# MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

**This MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT** (the “Agreement”) dated

 , 20 (the “Effective Date”) between and (each in connection with Confidential Information (as defined below) provided by it or on its behalf, a “Discloser” and, in connection with Confidential Information received by it or on its behalf, a “Recipient,” and, together, the “Parties”).

**WHEREAS**, each Party to this Agreement may be receiving from the other Party or its officers, agents, employees, or consultants, including financial and legal advisers (collectively, “representatives”) information of a confidential and non-public nature for use by it and its representatives in connection with a possible business transaction (the “Transaction”); and

**WHEREAS**, the Parties desire to protect the confidentiality of such information in accordance with the terms of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement, the Parties hereby agree as follows:

1. **Confidential Information Defined.** Each Party may receive certain non-public and confidential oral or written information from the other Party or its representatives, including but not limited to, trade secrets, technical and financial information, business plans, market projections and other confidential or proprietary information, in each case relating to the Transaction, that is either marked or otherwise identified as proprietary or confidential at the time of disclosure, or that by its nature would be understood by a reasonable person under the circumstances to be proprietary or confidential, whether disclosed prior to or following the Effective Date. All such information thus supplied by Discloser to Recipient is hereinafter referred to as “Confidential Information” of Discloser.
2. **Nondisclosure Obligation.** Recipient shall keep all Confidential Information of Discloser received by it confidential and shall not disclose such Confidential Information, in whole or in part, to any person other than its representatives. Such Confidential Information shall be used by Recipient solely in connection with its evaluation of the Transaction, and shall not be used for Recipient's own benefit in any way unrelated to the Transaction or for any other purpose (including without limitation development of any competitive product). For the purpose of complying with the obligations set forth herein, each Party shall use efforts commensurate with those it employs for the protection of its own confidential information, but in no case shall such efforts consist of less than a reasonable degree of care.
3. **Exceptions to Confidentiality.** This Agreement imposes no obligation upon Recipient with respect to any Confidential Information disclosed under this Agreement to it which: (i) was in Recipient’s possession before receipt from Discloser or its representatives; or (ii) is or becomes a matter of public knowledge through no fault or violation of any obligation or duty of Recipient to Discloser; or

(iii) received by the Recipient on a nonconfidential basis from a source other than Discloser; or (iv) is independently developed by Recipient without reference to the confidential information disclosed hereunder. Notwithstanding any other provision of this Agreement, Recipient may disclose Confidential Information of Discloser to the extent such disclosure is required by law, rule, regulation or legal process; provided however, that Recipient shall give prompt notice of any such request for such information to Discloser, and agrees to cooperate, to the extent practicable, with Discloser, at Discloser’s expense, to challenge the request or limit the scope thereof, as Discloser may reasonably deem appropriate.

1. **No Representations or Further Obligations.** Discloser warrants that it has the right to make the disclosures to be made by it or on its behalf under this Agreement. All disclosures made hereunder are at the sole discretion of Discloser. It is understood that this Agreement does not obligate either Party to enter into any further agreements or to proceed with the Transaction or any other possible relationship or other transaction. Neither of the Parties makes any covenants, warranties or representations with respect to the accuracy or completeness of any Confidential Information disclosed hereunder, and neither Party shall have any liability arising out of the use of its Confidential Information disclosed under this Agreement. No licenses, express or implied, are granted by either Party with respect to its Confidential Information.
2. **Non-Solicitation.** During the term of this Agreement and for a period of one year following the date of the termination of same, neither Party shall directly or indirectly, induce or attempt to induce any employee of, or consultant to, the other party to leave the employ of the other party nor hire any such individual.
3. **Return of Information.** Upon the written request of Discloser, Recipient shall destroy or return to Discloser all copies of the Confidential Information of Discloser, except that one copy may be retained in the files of Recipient's legal counsel to be used solely in connection with any dispute that may arise with respect to the Confidential Information, but shall remain subject to the terms and conditions of this Agreement.
4. **Termination.** Recipient's obligations under this Agreement shall expire on the fifth (5th) anniversary of the date of disclosure of the Confidential Information, except that Recipient’s obligations with respect to trade secrets and customer data of Discloser shall not expire.

# Miscellaneous.

* 1. All additions or modifications to this Agreement must be made in writing and must be signed by both Parties.
	2. This Agreement is made under, and shall be construed and enforced in accordance with, the laws of the Commonwealth of Massachusetts (without giving effect to the conflict of laws rules thereunder). Each Party consents to exclusive jurisdiction and venue of courts in Boston, Massachusetts for all disputes relating to this Agreement.
	3. The Parties acknowledge that money damages would not be a sufficient remedy for any breach of this Agreement, and that, accordingly, in the event of any such breach or threatened breach, the non-breaching Party shall be entitled to seek equitable relief, including an injunction or specific performance.
	4. If any one or more provisions of this Agreement are determined to be invalid, illegal or unenforceable in any respect, the remaining provisions of this Agreement shall remain in effect and shall not be affected by such invalidity, illegality or unenforceability.
	5. This Agreement (a) constitutes the entire agreement of the Parties with respect to its subject matter and supersedes any prior agreement or understanding with respect to the subject matter hereof, and (b) may be executed in counterparts.
	6. This Agreement may not be assigned by either Party without the prior written consent of the other Party. This Agreement will be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement on the date and year first above written.

# [ ] [ ]

By: By:

Name: Name:

Title: Title: