**[*Overview****: This Confidentiality & Non-Circumvent Agreement is appropriate when two parties are considering a potential transaction and* ***only one party will be disclosing confidential information****. It also includes provisions to prevent the receiving party from circumventing the disclosing party, and thus the party taking on the risk.*]

**CONFIDENTIALITY & NON-CIRCUMVENT AGREEMENT**

This Confidentiality Agreement (this “Agreement”) is dated below by and between the undersigned (the “Recipient”) and [name of company] (the “Disclosing Party”) regarding the development of a business relationship between the Parties.

* 1. **Confidential Information, Representatives**. The Recipient is considering entering into a [describe the business transaction] with the Disclosing Party (the “Potential Transaction”), and in order to assist the Recipient in evaluating the Potential Transaction, the Disclosing Party is prepared to make available to the Recipient certain confidential, non-public or proprietary information concerning the business, operations, client lists, and assets of the Disclosing Party (the “Confidential Information”). As a condition to the Confidential Information being furnished to the Recipient and its representatives, advisors, lenders, shareholders, directors, officers, and employees (collectively, the “Representatives”), the Recipient agrees to treat the Confidential Information in accordance with the provisions of this Agreement and to take or abstain from taking certain other actions hereinafter set forth.
  2. **Excluded Information**. The Confidential Information shall not include information that (i) is or becomes generally available to the public other than as a result of acts by the Recipient in breach of the terms of this Agreement, (ii) is independently **derived** by the Recipient without the aid, application, or use of the Confidential Information, (iii) is **disclosed** to the Recipient by a third party on a nonconfidential basis, or (iv) is required to be disclosed by applicable law or regulation.
  3. **Non-Disclosure of Confidential Information**. The Recipient shall use the Confidential Information solely for the purpose of evaluating the Potential Transaction. The Recipient agrees to hold the Confidential Information in trust and confidence for a period of three (3) years from the date of execution hereof. The Recipient shall use its best efforts to keep the Confidential Information in confidence and shall not disclose any of the Confidential Information to any other person, provided, however, that the Recipient may make any disclosure of Confidential Information to the Recipient’s Representatives who need to know such information for the purpose of evaluating the Potential Transaction and who agree to keep such information in confidence. The Recipient will not disclose or permit inevitable disclosure of such Confidential Information, and the Recipient shall be solely and directly responsible for all persons who obtain Confidential Information by or through the Recipient or the Recipient’s Representatives. The Recipient shall not otherwise permit such Confidential Information to be available or accessible, stored electronically or otherwise, published, distributed, transmitted, or delivered in any form whatsoever to anyone else. Without limitation to these obligations, all Confidential Information will be safeguarded with the highest degree of care to avoid disclosure, and shall, to the extent reasonably possible, be preserved bug- and virus-free. The Recipient shall not allow or permit any such Confidential Information to be knowingly or negligently misappropriated or used (directly or indirectly, by independent research, reverse engineering, decompiling, or otherwise) by the Recipient or the Recipient’s Representatives for their own benefit or for the benefit of others, except in conjunction with discussions and meetings between the Disclosing Party and the Recipient and agreements or actions arising therefrom or related thereto.
  4. **Non-Disclosure of Existence of Negotiations**. Without the prior written consent of the Disclosing Party, or except as may be required by applicable law or regulation, the Recipient nor any person acting on behalf of the Recipient shall **disclose** to any third party that discussions or negotiations are taking place between the Parties concerning the Potential Transaction, including the status of such discussions or negotiations. This is a material provision to this Agreement and the Disclosing Party would not have disclosed any Confidential Information but for this provision.
  5. **Non-Disclosure of Identity**. Without the prior written consent of the Disclosing Party, or except as may be required by applicable law or regulation, the Recipient nor any person acting on behalf of the Recipient shall disclose to any third party the identities of the persons directly involved with the business of the Disclosing Party. This is a material provision to this Agreement and the Disclosing Party would not have disclosed any Confidential Information but for this provision.
  6. **Non-Circumvention**. During the term of this Agreement, the Recipient agrees not to pursue or engage in any transaction involving the Potential Transaction, or contact directly or indirectly any party-in-interest relating to the Disclosing Party’s business or pursue any introduction of any party of interest without the Disclosing Party’s prior written consent. The Recipient agrees that all communications regarding the Potential Transaction, requests for additional information, and discussions or questions regarding procedures will be submitted or directed to the Disclosing Party and not directly with any other party. The Recipient covenants not to use the Confidential Information to the detriment of the Disclosing Party and to use it only in connection with its evaluation of the Potential Transaction. The Disclosing Party shall be present in the engagement of any transaction involving the Potential Transaction with introduced parties-in interest by the Recipient.
  7. **Subpoena or Court Order**. In the event that the Recipient or anyone to whom it discloses the Confidential Information receives a request to disclose all or any part of the Confidential Information under the terms of a subpoena or other **order** issued by a court of competent jurisdiction or by another governmental agency, the Recipient shall (i) if practicable, promptly notify the Disclosing Party of the existence, terms, and circumstances surrounding such a request and consult with the Disclosing Party on the advisability of taking steps to resist or narrow such a request, (ii) if disclosure of such Confidential Information is required, furnish only such portion of the Confidential Information as the Recipient is required to disclose, and (iii) cooperate with the Disclosing Party, at the Disclosing Party’s expense, in its efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to such portion of the Confidential Information that is required to be disclosed.
  8. **Return of Confidential Information**. Promptly upon the written request of the Disclosing Party, the Recipient will return all **copies** of the Confidential Information to the Disclosing Party or destroy all Confidential Information and certify such destruction to the Disclosing Party.
  9. **Intellectual Property**. Nothing contained in this Agreement will be construed as granting or conferring any intellectual property, patent, copyright, trademark, trade secret, or any other proprietary rights by license or otherwise, **whether** expressly written or implied herein or otherwise, for any trademark, trade name, logo, logotype, invention, discovery, or improvement made, conceived, or acquired prior to or after the date of this Agreement. All such rights shall be, become, and remain the sole property of the Disclosing Party.
  10. **Media**. The Recipient shall not issue or permit any media release or public comment regarding the discussions, the Potential **Transaction**, this Agreement, or the Confidential Information without the prior written consent of the Disclosing Party.
  11. **Definitive Agreement**. Unless and until a definitive written agreement between the Recipient and the Disclosing Party with respect to the Potential Transaction has been executed and delivered, neither the Recipient nor the Disclosing Party will be under any legal obligation of any kind whatsoever with respect to the Potential Transaction by virtue of this or any other written or oral expression by either of them or their Representatives except, in the case of this Agreement, for the matters specifically agreed to herein.
  12. **Remedies**. The Recipient and the Disclosing Party acknowledge that in the event of any breach of the terms of this Agreement, the Disclosing Party may not be made whole by monetary damages. Accordingly, the Disclosing Party, in addition to any other remedy to which it may be entitled in law or in equity, shall be entitled to seek an injunction to prevent breaches of the terms of this Agreement. No bond or other security will be required in connection with the pursuit of an injunction.
  13. **Indemnity**. The Recipient hereby agrees to indemnify, defend, and hold the Disclosing Party harmless from and against any and all suits, liabilities, causes of action, claims, losses, damages, or expenses of any kind (including **reasonable** attorneys’ fees and expenses) incurred or suffered by the Disclosing Party arising from or in connection with a breach of this Agreement, including without limitation unauthorized use or disclosure of the Confidential Information in violation of this Agreement, and negligent or intentional acts or omissions in the performance of this Agreement by the Recipient or the Recipient’s Representatives or persons to whom such persons reveal Confidential Information.
  14. **Attorney’s Fees**. In the event of any dispute arising out of the subject matter of this Agreement, the prevailing party shall be entitled to recover, in addition to any other damages assessed or relief afforded, its attorney fees and court costs incurred in litigating or otherwise settling or resolving such dispute hereunder.
  15. **WAIVER OF JURY TRIAL**. EACH PARTY HERETO KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION (INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS, CROSS-CLAIMS, COUNTER-CLAIMS, OR THIRD PARTY CLAIMS) ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT OR BETWEEN THE PARTIES TO THIS AGREEMENT, THEIR AFFILIATES, SUBSIDIARIES, SUCCESSORS, OR ASSIGNS AND IRRESPECTIVE OF WHETHER SUCH LITIGATION ARISES OUT OF THIS AGREEMENT, BY STATUTE, OR AS A MATTER OF TORT LAW AND THE PARTIES HERETO EXPRESSLY CONSENT TO A NON-JURY TRIAL IN THE EVENT OF ANY OF THE FOREGOING.
  16. **Entire Agreement, Amendment**. This Agreement (i) represents the entire understanding and agreement of the parties hereto with respect to the matters contained herein, and (ii) may be amended, modified, or waived only by a separate writing executed by the Recipient and the Disclosing Party expressly so amending, modifying, or waiving this Agreement.
  17. **No Waiver**. No failure or delay by the Disclosing Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.
  18. **Survival**. The confidentiality requirements, covenants, agreements, and indemnity obligations of this Agreement will survive any termination of this Agreement.
  19. **Severability**. If any provision of this Agreement is found to violate any statute, regulation, rule, order, or decree of any governmental authority, court, agency, or exchange, such invalidity shall not be deemed to affect any other provision hereof or the validity of the remainder of this Agreement, and such invalid provision shall be deemed deleted from this Agreement to the minimum extent necessary to cure such violation.
  20. **Affiliates**. All provisions hereof are binding upon and shall inure to the benefit of the respective parties and their successors and assigns. In addition, both the Recipient and the Disclosing Party expressly acknowledge and agree that this Agreement shall be binding upon each of their subsidiaries or other related and/or affiliated entities, which either the Recipient or the Disclosing Party may now or hereafter own or have any interest in.
  21. **Governing Law**. This Agreement shall be governed by and construed in accordance with the appropriate laws of the State of [Name of State], without regard to the laws of conflict of laws. Exclusive venue for any court action related to this Agreement shall be in [Name of County], [Name of State].
  22. **Assignment**. The Recipient may not assign or otherwise transfer any of its rights or obligations under this Agreement to any third party without the prior written consent of the Disclosing Party. No permitted assignment shall relieve the Recipient of the obligations hereunder. Assignment includes assignment, encumbrance, or transfer of any kind of all or any rights or obligations arising hereunder or pursuant hereto. Any assignment in violation of this Agreement shall be deemed null and void.
  23. **Authority**. The Recipient hereby represents, warrants, and certifies to Disclosing Party that it has authority to enter into this Agreement.
  24. **Term**. This Agreement shall terminate and be of no further force or effect three (3) years from and after the date hereof.
  25. **Captions**. The captions contained in this Agreement are for convenience only and shall not affect the construction or interpretation of any provisions of this Agreement.
  26. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, THIS AGREEMENT is executed and delivered effective as of the date

written below.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

RECIPIENT:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

DISCLOSING PARTY:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_