

## Non-Disclosure Agreement

This Agreement (the "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2017 ("**Effective Date**") by and between Proskauer Rose LLP (the "**Disclosing Party**"), located at Eleven Times Square, New York, NY 10036, and \_\_\_\_\_ (the "**Recipient**"), located at \_\_\_\_\_. For the purposes of this Agreement, Proskauer includes its wholly owned subsidiaries, as well as its affiliates, branches, and offices both in and outside the United States.

WHEREAS, Disclosing Party has agreed to disclose to Recipient, and Recipient wishes to receive from Disclosing Party, certain Confidential Information (as defined below) of Disclosing Party for the sole purpose(s) of \_\_\_\_\_; and

WHEREAS, Disclosing Party wishes to protect the Confidential Information of Disclosing Party which may be disclosed to Recipient.

NOW, THEREFORE, in consideration of access to the Confidential Information and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. "**Confidential Information**" means all information (either oral, written, or digital) provided to the Recipient by the Disclosing Party, including without limitation: (a) any document, data, materials, trade secret, process, know-how, technique, design, drawing, diagram, program, source code, invention, and/or work in process; (b) any financial, supplier, administrative, technical, customer, employee, investor or business information; and (c) any data submitted in connection with \_\_\_\_\_.

2. The Recipient agrees to treat the Confidential Information as strictly confidential and shall not, directly or indirectly: (a) use the Confidential Information for any purpose other than \_\_\_\_\_; (b) copy or modify the Confidential Information without the prior written consent of the Disclosing Party; or (c) distribute or disclose the Confidential Information to any third party other than to the Recipient's employees, directors, agents and independent contractors (collectively, "**Representatives**") who have a specific need to know the Confidential Information and who are obligated to maintain the Confidential Information in confidence to at least the same extent as the Recipient is obligated under this Agreement. The Recipient agrees, at its sole expense, to take all reasonable measures to prevent its Representatives from breaching this Agreement and the Recipient agrees that it shall be responsible for any breach or threatened breach of this Agreement by any of its Representatives. The Recipient agrees not to sell, transfer, lease, or license the Confidential Information in any manner whatsoever.

3. The Recipient agrees to notify the Disclosing Party promptly in writing of any breach or threatened breach of this Agreement, such notice to include a detailed description of the circumstances of the breach or threatened breach and the parties involved. The Recipient agrees to provide reasonable assistance to the Disclosing Party in the prosecution of any parties who are in violation of this Agreement.

4. The Recipient shall not be required to keep confidential any Confidential Information that the Recipient can demonstrate by written documentation: (a) is or has entered the public domain through no fault of the Recipient or its Representatives; (b) is or was independently developed by or for the Recipient without use, directly or indirectly, of the Confidential Information; (c) is or was received by the Recipient in good faith from a third party on a non-confidential basis, provided that the source of such Confidential Information was not bound by an obligation of confidentiality with respect to such information; or (d) is approved for release by the prior written authorization of the Disclosing Party.

5. In the event that the Recipient or any of its Representatives receive a request or demand to disclose all or part of the Confidential Information pursuant to a court order, operation of law, subpoena, requirement of a governmental authority, or otherwise, the Recipient agrees to: (a) promptly notify the Disclosing Party of the terms and surrounding circumstances of such request or demand so that the Disclosing Party may seek a protective order, or other appropriate relief and/or waive compliance with the provisions of this Agreement; (b) promptly consult with the Disclosing Party on the advisability of taking steps to resist or narrow such request or demand; (c) in the absence of a protective order or other remedy or the receipt of a waiver from the Disclosing Party and only after the Recipient's compliance with (a) and (b) above, minimize the disclosure of the Confidential Information ultimately required to be disclosed to only that Confidential Information which is reasonably necessary to meet the express requirements of the request or demand; and (d) subject to the mutual agreement of the parties concerning costs and expenses, cooperate with the Disclosing Party to obtain an order or other reliable assurance that confidential treatment will be accorded to any Confidential Information ultimately required to be disclosed after the Recipient's compliance with (a) and (b) above.

6. Promptly but in no event later than five (5) days after the Recipient's receipt of the Disclosing Party's written request, the Recipient shall return to the Disclosing Party all tangible materials containing or embodying the Confidential Information, and/or at the specific request of the Disclosing Party, destroy all documents (paper, electronic or otherwise) containing or embodying the Confidential Information. Notwithstanding the return and destruction of the Confidential Information, the Recipient and its Representatives shall continue to be bound by the terms and conditions of this Agreement.

7. The terms and conditions of this Agreement shall apply to Confidential Information disclosed by the Disclosing Party prior to, on and after the Effective Date set forth above, and shall continue in perpetuity.

8. The Recipient agrees that the breach or threatened breach of any of the terms or conditions of this Agreement will cause the Disclosing Party and/or the owner of such Confidential Information irreparable injury for which the recovery of money damages would be inadequate. Therefore, the Disclosing Party or such other party shall be entitled to obtain injunctive relief against the breach or threatened breach of this Agreement, in addition to any other remedies the Disclosing Party may have under applicable law and without the necessity of posting a bond, even if otherwise normally required.

9. Nothing contained in this Agreement shall be construed as: (a) granting, conferring, or implying any rights to the Recipient by license or otherwise; (b) creating any partnership or joint venture between Disclosing Party and Recipient; or (c) obligating the parties to enter into a business transaction. Neither party shall assign its rights or obligations arising under this Agreement, in whole or in part, without the prior written consent of the other party.

10. Any notice required or permitted under this Agreement shall be in writing and shall be deemed given (a) if by hand delivery, upon receipt thereof, (b) if mailed, three (3) days after deposit in the United States mails, postage prepaid, certified mail, return receipt requested, or (c) if by next day delivery service, upon such delivery. All notices shall be addressed as follows (or to such other address as either party may in the future specify in writing to the other):

In the case of the Disclosing Party:

Proskauer Rose LLP

General Counsel

Eleven Times Square

New York, NY 10036

In the Recipient's Case:

[Company Name]

[Attention]

[Address]

[Address]

11. This Agreement sets forth the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements, proposals, understandings and representations, written or oral, between the parties with respect to the subject matter hereof.

12. No change, deletion, modification, amendment, supplement to or waiver of this Agreement shall be binding upon a party hereto unless made in writing and signed by duly authorized representatives of both parties. No delay or failure by either party in exercising or enforcing any of its rights or remedies hereunder, in whole or in part, and no course of dealing or performance with respect thereto, shall constitute a waiver thereof in any other instance. All rights and remedies shall be cumulative and not exclusive of any other rights or remedies.

13. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New York, without giving effect to its conflict of laws provisions. The exclusive jurisdiction and venue for all legal actions arising out of the Agreement shall be in an appropriate federal or state court sitting in the State of New York, County of New York, and the parties hereby consent to the jurisdiction of such courts. Each party expressly waives any rights it may have to contest the jurisdiction, venue or convenience of any court sitting in the State of New York.

14. In the event that any provision of this Agreement shall for any reason be determined to be void, invalid, illegal or otherwise unenforceable in any respect by any court of competent jurisdiction, then, to the full extent permitted by law: (a) all other provisions hereof will remain in full force and effect and will be liberally construed in order to carry out the intent of the parties hereto as nearly as may be possible; (b) such determination will not affect the remaining provisions of this Agreement; and (c) any court of competent jurisdiction will have the power to reform such provision to the extent necessary for such provision to be enforceable under applicable law.

15. This Agreement may be executed in counterparts, each such counterpart shall be an original and altogether shall constitute but one and the same document.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Agreement in duplicate.

**DISCLOSING PARTY**

**RECIPIENT**

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

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

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

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

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

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