# **Confidentiality and Non-Circumvent Agreement**

This Confidentiality Agreement is between the Recipient named below and [company name] regarding a business relationship between the aforementioned parties.

## **Confidential Information.**

In order for the Recipient to enter into a [type of business transaction] with the Disclosing Party, they will be privy to certain confidential information. This may be proprietary information, non-public, and confidential information about client lists, operations, assets, and business information.

As a condition of the [type of business transaction], the Recipient agrees to cooperate with the provisions this Agreement makes with regards to sensitive information. They also agree not to act in ways that are prohibited by this Agreement.

## **Excluded Information**

The following information does not constitute confidential information:

1. Information that is or will become available to the public in ways other than a breach of the terms of this Agreement.
2. Information that is independently discovered by the Recipient that is unrelated to the Confidential Information.
3. Information disclosed to the Recipient on a non-confidential basis by a third-party.
4. Information that is required to be disclosed by regulations or laws.

## **Non-Disclosure of Confidential Information**

The Recipient shall only use the Confidential Information to evaluate and perform duties required in the Potential Transaction. This Confidential Information will be held in confidence and trust by the Recipient for 3 (three) years from the date of the Agreement’s execution. The Recipient shall not disclose Confidential Information to anyone else, with the exception of the Representatives who may need to know details regarding the Confidential Information for review of the Potential Transaction. The Recipient will also not permit inevitable disclosure of Confidential Information, and they will be solely responsible for anyone who obtains Confidential Information through the Recipient or by anyone the Recipient shares such information with.

The Recipient will not allow any Confidential Information to be delivered, transmitted, or available to any other persons by any means. This includes monitoring how Confidential information is stored electronically, or otherwise, secured, transmitted, distributed, delivered, published, or accessed. All Confidential Information must be stored securely and safeguarded to avoid purposeful or accidental disclosure. Where reasonably possible, the Confidential Information must be stored virus-free.

The Recipient is responsible for ensuring that the Confidential Information is not negligently or knowingly stolen or used through any manner by the Representatives or Recipient for any benefit of their own or others without the express permission of the Disclosing Party.

## **Non-Disclosure of Existence of Negotiations**

The Recipient nor anyone acting on their behalf must not disclose the fact that negotiations or discussions are in place between the Parties without prior written consent from the Disclosing Party. This includes discussions about the Potential Transaction or the fact that negotiations or discussions are taking place and the status of them.

## **Non-Disclosure of Identity**

The Recipient nor anyone acting on their behalf must not disclose the identity of any parties or people involved with the Disclosing Party’s business without prior written consent from the Disclosing Party.

## **Non-Circumvention**

During and throughout the term of the Agreement, the Recipient agrees not to do any of the following without prior written consent from the Disclosing Party:

* Engage in or pursue any transaction involving the Potential Transaction.
* Directly or indirectly contact any parties of interest relating to the Disclosing Party and their business or pursue an introduction to such parties.

The Recipient agrees that all communications, discussion of procedures, and requests for information will be directed to the Disclosing Party, not any other party.

The Recipient agrees that Confidential Information will not be used to the detriment of the Disclosing Party at any point. The Confidential Information will solely be used to evaluate the Potential Transaction. For all transactions with parties-in-interest relating to the Potential Transaction, the Disclosing Party will be present.

## **Subpoena or Court Order**

In the event that the Recipient or any of the parties they disclose the Confidential Information to receive a subpoena or court order for any or all of the Confidential Information, the Recipient shall do the following:

1. Immediately notify the Disclosing Party of the subpoena or court order and its terms. They shall also disclose the circumstances surrounding the subpoena or court order. The Recipient shall also where practical, discuss steps to resist or narrow the scope of the request with the Disclosing Party.
2. Only provide the portion of the Confidential Information that the subpoena or court order requires.
3. Cooperate with the Disclosing Party and its efforts to ensure that the Confidential Information is treated as such by the court and that only the portion that is required for the purpose of the subpoena or court order will be disclosed.

## **Return of Confidential Information**

Upon the Disclosing Party’s written request, the Recipient will promptly return all materials and copies of the Confidential Information or immediately destroy the Confidential Information and furnish the Disclosing Party with proof of its destruction.

## **Intellectual Property**

All rights to patents, copyrights, intellectual property, trade secrets, trademarks, logo, discovery, improvement, invention, logotype, trade name, and any other proprietary rights shall remain, become, and be the sole property of the Disclosing Property. The Recipient shall not construe anything in this Agreement as conferring or granting them rights to proprietary rights or intellectual property.

## **Media**

The Recipient shall not permit or issue any public comment or media release about the Potential Transaction, the Confidential Agreement, this Agreement, or discussions without prior written consent from the Disclosing Party.

## **Definitive Agreement**

Until and unless a definitive written agreement has been executed between the Disclosing Party and the Recipient, neither party has any legal obligation with respect to the Potential Transaction. However, this Non-Disclosure Agreement and the matters specifically addressed in it will apply once it is executed, regardless of the status of the Potential Transaction.

## **Remedies**

Both the Disclosing Party and the Recipient acknowledge that a breach of the Agreement may not be made whole by monetary damages. Because of this, the Disclosing Party shall be entitled to seek any remedy the law provides as well as an injunction to prevent any breaches of the Agreement. The Disclosing Party will not seek any security or bond in connection with the injunction.

## **Indemnity**

The Recipient agrees to defend, indemnify, and hold the Disclosing Party harmless against and from all liabilities, claims, suits, causes of action, damages, losses, or expenses of any kind in connection with a breach of the Agreement.

## **Attorney’s Fees**

In the event of a dispute regarding this Agreement, the prevailing party is entitled to recover court costs and attorney’s fees incurred from the settlement, litigation, and resolution of the dispute.

## **Waiver of Jury Trial**

Each party voluntarily, knowingly, and intentionally waives any right to a jury trial in any claims arising under, out of, or in connection with this Agreement. This includes any claims from affiliates, successors, assigns, and subsidiaries of the parties bound by this Agreement.

1. **Entire Agreement Amendment**

This Agreement:

1. Represents the complete understanding and agreement of all the parties with respect to the matters included in the Agreement.
2. May only be amended, waived, or modified by a separate written agreement executed mutually by the Disclosing Party and the Recipient. No delay or failure by the Disclosing Party should operate as a waiver of any kind.

## **Survival**

The agreements, covenants, confidentiality requirements, and indemnity obligations of the Agreement will survive the termination of this Agreement and the Potential Transaction.

## **Severability**

If any provision of the Agreement violates any laws, regulations, or any other government authority, that invalidity will not invalidate the whole Agreement or any other part of it. The invalid provision shall be considered as deleted from the Agreement in order to remedy the violation.

## **Affiliates**

All provisions are binding upon both parties and their affiliates, assigns, and successors once executed. In addition, both parties acknowledge that the Agreement is binding upon each of their current and future affiliated entities and subsidiaries.

## **Assignment**

The Recipient must not transfer or assign any of its obligations or rights to a third party without written consent from the Disclosing Party. If the Disclosing Party permits such an assignment, the Recipient is still bound by the obligations of the Agreement. Assignments that violate this Agreement will be null and void.

## **Authority**

The Recipient certifies, warrants, and represents that they have the authority to enter into this Agreement with the Disclosing Party.

## **Term**

The term of this Agreement is 3 (three) years from the date of execution. After this time, the Agreement will terminate and be of no further effect or force.

## **Captions**

The captions of this Agreement shall not affect the interpretation and construction of any part of the Agreement. They simply exist for convenience.

## **Counterparts**

The Agreement may be executed in several counterparts, all of which will be an original and shall be considered as one Agreement.

This Agreement is executed and delivered in front of a witness. It is delivered and executed as of the date below.

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

RECIPIENT:

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

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

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

DISCLOSING PARTY:

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

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

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