

MUTUAL NON-DISCLOSURE AGREEMENT

This **Mutual Non-Disclosure Agreement** (the "Agreement"), entered into as of _____, 2014 (the "Effective Date"), is by between _____ (together hereinafter, "Seller") and _____ (together hereinafter, "Buyers").

WHEREAS, Buyers and their representatives and SELLER and their representatives have requested information from each other in connection with the consideration of a possible transaction or relationship between the parties.

WHEREAS, in the course of consideration of the possible transaction or relationship, Buyers and SELLER may disclose confidential, important, proprietary and/or trade secret information.

THEREFORE, Buyers and SELLER agree to enter into a confidential relationship with respect to the disclosure of such information, subject to the terms of this Agreement.

1. Definitions. For purposes of this Agreement, "Confidential Information" shall include all information or material that has or could have commercial value or other utility in the business or prospective business of either party. Confidential Information also includes all information of which unauthorized disclosure could be detrimental to the interests of Disclosing Party whether or not such information is identified as Confidential Information by either party. By example, Confidential Information includes, but is not limited to, the following: customer lists, contract terms, financial information, business procedures, processes, techniques, methods, ideas, discoveries, inventions, processes, developments, records, product designs, source code, product planning, and trade secrets, all of which is deemed confidential and proprietary.
2. Exclusions. Confidential Information does not include information that the Receiving Party can demonstrate: (a) was in the Receiving Party's possession prior to its being furnished to that party under the terms of this Agreement, provided the source of that information was not known by the Receiving Party to be bound by a confidentiality agreement with or other continual, legal or fiduciary obligation of confidentiality to the Disclosing Party; (b) is now, or hereafter becomes, through no act or failure to act on the part of the Receiving Party, generally known to the public; (c) is rightfully obtained by the Receiving Party from a third party, without breach of any obligation to the Disclosing Party; or (d) is independently developed by the Receiving Party without use of or reference to the Confidential Information.
3. Confidentiality. Both parties and their Representatives shall not disclose any of the Confidential Information in any manner whatsoever, except as provided in Section 4 of this Agreement, and shall hold and maintain the Confidential Information in strictest confidence and take all reasonable steps to preserve the confidential and proprietary nature of the Confidential Information. Buyers and SELLER hereby agree to indemnify each other against any and all losses, damages, claims, expenses, and attorneys' fees incurred or suffered as a result of a breach of this Agreement by the other party. In the event of a breach or threatened breach of any of the provisions of this Agreement, the non-breaching party, in addition to and not in limitation of, any other rights, remedies, or damages available to it at law or in equity, shall be entitled to a

permanent injunction in order to prevent or restrain any such breach by the breaching party or its partners, agents, representatives, servants, employers, employees, and/or any and all persons directly or indirectly acting for or with it.

4. Permitted Disclosures. The Receiving Party may disclose the Disclosing Party's Confidential Information if and to the extent that such disclosure is required by court order, provided that the Receiving Party provides the Disclosing Party with immediate notice of such order and a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure or obtain a protective order.
5. Use. Each party and its Representatives shall use the Confidential Information solely for the purpose of evaluating a possible transaction or relationship with the other party and shall not in any way use the Confidential Information to the detriment of the Disclosing Party. Nothing in this Agreement shall be construed as granting any rights to the Receiving Party, by license or otherwise, express or implied, to any of the Disclosing Party's Confidential Information.
6. Return of Confidential Information. If the Receiving Party does not proceed with the possible transaction with Disclosing Party, the Receiving Party shall notify Disclosing Party of that decision and shall, at that time or at any time upon the request of the Disclosing Party for any reason, return to Disclosing Party any and all records, notes, and other written, printed or other tangible materials in its possession pertaining to the Confidential Information immediately on the written request of the Disclosing Party. The returning of materials shall not relieve the Receiving Party from compliance with other terms and conditions of this Agreement.
7. Survival. Regardless of the termination of any business relationship or negotiations between the parties, the obligations and commitments established by this Agreement will remain in full force and effect for three (3) years after the Effective Date, or such longer time as the parties may agree in writing.
8. Equitable Remedies. The Confidential Information protected by this Agreement is of a special character, such that money damages would not be sufficient to avoid or compensate for any unauthorized use or disclosure of the Confidential Information. The parties agree that injunctive and other equitable relief would be appropriate to prevent any such actual or threatened unauthorized use or disclosure. The remedy stated above may be pursued in addition to any other remedies available at law or in equity, and the Receiving Party agrees to waive any requirement for the securing or posting of any bond in connection with such remedy. In the event of litigation to enforce any provision hereof, the prevailing party will be entitled to recover all costs, including its reasonable attorneys fees and costs, incurred in connection with the litigation.
9. No Partnership Implied. This Agreement is not and will not be construed as any form of a letter of intent or agreement to enter into any type of transaction. This Agreement is to evidence the parties' agreement to maintain the confidentiality of the Confidential Information, and will not constitute any commitment or obligation on the part of either party to enter into any specific contractual arrangement of any nature whatsoever.

- 10. No Representations. The Discloser does not make any representations or warranties as to the accuracy, completeness or fitness for a particular purpose of any information disclosed to the Receiving Party hereunder. Neither the Discloser nor its representatives will have any liability or responsibility to the Receiving Party (except as pursuant to this Agreement) or to any other person or entity resulting from the use of any information so furnished or otherwise provided.

- 11. Governing Law. South Carolina law will govern the interpretation of this Agreement, without reference to rules regarding conflicts of law. Any dispute arising out of this Agreement will be submitted to a state or federal court sitting in Charleston County, South Carolina, which will have the exclusive jurisdiction regarding the dispute and to whose jurisdiction the parties irrevocably submit.

- 12. No Waiver. No waiver of any term, provision or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, will be deemed to be or be construed as a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

- 13. Severability. If any term or provision of this Agreement is found to any extent to be invalid, void, or unenforceable, the remaining provisions of this Agreement will, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

- 14. Integration. This Agreement constitutes the parties' entire Agreement with respect to the subject matter hereof and supersedes any and all prior statements or agreements, both written and oral. This Agreement may not be amended except by a writing signed by the parties. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and both such counterparts shall constitute but one instrument. Facsimile signatures shall also be binding.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

Buyers and/or their representatives

SELLER and/or their representatives

By: _____

_____ Date

_____ Date

