

MUTUAL NON-CIRCUMVENTION, NON-DISCLOSURE, AND NON-SOLICITATION AGREEMENT

This Mutual Non-Circumvention, Non-Disclosure and Non-Solicitation Agreement
("Agreement")

is made by and between: <Company Name 1> and <Company Name 2>.

The names listed above shall each constitute a "**party**" when hereinafter defined individually, and shall jointly constitute the "**parties**" when hereinafter defined collectively.

In consideration of the mutual promises of the parties as embodied in this Agreement, the parties' past and ongoing discussions and any access to Confidential Information before or after the execution of this Agreement, and in reliance upon the following undertakings, the parties consent to be bound by the terms of this Agreement.

- 1. Background and Objectives.** The parties contemplate developing a business relationship and wish to explore the possibility of executing certain related business transactions between them for mutual benefit. Each party has disclosed or may disclose to the other party Confidential Information, as defined below in Section 4, in connection with such potential business relationship and such potential transactions.

The purpose of this Agreement is to: (a) assure the protection and preservation of the confidential and proprietary nature of information that each party has disclosed or may disclose to the other party; (b) prevent the unfair circumvention by one party of the other party in connection with the development of any related business opportunity; (c) for the parties to acknowledge prior knowledge of private transactions, private placement or related business opportunities; and (d) for the parties to request assistance without any financial responsibility or advice given, or implied.

- 2. Non-Disclosure and Non-Use Obligation.** The party receiving Confidential Information ("**Receiving Party**") from the other party ("**Disclosing Party**") agrees that it will hold in confidence and will not: (a) disseminate or in any way disclose to a third party any of the Disclosing Party's Confidential Information; (b) make use of the Disclosing Party's Confidential Information, except to the extent necessary for negotiations, discussions, and consultations with the Disclosing Party or the personnel or authorized representatives of the Disclosing Party, or as otherwise authorized in writing by the Disclosing Party; or (c) disclose or release to any form of public media the existence of any business negotiations, discussions, consultations or agreements between the parties without written approval of both parties.

- 3. Duty to Take Reasonable Precautions to Maintain Confidentiality.** The Receiving Party shall take all reasonable precautions, including, without limitation, all precautions the Receiving Party employs with respect to its own confidential and proprietary information, to ensure that all Confidential Information disclosed to it by the Disclosing Party will be maintained as confidential, adequately safeguarded and segregated, and used, disseminated or disclosed only in accordance with the terms of this Agreement. The parties agree that their respective employees shall be provided Confidential Information only on a "need to know" basis and shall be bound by the terms of this Agreement. For purposes of this Agreement, the term "employee" shall

include, in addition to employees, the directors, officers, consultants, and other agents of each party. Both parties hereto understand and agree that nothing in this Agreement: (a) requires either party to disclose any Confidential Information, and (b) requires either party to proceed with any transaction, relationship or other agreement of any kind.

4. **Definition of Confidential Information.** Confidential Information shall be deemed to include: (a) all written information of the Disclosing Party; (b) all oral information of the Disclosing Party; (c) all tangible and intangible information, whether oral or in writing or in any other medium, relating to any form of media and entertainment (projects, productions and distributions), projects, assets, management, operations, intellectual property, sources, financial institutions and financial sources, and current, future and proposed projects, assets, products and services of the Disclosing Party, including, without limitation, information concerning patents, copyrights, trade secrets, research and development, experimental work, design details and specifications, inventions, know-how, processes, procedures, sketches, drawings, models, equipment, algorithms, software programs, software source documents and formulae, computer source code, flowcharts, pseudo-code, software and hardware design, data files, engineering data and designs, formulations, construction, processing and control, product performance data and specifications, manuals and other related documentation, systems, plans, finances and business forecasts, procurement requirements, purchasing, manufacturing, customer lists, sales and merchandising, marketing, documentation lists, orders, confirmations, leases, contracts, agreements, bills, invoices, statements, any other information that the Disclosing Party communicates to the Receiving Party in writing as being confidential, and all information that relates to Receiving Party's analysis of the Confidential Information and the uses thereof.
5. **Confidential Information Disclosed Prior to Agreement.** All Confidential Information disclosed by one party to the other party prior to the execution of this Agreement shall be subject to the same treatment by the Receiving Party as the Confidential Information made available after the execution of this Agreement.
6. **Ownership of Confidential Information and Other Materials.** All Confidential Information, including all copies and any Derivatives, as defined below, remain the property of the Disclosing Party and shall be returned to the Disclosing Party after the Receiving Party's need for such information has expired, or immediately upon request of the Disclosing Party, and, in any event, upon the first anniversary of this Agreement, unless the parties otherwise agree in writing. The Receiving Party acknowledges and agrees that no license or other rights to Confidential Information is granted or implied in this Agreement.

Definition of Derivatives: For purposes of this Agreement, "Derivatives" shall include but not be limited to: (a) copyrightable or copyrighted material, any translation, abridgement, revision or other form in which an existing work may be recast, transformed or adapted; (a) patentable or patented material, any improvement thereon; and (b) material which is protected by trade secret, any new material derived from such existing trade secret material, including new material which may be protected by copyright, patent and trade secret.

7. **Disclosure of Third Party Information.** Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.
8. **No Warranty.** All Confidential Information is provided "AS IS" and without any warranty, express, implied or otherwise, regarding its accuracy or performance.

9. **Compliance with Law.** Confidential Information shall not be used by the Receiving Party for any purpose or in any manner that would constitute a violation of any laws or regulations, including without limitation, the export control laws of the United States.

10. **Non-Circumvention.** The party (“Beneficiary Party”) receiving the benefit of an introduction to another person or business opportunity from the other party (“Intermediary Party”) agrees that the Beneficiary Party and the employees, agents, affiliated companies, successors in interest and assigns of the Beneficiary Party shall not, directly or indirectly, during the term of such obligation, enter into any agreement, association, partnership, joint venture or other transaction for the purpose of developing any business opportunity with any such other person introduced by the Intermediary Party to the Beneficiary Party or otherwise pursue or take advantage of any business opportunity introduced by the Intermediary Party to the Beneficiary Party without the prior written consent of the Intermediary Party. The Beneficiary Party further agrees that such Beneficiary Party shall not be a lender, investor, distributor, consultant, manager, buyer, seller or counterparty in any business transaction to any company, person, organization, or any affiliated companies, successors in interest or assigns, either directly or indirectly, introduced to such Beneficiary Party by the Intermediary Party without prior written consent of the Intermediary Party.

a) Confidential and Proprietary Contact Information: The parties hereby agree to keep confidential the names, addresses, telephone numbers, email addresses and related contact information of any person introduced by the Intermediary Party to the Beneficiary Party pursuant to this Agreement, including but not limited to such persons as individuals, companies, corporations, partnerships, limited liability companies, banks, trusts, lenders, borrowers, lending institutions, buyers and sellers. Such information is the property of the Intermediary Party and shall remain so for the term of this Agreement.

b) No Circumvention for Unfair Advantage: The Beneficiary Party agrees not to circumvent the Intermediary Party or the terms of this Agreement in an attempt to gain unfair advantage, remuneration or consideration to the detriment of the Intermediary Party.

11. **Non-Solicitation.** In the event of any future intentions of a party or parties to enter into a private transaction, private placement or related business opportunity, the respective party or parties respectfully request assistance by the other party and without any financial responsibility or advice given, or implied by the other party to further confirm that this or any future transaction was not solicited by the other party and that this or any future transaction entails no payment of any “up front” fees for services the other party may provide to the respective parties. Furthermore, the respective party or parties acknowledge that they had prior knowledge of such private transactions, private placement or related business opportunities before having encountered the other party and that this or any future transaction is a non-securities transaction according to the Securities and Exchange Act of 1933 and 1934.

12. **Term.** This Agreement shall come into force on the Effective Date, which shall be the date on which the last of the two parties signifies consent to this Agreement in writing. This Agreement shall govern the disclosure of Confidential Information between the parties that is made prior to or during the period from the Effective Date

of this Agreement to the date on which either party provides the other party written notice of termination, provided, however, that the termination of this Agreement shall not relieve either party of the obligations and rights imposed by Sections 2, 3, 4, 5, 6, 13 and 14. The parties' respective nondisclosure and nonuse obligations as set forth in Section 2 shall continue for a period of two (2) years after termination of this Agreement, except and to the limited extent as may be earlier relieved pursuant to Section 5(a). The parties' respective non-circumvention obligations as set forth in Section 10 shall continue for a period no longer than two (2) years after the Effective Date of this Agreement, except as the parties may otherwise consent to shorten such period of non-circumvention by mutual agreement in writing.

- 13. Specific Performance and Injunctive Relief.** The parties agree that any party found to have engaged in a material breach of this Agreement by a court of competent jurisdiction shall be (a) deemed to have inflicted irreparable injury on the non-breaching party such that no remedy at law will afford the non-breaching party adequate protection against, or appropriate compensation for, such injury and (b) entitled to obtain injunctive relief, a decree for specific performance, monetary damages or such other relief as may be appropriate.
- 14. Indemnification and Accounting.** The parties agree that any party found to have engaged in a material breach of this Agreement by a court of competent jurisdiction shall: (a) indemnify and hold harmless the non-breaching party from and against all claims, losses, liabilities, damages, expenses and costs, including, without limitation, reasonable attorney's fees, expert witness fees and court costs, that the non-breaching party has suffered as a result of such breach, and (b) give the non-breaching party an accounting and payment of all forms of compensation or benefits that the breaching party has received as a result of such breach, without impairing the right of the non-breaching party to obtain any other injunctive relief or other remedies to which the non-breaching party may be entitled at law or in equity.
- 15. No Assignment.** Neither party shall assign nor transfer any rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. The parties' rights and obligations under this Agreement will bind and inure to the benefit of their respective successors, heirs, executors, assigns and administrators.
- 16. No Agency Relationship or Partnership.** Neither party shall act nor have the authority to act as an agent of the other party for any purpose whatsoever, unless expressly authorized in writing. No partnership or joint venture is created by this Agreement.
- 17. Arbitration.** All claims, controversies, disputes, and disagreements arising out of or relating to this Agreement or its validity, construction or performance, including any alleged failure of performance or any alleged breach of any provision of this Agreement shall be resolved and conducted in accordance with the rules and procedures of the State of California Arbitration, as such rules may be amended from time to time, with rights of discovery, if requested by arbitrator; or if for any reason unavailable, binding arbitration shall be in accordance with and settled with the Commercial Arbitration Rules of the AAA (American Arbitration Association) Los Angeles, California Chapter, relative to the reservation and the protection of individual contact and contract sources. The parties shall abide by and perform any award rendered therein and any court having jurisdiction may issue a judgment based upon such award, which is final, binding and non-appeal able.

- 18. Governing Law, Venue and Jurisdiction.** This Agreement shall be governed in all respects by the laws of the State of California without regard to the conflicts of law provisions thereof and notwithstanding the actual residence of the parties. The parties hereby irrevocably agree that the federal courts and state courts within the State of California shall be the sole permissible venue and shall have exclusive jurisdiction to adjudicate any disputes arising out of this Agreement. In this connection, the parties hereby expressly consent to: (a) the personal jurisdiction of the federal and state courts identified in this Section; and (b) service of process being effected in accordance with the notice provisions of Section 19 below.
- 19. Notice and Service of Process.** Any notice required or permitted by this Agreement shall be in writing and shall be delivered to the appropriate party at the relevant address and facsimile number set forth on the signature page of this Agreement or at such other address or facsimile number as the party shall subsequently specify in writing to the other party. Such notice shall be deemed given: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of receipt; (c) by telecopy, email or facsimile transmission upon acknowledgment of receipt of transmission; or (d) by certified or registered mail, postage prepaid and return receipt requested, three (3) days after mailing.
- 20. Amendment.** No waiver, amendment or modification of this Agreement will be binding upon a party unless made in writing and signed by a duly authorized representative of such party.
- 21. No Implied Waiver.** No failure or delay in enforcing any right under this Agreement or otherwise shall be deemed a waiver.
- 22. Section Headings.** The section headings in this Agreement have been inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of any substantive text in the various sections of this Agreement and such section headings do not affect the operation or interpretation of this Agreement.
- 23. Severability.** Should any provision of this Agreement be held by a court of law or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be thereby affected or impaired.
- 24. Entire Agreement.** This Agreement constitutes the entire agreement with respect to its subject matter and supersedes all prior or contemporaneous oral or written agreements concerning such subject matter.
- 25. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original for all purposes and all of which together shall constitute one and the same instrument.
- 26. Electronic Signatures.** The parties acknowledge that this Agreement shall be binding when executed either by the handwritten or electronic signature of each of them, whether written in longhand on a paper copy of this Agreement or entered from a computer keyboard, pursuant to the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000), codified at 15 U.S.C. § 7001 et seq., which went into effect as of October 1, 2000.

This Act is intended to facilitate the use of electronic records and signatures in interstate or foreign commerce by giving legal effect to electronic signatures, contracts and records in most commercial and consumer transactions.

The term “electronic signature” means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. Each party agrees that the executed original of this Agreement may be delivered to the other party my email, facsimile, regular mail or personal delivery.

27. Termination Clause. The obligations of the parties hereto pursuant to Sections 2 and 3 shall terminate with respect to any particular portion of the Confidential Information as follows:

Upon the occurrence of any of the following events the party or parties intending to terminate shall give written notice of proof of the occurrence and intent to terminate to all respective parties:

- a) If any such Confidential Information was in the public domain at the time of the disclosure of such information by either party to the other;
- b) If any such Confidential Information enters the public domain after disclosure by either party hereto to the other through no fault or action of the party receiving such information;
- c) If any such Confidential Information was in the possession of the party receiving such information at the time of disclosure thereof by the other party and such Confidential Information was obtained by the receiving party free of any obligation or confidence; or
- d) If any such Confidential Information is verifiably in development by employees or authorized agents of the receiving party independently and without reference to the furnishing of any such Confidential Information to the receiving party by the other party hereto.

Signatures

IN WITNESS WHEREOF the parties warrant that they are the authorized signatories to execute this Agreement and hereby agree to be bound by its terms as evidenced by their signatures below:

Executed by:

<Company Name 1>

<Signee 1>

Signature here:

Dated on or about:

Executed by:

<Company Name 2>

<Signee 2>

Signature here:

Dated on or about:

Private and Confidential

Initials: _____

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