Nondisclosure Agreement

This nondisclosure agreement (this “**Agreement**”) is dated \_\_\_\_\_ (the “**Effective Date**”) and is between [\_\_\_\_\_], a [STATE] [ENTITY TYPE] (the “**Company**”), and [\_\_\_\_\_], a [STATE] [ENTITY TYPE] (the “**Recipient**”).

[Background information in complete sentences.]

The parties therefore agree as follows:

# **Definitions.** The following terms, as used in this Agreement, have the following meanings:

“**Confidential Information**” means any information that is proprietary or unique to the Company and that is disclosed by the Company to the Recipient before the Effective Date or during the term of this Agreement, including trade secret information; matters of a technical nature such as processes, devices, techniques, data, and formulas, marketing methods, plans, and strategies; and information about operations, products, services, revenues, expenses, profits, sales, key personnel, customers, suppliers, pricing policies, marketing and other business affairs and methods of the Company which is not readily available to the public. “Confidential Information” also includes information of others that the Company is obligated to protect from disclosure or restricted from using or both.

“**Purpose**” means evaluating the parties’ capabilities in anticipation of pursuing one or more business opportunities.

# **Use of Confidential Information.** The Recipient shall use Confidential Information only for the Purpose. Unless otherwise agreed in writing, neither party shall disclose to a third party the fact that discussions or negotiations are taking place concerning the Purpose or any of the terms or other facts relating to the Purpose, including the status of negotiations between the parties.

# **Confidentiality; Standard of Care; Limited Access.** The Recipient shall protect the Confidential Information from unauthorized use and disclosure using the same degree of care that it uses with respect to its own information of like importance, but no less than a reasonable degree of care. The Recipient shall retain the Confidential Information in confidence and shall not disclose Confidential Information to any third party without the Company’s prior written consent. However, the Recipient may disclose the Confidential Information to employees, contractors, consultants, and representatives of the Recipient who (1) require access to the information for the Purpose, (2) are informed by the Recipient of the Recipient’s obligations under this Agreement, and (3) are bound by contract or fiduciary duty to obligations of confidentiality and use restrictions with substantially similar function, purpose, scope, and effect to those of this Agreement and that are at least as protective of the Confidential Information as this Agreement.

# **Exclusions**

## **This Agreement imposes no obligations upon the Recipient with respect to Confidential Information that: (1) was known to the Recipient before disclosure by the Company as evidenced by contemporaneous records; (2) has become publicly available through no fault of the Recipient; (3) is disclosed to the Recipient by a third party that has the right to make the disclosure to the Recipient and that does not have any obligation of confidentiality with respect to the Confidential Information; or (4) is disclosed by the Recipient with the Company’s prior written consent.**

## **If the Recipient is required by any governmental agency, court, or other judicial or regulatory body to provide any Confidential Information received under this Agreement, then the Recipient will not be deemed to be in violation of this Agreement for the disclosure if the Recipient promptly gives written notice to the Company of the requirement to provide the Confidential Information and cooperates with the Company so that the Company may contest the requirement to provide the Confidential Information. The Recipient may disclose only that portion of the Confidential Information that it is legally required to furnish.**

# **No Grant or License. The disclosure of Confidential Information under this Agreement will not constitute the grant of a license to or an interest in the Confidential Information or any other intellectual property of the Company.**

# **Disclosure at the Company’s Discretion. Nothing contained in this Agreement will be construed as requiring the Company to disclose any particular information to the Recipient.**

# **“As Is” Disclosure. All information that the Company provides under this Agreement is provided “as is.” The Company makes no representations as to the information’s accuracy, completeness, or noninfringement.**

# **Relationship of the Parties. This Agreement does not create an agency, joint venture, partnership, employment, or other formal business relationship or association between the parties, or obligate either party to enter into any subsequent agreement or business arrangement or to purchase or provide any goods or services.**

# **Term and Obligations of Confidentiality Period. This Agreement will continue for a period of one year from the Effective Date unless: (1) terminated earlier by either party upon written notice to the other; (2) extended by the mutual written agreement of the parties; or (3) superseded by a subsequent written agreement that explicitly sets forth the obligations of the parties with respect to Confidential Information. With respect to business information, the Recipient’s obligations of confidentiality and non-use under this Agreement will expire three years from the termination of this Agreement. With respect to technical, scientific, or product information, and with respect to all information that constitutes a trade secret, the Recipient’s obligations of confidentiality and non-use under this Agreement will survive the termination of this Agreement in perpetuity.**

# **Return of Confidential Information. Upon the Company’s request or upon the termination of this Agreement, the Recipient shall return to the Company, delete, or destroy all written and electronic documentation and data containing Confidential Information and any other written, recorded, or machine-readable material containing or reflecting any Confidential Information. Upon the Company’s request, the Recipient shall provide written certification of the destruction or deletion of Confidential Information under this section.**

# **Remedies.** If the Recipient violates or threatens to violate any of its obligations contained in this Agreement, then, in addition to any other remedy available at law or in equity, the Company will have (1) the right and remedy of specific enforcement, including injunctive relief, it being acknowledged that any such violation or threatened violation will cause irreparable injury to the Company and that monetary damages will not provide an adequate remedy, and (2) the right to any and all damages available as a matter of law, and costs and expenses incurred by the Company in pursuing its rights under this Agreement, including reasonable attorney fees and other litigation expenses.

# **Severability.** If a court of competent jurisdiction declares any provision of this Agreement invalid or unenforceable, then parties request that the court judicially modify that provision consistent with the intent of this Agreement so that it will be enforceable to the fullest extent possible.

# **Amendment and Modification.** No amendment, modification, supplement, termination, consent, or waiver of any provision of this Agreement, nor consent to any departure therefrom, will be effective unless it is in writing and is signed by the party against whom enforcement is sought. Any waiver of any provision of this Agreement and any consent to any departure from the terms of any provision of this Agreement is to be effective only in the specific instance and for the specific purpose for which given.

# **Assignment.** The Recipient shall not (1) assign or transfer any of the Recipient’s rights under this Agreement, either voluntarily or involuntarily, whether by operation of law, or any other manner, or (2) delegate any performance under this Agreement, except with the prior written consent of the Company. Any purported assignment of rights or delegation of performance in violation of this section is void.

# **Counterparts and Electronic Signatures.** The parties may sign this Agreement on any number of separate counterparts, and all the counterparts will constitute one agreement binding on all the parties. A signature delivered by facsimile, email, or other means of electronic transmission will have the same legal effect as delivery of an original signed copy of this Agreement. The parties may sign this Agreement electronically.

# **Governing Law and Designation of Forum**

## The laws of the State of [\_\_\_\_\_] (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including its interpretation, construction, validity, performance (including the details of performance), and enforcement.

## Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in either the United States District Court for the [\_\_\_\_\_] District or in any court of the State of [\_\_\_\_\_] sitting in [\_\_\_\_\_] County, [\_\_\_\_\_], if there is no federal subject matter jurisdiction. Each party consents to the exclusive jurisdiction of the United States District Court for the [\_\_\_\_\_] District and its appellate courts, and any court of the State of [\_\_\_\_\_] sitting in [\_\_\_\_\_] County, [\_\_\_\_\_] and its appellate courts, for the purpose of all legal actions and proceedings arising out of or relating to this Agreement and agrees that the exclusive choice of forum set forth in this section does not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum.

## Each party waives, to the fullest extent permitted by law, any objection that it may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in the United States District Court for the [\_\_\_\_\_] District or in any court of the State of [\_\_\_\_\_]sitting in [\_\_\_\_\_] County, [\_\_\_\_\_]; and any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.

# **Notices Between the Parties.** All notices, consents, requests, demands, and other communications under this Agreement must be in writing, and will be effective: (1) when delivered in person; (2) three days after deposited in the United States mail, first class postage prepaid; (3) in the case of overnight courier services, one business day after delivery to the overnight courier service with payment provided; or (4) in the case of electronic transmission such as email, when sent; in each case addressed as follows, or to such other address as any party may designate by notice to the other party in accordance with the terms of this section:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn: \_\_\_\_\_

Email: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Email: \_\_\_\_\_

# **Construction.** Unless the context of this Agreement clearly requires otherwise: (1) “including” is not limiting; (2) section and clause references are to this Agreement unless otherwise specified; and (3) section headings are for convenience only and are not considered a part of the terms of this Agreement. The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises regarding this Agreement, this Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

[Signature page follows.]

The parties are signing this Agreement as of the Effective Date.

[COMPANY NAME]

By:

[NAME]

[TITLE]

[RECIPIENT’S NAME]

By:

[NAME]

[TITLE]

[RECIPIENT’S NAME]