

## **Confidentiality Agreement**

This Confidentiality Agreement (this “Agreement”), dated as of [DATE], is between [NAME OF DISCLOSING PARTY], a [NAME OF JURISDICTION] [corporation/limited partnership] (the “Corporation”), and [NAME OF RECEIVING PARTY], a [NAME OF JURISDICTION] [corporation/limited partnership] (the “Receiving Party”). Each of the Corporation and the Receiving Party is a “Party” and, together, the “Parties”.

### **1. Confidential Information.**

1.1 The Parties wish to explore a possible business relationship or transaction between the Receiving Party and the Corporation (the “Relationship”) in connection with which the Corporation has disclosed and may further disclose its Confidential Information (as defined below) to the Receiving Party. This Agreement is intended to allow the Parties to continue to discuss and evaluate the Relationship while protecting the Corporation’s Confidential Information (including Confidential Information previously disclosed to the Receiving Party) against unauthorized use or disclosure.

1.2 The Parties hereby acknowledge that, by virtue of this Agreement, the Receiving Party will have access to Confidential Information of the Corporation and that the communication of the Confidential Information to any third party could irreparably injure the business of the Corporation. Accordingly, the Receiving Party agrees that, during the term of this Agreement (the “Holding Period”), the Receiving Party shall treat and safeguard, and shall cause its affiliates, directors, officers, employees, general partners, agents and consultants (including lawyers, financial advisors and accountants) (collectively, the “Representatives”) to treat and safeguard, as confidential and secret all Confidential Information received by the Receiving Party at any time, and that the Receiving Party shall not and shall not permit its Representatives to, without the prior written consent of the Corporation, disclose or reveal any Confidential Information or the fact that it has received Confidential Information, or that any discussions or negotiations are or were ongoing between the Parties, to any third party whatsoever or use the Confidential Information in any manner except in connection with the Relationship.

1.3 For the purposes of this Agreement, “Confidential Information” means any information not generally known to the public or recognized as standard industry practice, including, without limitation: [any data; reports; studies; interpretations; forecasts; know-how; compositions; plans; strategies; strategic partnerships and the existence of the discussions between the Parties; employee information; financial records and inventory records of the Corporation; intellectual property; trade secrets; product development plans; research; ideas; concepts; designs; formulae; technology; devices; inventions; methods or processes, whether or not patented or patentable; the substance of agreements with customers, suppliers and any third party; customer lists; supplier lists; marketing arrangements; channels of distribution; pricing policies and records], and such other information normally understood to be confidential or otherwise designated as such in writing by the Corporation, and information discerned from, based on or relating to any of the foregoing which may be prepared by the Receiving Party, all of which the Receiving Party expressly acknowledges and agrees shall be confidential and proprietary information belonging to the Corporation. Confidential Information shall also include any other document or

information (whether of the Corporation or of any supplier or customer of the Corporation or any third party with whom or which the Corporation has an agreement concerning the confidentiality of information) which comes into the Receiving Party's possession as a result of this Agreement.

1.4 Upon termination of the Holding Period, the Receiving Party shall promptly return to the Corporation all documents and papers relating to the Corporation, including any Confidential Information, together with any copies thereof; *provided that*, if either Party decides not to proceed with the Relationship and provides written notice to that effect to the other Party, the Receiving Party will promptly deliver, or cause to be delivered, to the Corporation all documents or other matter furnished by the Corporation or its agents or representatives to the Receiving Party or the Representatives constituting Confidential Information, together with all copies thereof in the possession of the Receiving Party or the Representatives.

1.5 The Receiving Party further agrees that it shall:

- (a) immediately notify the Corporation, in writing, of any breach of this Agreement;
- (b) fully cooperate with the Corporation to mitigate the effect of such breach; and
- (c) be responsible for any breach of this Agreement caused by any of its Representatives or any third party to whom or to which it has provided or given access to the Confidential Information.

1.6 The Receiving Party, and any third party to whom or to which the Receiving Party provides the Confidential Information, will comply with all applicable laws with respect to the use and maintenance of the Confidential Information, including without limitation, any applicable data protection laws.

## 2. Term and Termination.

2.1 Each Party's rights and obligations under this Agreement shall commence on the date first written above and expire on the date that is the earlier of (i) [NUMBER] year[s] from such date and (ii) any termination under [Section 1.4](#), unless, in either case, any applicable privacy law requires a longer period. Notwithstanding anything to the contrary in this Agreement, each Party's rights and obligations under this Agreement shall survive the expiration or termination of this Agreement for a period of [NUMBER] year[s] after such expiration or termination, even after the return of such Confidential Information by the Receiving Party.

## 3. Additional Provisions.

3.1 Neither the Corporation nor any of its representatives or other agents makes any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information nor shall any of them be liable to the Receiving Party or any of its Representatives relating to the Receiving Party's use of the Confidential Information or any errors therein or omissions therefrom.

3.2 The Corporation hereby retains its entire right, title and interest, including all intellectual property rights, in and to all of the Confidential Information, and nothing herein shall be construed as an assignment or other transfer of any of the Corporation's rights in the Confidential Information to any other party.

3.3 The Parties agree that (a) this Agreement does not require the Corporation to provide any information to the Receiving Party or any of its Representatives and (b) neither Party is under any legal obligation to conduct or continue any discussions or negotiations with respect to, or enter into, any relationship, other agreement or transaction whatsoever, including, without limitation, the Relationship.

3.4 The Receiving Party acknowledges and agrees that monetary damages might not be a sufficient remedy for any breach or threatened breach of this Agreement by the Receiving Party or its Representatives or other agents. As a result, in addition to all other remedies available at law (which the Corporation does not waive by the exercise of any rights hereunder), the Corporation shall be entitled to seek specific performance and injunctive and other equitable relief as a remedy for any such breach or threatened breach, and the Receiving Party hereby waives any requirement for the securing or posting of any bond or security or the showing of actual monetary damages in connection with such claim. [If 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 legal fees, disbursements and charges on a [substantial indemnity/solicitor-client] basis].

3.5 Entire Agreement. This Agreement supersedes all prior oral or written agreements or understandings that may exist between any of the parties hereto in respect of any Relationship.

3.6 Notices; Amendments and Assignments; Counterparts. All notices under this Agreement shall be delivered to the other Party at the address, fax number or e-mail address set forth on the signature page to this Agreement. This Agreement may not be amended or assigned without the prior written consent of each Party. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.

3.7 [Non-Solicitation]. The Receiving Party agrees that during the term of this Agreement and for a period of one year after, the Receiving Party will not encourage or solicit any employee of the Corporation to leave the Corporation for any reason.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first written above.

**Please note that the sample agreement above should not be used without obtaining legal advice as it may not be applicable to your particular application.**