

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (this “Agreement”) is made and entered into as of _____, 2019, by and between _____ (the “Disclosing Party”) and _____ (“Recipient”). The Disclosing Party and the Receiving Party may be referred to individually as a “Party” and, collectively, as the “Parties”.

In connection with the analysis of a potential business transaction or relationship, the Disclosing Party may provide to Recipient certain information, observations or data of a confidential nature. In order to protect the Disclosing Party’s proprietary interests in such confidential information and to protect customer relationships, the Disclosing Party requires certain assurances from Recipient as set forth herein.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Confidential Information. “Confidential Information” means any and all information, observations or data, in whatever form or medium, concerning the business or affairs of the Disclosing Party or any of its affiliates, including, without limitation, financial information, financing plans, identity of customers and suppliers, marketing techniques, strategies or developments, inventions (whether patentable or not) or any other trade secret or confidential information of whatever nature, together with all written or electronically stored analyses, compilations, memoranda, notes or any other documentation prepared by Recipient or its Advisors (as defined below) that is based on or reflects, in whole or in part, such information. Confidential Information shall not include information: (a) which is or becomes generally known or available to the public or the industry through no violation or breach of this Agreement; (b) which is disclosed to Recipient in good faith by a third party who was not, nor is not, under any obligation of confidence to the Disclosing Party; (c) which Recipient can document was known to it prior to the time of disclosure by the Disclosing Party; or (d) developed by or for Recipient without any use or reliance on the disclosed information.

2. Covenants Regarding Confidential Information. Recipient acknowledges and agrees that the documents and information regarding the Confidential Information are highly confidential and constitute trade secrets. Recipient will treat and maintain the Confidential Information in substantially the same manner as it treats and maintains confidential information in the ordinary course of its business. Recipient shall hold the Confidential Information in the strictest confidence and shall undertake the following additional obligations with respect thereto: (a) to use Confidential Information for the sole purpose of evaluating and consummating a potential business transaction with the Disclosing Party and not for any other use or purpose; (b) to not disclose Confidential Information outside of Recipient except to its attorneys, accountants, financial advisors, actuaries and other advisors (collectively, “Advisors”) solely for the purposes described above and provided that Recipient shall require each such person to keep the Confidential Information confidential to the same extent and on the same terms as Recipient has agreed to herein; and (c) to return to the Disclosing Party or destroy any Confidential Information, including all copies thereof, upon request. The Confidential Information shall remain the Disclosing Party’s sole and exclusive property, and any Confidential Information that is not destroyed (or returned) will remain subject to this Agreement. Such destruction (or return) will be confirmed in writing to the Disclosing Party. Recipient shall not disclose to any person the fact that the Confidential Information has been made available or that discussions between the Parties concerning a potential business transaction are taking place.

3. Notice Preceding Compelled Disclosure. If Recipient or any of its Advisors are requested to disclose any Confidential Information, Recipient will promptly notify the Disclosing Party to permit the Disclosing Party, at its expense, to seek a protective order or to take other appropriate action. Recipient will

also, and will cause its Advisors to, cooperate as reasonably requested by the Disclosing Party in the Disclosing Party's efforts to obtain a protective order or other reasonable assurance that confidential treatment will be accorded such Information. If, in the absence of a protective order, Recipient or any of its Advisors are, in the written opinion of its counsel, compelled as a matter of law to disclose the Confidential Information to a third party, Recipient may disclose to the third party compelling disclosure only the part of such Confidential Information as is required by law to be disclosed (as set forth in such opinion). In such case, prior to such disclosure, Recipient will use reasonable efforts to advise and consult with the Disclosing Party and its counsel as to such disclosure and the nature and wording of such disclosure, and Recipient will use its reasonable efforts to obtain confidential treatment therefor.

4. No Warranty. All Confidential Information is provided by the Disclosing Party "AS IS" and without any warranty, express implied otherwise, regarding its completeness, accuracy or performance.

5. Notice of Breach. Recipient shall immediately notify the Disclosing Party upon discovering any unauthorized use or disclosure of Confidential Information by Recipient or its Advisors, or any other breach of this Agreement by Recipient or its Advisors, and will cooperate with any efforts by the Disclosing Party to assist the Disclosing Party to regain the possession of its Confidential Information and prevent its further unauthorized use.

6. Remedies. If Recipient breaches, or threatens to commit a breach of, this Agreement, the Disclosing Party shall have the following rights and remedies, each of which rights and remedies shall be independent of the other and severally enforceable, and all of which rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Disclosing Party under law or in equity: the right and remedy to have this Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to the Disclosing Party and that money damages alone may not prove an adequate remedy to the Disclosing Party.

7. Severability. It is the desire and intent of the Parties that this Agreement be enforced to the fullest extent permissible under governing law. If any particular provision or portion of this Agreement shall be adjudicated by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall be deemed amended to delete such provision or portion adjudicated to be invalid or unenforceable without in any way affecting the remaining parts of this Agreement, such amendment to apply only with respect to the operation of this Agreement in the particular jurisdiction in which such adjudication is made.

8. Governing Law. The terms and provisions of this Agreement shall be governed by, construed and enforced in accordance with the internal laws of the State of Illinois. Any legal or equitable action or proceeding arising out of, or in connection with, this Agreement shall be commenced and maintained in the appropriate federal or state courts in the State of Illinois, and both Parties hereby irrevocably waive any and all objections to such jurisdiction and venue.

9. Entire Agreement; Amendment. This Agreement embodies the entire agreement between the Parties concerning the subject matter hereof. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing signed by the Parties.

10. Assignment. This Agreement is personal in nature, and neither Party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other Party. All obligations contained in this Agreement shall extend to and be binding upon the Parties and their respective successors, assigns and designees.

IN WITNESS WHEREOF, the Parties hereto have caused this Confidentiality Agreement to be executed as of the date first above written.

Name:
Title:

Name:
Title: