

## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (“Agreement”) is made as of [Date], 202\_, by and between [Company A], a New York corporation (“[Company A]”) and [Company B], a Delaware corporation (“[Company B]”). [Company A] and [Company B], individually, are each a Party, and collectively, they are the Parties.

### RECITALS

**WHEREAS**, the Parties are contemplating sharing Confidential Information regarding [Company B] and [Company A] and proposing a transaction involving [Company A] and [Company B] or its affiliates (the “Transaction”);

**WHEREAS**, to analyze and evaluate the Transaction, the Parties need to exchange certain confidential and proprietary information; and

**WHEREAS**, each Party is willing to make such disclosure only pursuant to the terms of this Agreement.

**NOW THEREFORE**, because of the above Recitals which are incorporated in this Agreement and as an inducement to and in consideration of the disclosure of such confidential, trade secret and proprietary information by one Party to the other, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. For purposes of this Agreement:
  - a. **“Disclosing Party”** shall mean the Party hereto that is disclosing Confidential Information to the other Party; and
  - b. **“Receiving Party”** shall mean the Party hereto that is receiving Confidential Information from the other Party.
2. For purposes of this Agreement, **“Confidential Information”** shall mean any proprietary information that is confidential and is owned or controlled by Disclosing Party. It also includes information of third Parties in possession of Disclosing Party that Disclosing Party is obligated to maintain in confidence. Confidential Information subject to this Agreement may be in intangible form, such as unrecorded knowledge, ideas or conceptions or information communicated orally or by visual observation, or may be embodied in tangible form, such as a document. The term “document” includes written memoranda, drawings, training materials, specifications, notebook entries, photographs, graphic representations, firmware, computer information or software, information communicated by other electronic or magnetic media or models. Confidential Information shall **not** include information that:
  - a. was already known to Receiving Party prior to its disclosure hereunder and was not improperly obtained by Receiving Party from Disclosing Party prior to the effective date of this Agreement;
  - b. is in the public domain or becomes available to the public other than through a negligent act or omission or willful misconduct of the Receiving Party;