

3. To maintain all of the Confidential Information in confidence and not to disclose any portion of the Confidential Information to any person or entity not authorized hereunder without the prior written consent of the Disclosing Party.
 4. That any dissemination of Confidential Information shall be only in connection with the Authorized Purpose, and shall be only to the employees, agents or affiliates of Receiving Party who have a need to know said Confidential Information in order for the Receiving Party to carry out proper purposes and responsibilities related to the Receiving Party's discussions with the Disclosing Party and the Authorized Purpose and who have been advised of the confidential nature of such information. Further, the Receiving Party shall cause such employees, agents and affiliates who have access to the Confidential Information to comply with the terms and provisions of this Agreement in the same manner as each party is bound hereby, with the Receiving Party remaining responsible for the actions and disclosures of such representatives.
 5. That, upon termination of the discussions between the Parties or upon the Disclosing Party's request, all records, any compositions, articles, documents and other items which contain, disclose and/or embody any Confidential Information (including, without limitation, all copies, reproductions, summaries and notes of the contents thereof), regardless of the person causing the same to be in such form, shall be returned to the Disclosing Party or destroyed by the Receiving Party, and the Receiving Party will certify that the provisions of this paragraph have been complied with.
- C. The obligations pursuant to Section B above shall not apply to information which:
1. Is or becomes a part of the public domain through no act or omission of the Receiving Party;
 2. Can be shown to be already possessed by the Receiving Party as of the date of disclosure;
 3. Shall be made available to the Receiving Party on a nonconfidential basis by a third party having a right to do so;
 4. Is disclosed by order of a court of competent jurisdiction; or
 5. The Disclosing Party authorizes, in writing, for release.
- D. If the Receiving Party or its representatives receives a request to disclose all or any part of the Confidential Information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction or by a governmental body, the Receiving Party agrees to:
1. Immediately notify the Disclosing Party of the existence, terms and circumstances surrounding such a request, so that it may seek an appropriate protective order and/or waive the Receiving Party's compliance with the provisions of this Agreement; and
 2. If disclosure of such Confidential Information is required in the opinion of the Receiving Party's counsel, to the extent possible cooperate with the Disclosing Party in obtaining reliable assurances that confidential treatment will be accorded to the disclosed Confidential Information.
- E. The Parties hereto acknowledge that each Party's Confidential Information is the property of the Disclosing Party and the disclosure of the Confidential Information to the Receiving Party does not convey any right, title or license in the Confidential Information to the Receiving Party. The Receiving-
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ing Party shall not appropriate the Confidential Information to its own use or to the use of any third party.

- F. It is further understood and agreed that 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.
- G. The termination of the discussions or relationship between the Parties shall not relieve either Party or its employees, agents or affiliates of the obligations of nonuse or nondisclosure hereunder or the obligation to return or destroy certain materials.
- H. The Parties agree that money damages would not be sufficient remedy for any breach of this Agreement, and the nonbreaching Party shall be entitled to enforce this Agreement by injunctive and other available relief, including without limitation specific performance.
- I. This Agreement shall be governed by and construed and interpreted in accordance with the substantive laws of the State of *[governing law]*. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. All obligations and rights of the Parties expressed herein shall be in addition to, and not in limitation of, those provided by applicable law. This Agreement may be modified or waived only by a separate writing by the Parties expressly so modifying or waiving such. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument. References to the Parties shall be deemed to include each of their affiliates, if any. Any disputes arising out of this Agreement shall be venued in federal or state district court in the State of *[governing law]*, and each Party hereby consents to the jurisdiction of such court. This Agreement shall be binding upon the Parties hereto and their successors and assigns.

IN WITNESS WHEREOF, the Parties acknowledge their agreement to the foregoing as of the date first set forth above by execution of the Agreement by their respective authorized representatives.

[NAME OF COMPANY]

[NAME OF COMPANY]

By (signature)

By (signature)

Name of Signatory

Name of Signatory

Title

Title

Date

Date