATION] [TYPE OF ENTITY] (the “**Company**”) and the recipient named on the signature page hereto (the “**Recipient**”) as of [DATE] (the “**Effective Date**”), to protect the confidentiality of certain confidential information of the Company to be disclosed to the Recipient solely for use in evaluating or pursuing a business relationship with the Company (the “**Permitted Use**”).

**1.** Background. The Company and the Recipient (the “**parties**”) intend to engage in discussions and negotiations concerning the possible establishment of a business relationship between them. In the course of such discussions and negotiations and in the course of any such business relationship, it is anticipated that the Company will disclose or deliver to the Recipient and to the Recipient’s directors, officers, employees, agents or advisors (including, without limitation, attorneys, accountants, consultants, bankers, financial advisors and members of advisory boards) (collectively, “**Representatives**”) certain of the Company’s trade secrets or confidential or proprietary information for the Permitted Use. The parties have entered into this Agreement in order to assure the confidentiality of such trade secrets and confidential or proprietary information in accordance with the terms of this Agreement.

**2.** Confidential Information. As used herein, “**Confidential Information**” will mean any and all technical and non-technical information provided by the Company to the Recipient, which may include without limitation information regarding: (a) patent and patent applications; (b) trade secrets; (c) proprietary and confidential information, ideas, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of the Company, including without limitation the Company’s information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, licenses, historical financial data, pricing methodologies, budgets, business forecasts, sales and merchandising, marketing plans and information the Company provides regarding third parties; and (d) all other information that the Recipient knew, or reasonably should have known, was the Confidential Information of the Company. In addition, the term Confidential Information shall be deemed to include: (a) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the Recipient or its Representatives which contain, reflect or are based upon, in whole or in part, any Confidential Information furnished to the Recipient or its Representatives pursuant hereto; and (b) the existence or status of, and any information concerning, the discussions between the parties concerning the possible establishment of a business relationship. Notwithstanding the foregoing, information which is orally or visually disclosed to the Recipient by the Company shall constitute Confidential Information if (a) the Company, within 30 days after such disclosure, delivers to the Recipient a written document or documents describing such Confidential Information and referencing the place and date of such oral or visual disclosure and the names of the Representatives of the Recipient to whom such disclosure was made, or (b) if it would be apparent to a reasonable person, familiar with the Company’s business and the industry in which it operates, that such information is of a confidential or proprietary nature the maintenance of which is important to the Company.

**3.** Use and Disclosure of Proprietary Information.Subject to Section 4, the Recipient agrees that at all times and notwithstanding any termination or expiration of this Agreement it will hold in strict confidence and not disclose to any third party any Confidential Information, except as approved in writing by the Company, and will use the Confidential Information for no purpose other than the Permitted Use. The Recipient will also protect such Confidential Information with at least the same degree of care that the Recipient uses to protect its own confidential information, but in no case, less than reasonable care. The Recipient will limit access to the Confidential Information to persons within its organization having a need to know and who have signed confidentiality agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein. Without limitation on the foregoing, the Recipient shall not cause or permit reverse engineering of any Confidential Information or decompilation or disassembly of any software programs which are part of the Confidential Information.

**4.** Limitation on Obligations. The Recipient will not have any obligations under this Agreement with respect to a specific portion of the Confidential Information if the Recipient can demonstrate with competent evidence that such Confidential Information:

(a)was in the public domain at the time it was disclosed to the Recipient;

(b)entered the public domain subsequent to the time it was disclosed to the Recipient, through no fault of the Recipient or any of its Representatives;

(c) entered into the public domain other than as a result of, directly or indirectly, any breach of this Agreement by the Recipient or any of its Representatives;

(d)was in the Recipient’s possession free of any obligation of confidence at the time it was disclosed to the Recipient; or

(e)was rightfully communicated to the Recipient free of any obligation of confidence subsequent to the time it was disclosed to the Recipient.

**5.** No Publicity. Neither party shall, without the prior consent of the other party, disclose to any person the fact that Confidential Information of the Company has been and/or may be disclosed under this Agreement, that discussions or negotiations are taking place between the parties, or any of the terms, conditions, status or other facts with respect thereto, except as required by law and then only with prior notice as soon as possible to the other party.

**6.** Disclosure Compelled by Law. Notwithstanding the above, the Recipient may disclose certain Confidential Information, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, *provided that* the Recipient provides the Company with reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist the Company in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

**7.** Unauthorized Disclosure. The Recipient will immediately notify the Company in the event of any loss or unauthorized disclosure of any Confidential Information.

**8.** Return or Destruction of Materials. Upon termination or expiration of this Agreement, or upon written request of the Company, the Recipient will promptly return to the Company all documents and all other tangible materials representing any Confidential Information and all copies thereof. In addition, the Recipient shall destroy: (i) any notes, reports or other documents prepared by the recipient which contain Confidential Information; and (ii) any Confidential Information (and all copies and reproductions thereof) which is in electronic form or cannot otherwise be returned to the Company. Alternatively, upon written request of the Company, the Recipient shall destroy all Confidential Information received by the Recipient or its Representatives from the Company (and all copies and reproductions thereof) and any notes, reports or other documents prepared by the Recipient which contain Confidential Information. Notwithstanding the return or destruction of the Confidential Information, the Recipient and its Representatives will continue to be bound by their obligations of confidentiality and other obligations hereunder.

**9.** No Rights Granted. Confidential Information is and shall remain the sole property of the Company. The Recipient recognizes and agrees that nothing contained in this Agreement will be construed as granting any property rights, by license or otherwise, to any Confidential Information disclosed under this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. The Recipient will not make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information. Neither this Agreement nor the disclosure of any Confidential Information hereunder shall result in any obligation on the part of either party to enter into any further agreement with the other, license any products or services to the other, or to require the Company to disclose any particular Confidential Information. Nothing in this Agreement creates or shall be deemed to create any employment, joint venture, or agency between the parties.

10**.** Reproduction.Confidential Information will not be reproduced in any form except as required to accomplish the intent of this Agreement. Any reproduction of any Confidential Information will remain the property of the Company and will contain any and all confidential or proprietary notices or legends that appear on the original, unless otherwise authorized in writing by the Company.

11**.** Term and Termination. This Agreement will terminate [NUMBER] years after the Effective Date, or may be terminated by either party at any time upon thirty (30) days written notice to the other party. The Recipient’s obligations under this Agreement will survive termination of this Agreement and will be binding upon the Recipient’s heirs, successors, and assigns. The Recipient’s obligations with respect to all Confidential Information will terminate only pursuant to Section 4.

12**.** No Representations. The Company is providing Confidential Information on an “AS IS” basis for use by the recipient at its own risk. The Company disclaims all WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

13**.** Governing Law. This Agreement and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of New York, without giving effect to any conflicts of laws principles that require the application of the law of a different state. Any disputes under this Agreement may be brought in the state courts and the Federal courts for the county in which Company’s principal place of business is located, and the parties hereby consent to the personal jurisdiction and exclusive venue of these courts. This Agreement may not be amended except by a writing signed by both parties.

14.Remedies. The Recipient hereby agrees that its breach of this Agreement will cause irreparable damage to the Company for which recovery of damages would be inadequate, and that the Company will be entitled to obtain timely injunctive relief under this Agreement, as well as such further relief as may be granted by a court of competent jurisdiction. In the event that either Party institutes any legal suit, action, or proceeding against the other Party arising out of or relating to this Agreement, the prevailing Party in the suit, action, or proceeding shall be entitled to receive in addition to all other damages to which it may be entitled, the costs incurred by such Party in conducting the suit, action, or proceeding, including reasonable attorneys' fees and expenses and court costs.

15.Severability. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity will not render this Agreement unenforceable or invalid as a whole and, in such event, such provision will be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of applicable law or applicable court decisions. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

16.No Transfer or Assignment. The Recipient will not assign or transfer any rights or obligations under this Agreement without the prior written consent of the Company and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void.

17.Notices. All notices or reports permitted or required under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, facsimile transmission or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices will be sent to the addresses set forth at the end of this Agreement or such other address as either party may specify in writing.

18. Integration. This Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matters hereof and supersedes and merges all prior discussions between the parties with respect to such matters. No modification of or amendment to this Agreement will be effective unless in writing and signed by the party to be charged.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and all of which together shall constitute one and the same agreement. Execution of a facsimile or scanned copy will have the same force and effect as execution of an original, and a facsimile or scanned signature will be deemed an original and valid signature.

***[Remainder of page intentionally left blank]***

The parties have executed this Non-Disclosure Agreement as of the Effective Date.

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