**NON-DISCLOSURE AGREEMENT**

This NON-DISCLOSURE AGREEMENT is between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and is effective as of the date of the last signature below (the “Effective Date”). This Agreement also applies to Confidential Information given or received by a person or entity controlling, under common control with, of controlled by a party (an “Affiliate”).

# **Definition of Confidential Information**. “Confidential Information” means information that one party discloses to the other under this agreement and that is marked as confidential or would normally be considered confidential information under the circumstances, but does not include information that is independently developed by the receiving party without reference to the disclosing party’s Confidential Information, is rightfully given to the receiving party by a third party without restriction as to disclosure, or becomes public through no fault of the receiving party.

# **Use and Disclosure of Confidential Information**. Neither party will (a) use the other party’s Confidential Information except for the purpose(s) for which it is disclosed or (b) disclose the other party’s Confidential Information to any third party except (x) under an identical confidentiality restriction to the receiving party’s employees or contractors who have a need to know Confidential Information in connection with the purposes for which it is disclosed or (y) when compelled by a court or other government agency (with as much advance notice to the disclosing party as reasonably possible). The receiving party will treat Confidential Information in the same manner as its own confidential information, but with a minimum of a reasonable degree of care.

# **Other Terms of Disclosure**. All Confidential Information provided hereunder is provided “AS IS” and without warranty. The receiving party obtains no intellectual property or other ownership or license rights in Confidential Information disclosed hereunder as a result of the disclosure. Neither party is required to exchange Confidential Information under this Agreement, nor does this Agreement constitute or imply a commitment or binding obligation between the parties regarding any potential transaction between the parties.

# **Publicity**. Except as otherwise permitted herein, neither party will disclose that it is having or has had discussions concerning a possible transaction with the other or that it has received Confidential Information without the express written consent of the other party.

# **Term and Termination**. This agreement may be terminated by either party upon notice to the other at any time but will apply to any Confidential Information exchanged hereunder for a period of five years following disclosure.

Upon termination of this agreement, each party shall, at the other party’s discretion, either (a) return the other party’s Confidential Information as reasonably directed by the other party or (b) destroy the other party’s Confidential Information as reasonably directed by the other party.

# **Remedies**. In the event of a breach of this Agreement, the parties agree that the disclosing party may not have an adequate remedy at law and accordingly, shall, in addition to any other available legal or equitable remedies, be entitled to seek an injunction against such breach without the posting of a bond.

# **Other Provisions**.

### Transfer of Agreement. Neither party may transfer this agreement, except that either party may transfer all or any part of this agreement (i) an Affiliate; or (ii) a third party in connection with a merger or sale of substantially all the party’s assets.

### Entire Agreement; Amendments and Waiver; Severability. This agreement sets out all the terms agreed between the parties and supersedes all other agreements between the parties relating to its subject matter. In entering into this agreement, neither party has relied on, and neither party will have any right or remedy based on, any statement, representation, or warranty except those expressly set out in this agreement. Any amendment must be in writing, signed by both parties, and expressly state that it is amending this agreement, and neither party will be treated as having waived any rights by not exercising (or delaying the exercise of) any rights under this agreement. If any term (or part of a term) of this agreement is invalid, illegal or unenforceable, the rest of this agreement will remain in effect.

### Governing Law. All claims arising out of or related to this agreement will be governed by Texas law excluding such State’s conflict of laws rules.

# **Notices**. Notices under this agreement are only effective when delivered in writing via certified mail or overnight delivery to the address for a party listed on the signature page hereto and with a copy to the email listed on the signature page, if any.

# **Signatures**. The parties may execute this agreement using electronic signatures, electronic copies, and counterparts.

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| By:  Name:  Title:  Date:  Address for Notice: | By:  Name:  Title:  Date:  Address for Notice: |
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