

Multiparty Confidentiality Agreement (Long Form)

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THIS CONFIDENTIALITY AGREEMENT dated as of the [day] day of [month], [year] (the "Commencement Date")

BETWEEN:

[Name of Party One], a [type of entity] under the laws of [jurisdiction], with its head office located in [city and province] ("Party One");

-and-

[Name of Party Two], a [type of entity] under the laws of [jurisdiction], with its head office located in [city and province] ("Party Two");

[-and-

[Name of Party Three], a [type of entity] under the laws of [jurisdiction], with its head office located in [city and province] ("Party Three")]

(each a "party" and collectively the "parties").

Recitals

- (A) Party One carries on the business of [nature of business], Party Two the business of [nature of business] [and [party number(s) and nature of business for each].
- (B) The parties propose to enter into negotiations concerning the Project (as defined below).
- (C) In order to explore and discuss the Purpose (defined below) the parties will be mutually disclosing Confidential Information to and receiving Confidential Information from each other.

These recitals [are/are not] intended to be legally binding.

THE PARTIES AGREE

1 Definitions and Interpretation

(a)

In this agreement (the "Agreement") unless otherwise provided:

"Authorized Persons"

means, in relation to a Recipient (defined below) of Confidential Information (defined below), [the persons listed in Schedule 1 as its Authorized Persons] [and/or] [its directors and employees], [and its consultants, agents, representatives or professional advisers], and any other person who has been previously approved in writing by the Discloser (defined below) in connection with the relevant disclosure;

"Business Day"

includes every day other than a Saturday, Sunday or a day that is a public holiday in [applicable jurisdiction];

"Confidential Information"

means any and all information, (whether in oral, written or electronic form) including technical or other information imparted in confidence or disclosed or made available by each Discloser to a Recipient or otherwise obtained (directly or indirectly) by a Recipient (or to any Authorized Persons of the Recipient) relating to a Discloser's business, finance or technology, know-how, intellectual property, assets, strategy, products and customers, including without limitation information relating to management, financial, marketing, technical and other arrangements or operations of any person, firm, or organization associated with the Discloser, including without limitation the Confidential Information referred to in Schedule 1;

"Discloser"

means, in relation to any Confidential Information, the party which discloses or otherwise provides such Confidential Information directly or indirectly to a Recipient (or to Authorized Persons of such Recipient) at any time (whether before or after that date of this Agreement) for the Purpose or otherwise in connection with or in anticipation of the Project;

"Intellectual Property"

means any and all copyright, rights in inventions, patents, know-how, trade secrets, trademarks and trade names, service marks, design rights, rights in get-up, database rights and rights in data, semiconductor chip topography rights, the right to sue for passing off, domain names and all similar rights and, in each case: (i) whether registered or not; (ii) including any applications to protect or register such rights; (iii) including all renewals and extensions of such rights or applications; (iv) whether vested, contingent or future; and (v) wherever existing;

"Project"

means [*definition of Project*];

"Purpose"

means the evaluation, negotiation, agreement [*and, subject to agreement, performance*] of the Project in a proper, professional and timely manner [*list specifics, such as "including the carrying out of legal and financial due diligence, assessments of the legal and commercial risks and the preparation, negotiation and conclusion of legally-binding agreements"*];

"Recipient"

means, in relation to any Confidential Information, the party which receives (or on whose behalf any Authorized Persons receive) such Confidential Information, directly or indirectly from a Discloser at any time (whether before, on or after the date of this Agreement) for the Purpose or otherwise in connection with or in anticipation of the Project; and

"Use"

means, in relation to any Confidential Information, to receive, store, transmit, access, read, analyze, disclose, share, print, copy, reproduce, extract, modify, adapt, incorporate or otherwise use such Confidential Information in whole or in part in any manner whatsoever.

(b) **Interpretation**

In this Agreement, unless the context otherwise requires:

- i the singular includes the plural and vice versa;
- ii references to subsections, sections and Schedules (if any) are to subsections, sections and Schedules of this Agreement;
- iii references to persons include individuals, trusts, partnerships, unincorporated bodies, government entities, companies and/or corporations (in each case whether or not having separate legal personality);
- iv "including" means including without limitation;
- v section headings do not affect the interpretation of this Agreement;
- vi references to legislation (including any regulations enacted thereunder) include any modification or re-enactment thereof.

2 Provision of Confidential Information

- (a) This Agreement shall be made and take effect from the Commencement Date.
- (b) In consideration of each party agreeing to disclose Confidential Information, and the parties' mutual obligations under this Agreement, each party (as a Recipient) undertakes to the other (as Discloser) to keep the Discloser's Confidential Information secret and treat it as set out in this Agreement.

[OR In consideration of the sum of \$1 and other good and valuable consideration, each party (as a Recipient) undertakes to the other (as Discloser) to keep the Discloser's Confidential Information secret and treat it as set out in this Agreement.]

- (c) The parties acknowledge that the Confidential Information is of significant commercial value and importance to the parties and is being supplied in confidence solely for the Purpose. Although Confidential Information is supplied by each party in good faith, no party makes any representation concerning the accuracy, efficacy, completeness, capabilities or safety of the Confidential Information disclosed by it (or of any materials or media by which it is supplied), except to the extent expressly agreed by it in writing.

3 Use of Confidential Information

- (a) Each Recipient agrees to, and shall ensure that its Authorized Persons shall, keep secret and confidential all Confidential Information received by it directly or indirectly from the Discloser and, unless expressly permitted otherwise under this Agreement, not Use such Confidential Information in any way without the prior written consent of the Discloser (which may be given or withheld in its absolute discretion), except to the extent reasonably necessary for the Purpose. Further, each Discloser agrees that the Recipient may disclose the Confidential Information to Authorized Persons strictly in accordance with para. 4.
- (b) The obligation to keep the Confidential Information confidential in accordance with this Agreement shall survive and subsist (notwithstanding the prior termination or expiry of this Agreement or service of any notice by a party hereunder).

[OR Notwithstanding the termination of this Agreement, the Recipient's obligations under this Agreement shall survive and subsist (notwithstanding the prior termination or expiry of this Agreement or service of any notice by either Party) for a period of [number of years] years from the date of disclosure of the relevant Confidential Information by Discloser.]

4 Authorized Disclosure

- (a) A Recipient may disclose Confidential Information received by it to any of its Authorized Persons, provided that such disclosure is made only to such persons and to such extent as is reasonably necessary for the Purpose, and is made under no less strict obligations of confidentiality than those set out in this Agreement. The Recipient undertakes to ensure that all Authorized Persons to whom it discloses the Confidential Information shall comply with this

Agreement as if they were parties hereto. The Recipient shall be liable for any acts or omissions of any Authorized Persons to whom it has disclosed Confidential Information as if those acts or omissions were performed by the Recipient.

5 Excluded Information

- (a) A Recipient's obligations under paras. 3 and 4 do not apply to, and the restrictions on Use of Confidential Information do not extend to, any information which the relevant Recipient can prove:
- i was independently developed by or on behalf of the Recipient or known to the Recipient, otherwise than under any obligation of confidentiality, prior to its disclosure by the Discloser;
 - ii was before or at the time of disclosure by the Discloser, or subsequently becomes, published, accessible to the public or otherwise in the public domain, other than through any breach by the Recipient or any Authorized Persons of this Agreement or of any other obligation of confidentiality; or
 - iii has been agreed by the parties in writing as being excluded from the Confidential Information.
- (b) A Recipient shall not be in breach of its obligations under paras. 3 and 4 if relevant Confidential Information received by it may be required by [*applicable law/[specify specific law]*], regulation or order of [*a court of competent jurisdiction/[list name of specific court, or courts of a specific provincial or federal jurisdiction]*] to be disclosed and each Recipient will immediately notify the Discloser in writing of any request or requirement for disclosure and of all relevant surrounding circumstances. If the Recipient is unable to so notify the Discloser before such disclosure is required it will notify the Discloser immediately after the disclosure has been made. The Recipient will use all reasonable endeavours to resist any requirement for disclosure (and to assist the Discloser in resisting the requirement for disclosure) and to maintain the confidentiality of the Confidential Information.

6 Breach and Liability

- (a) Each Recipient acknowledges and confirms that, as between the parties, ownership of the Confidential Information, including all Intellectual Property Rights therein, remains vested in and under the control of the Discloser or its licensors, and no licences or rights are granted or assigned (other than to the extent expressly separately agreed in writing by relevant parties).
- (b) Each Recipient further acknowledges that the rights of the Discloser in Confidential Information sought to be protected by this Agreement are valuable and that breach of these terms may cause irreparable damage and agrees that the Discloser may at its discretion apply for and obtain (without limiting the effect of any rights the Discloser may have to obtain damages) injunctive relief, specific performance or other equitable relief without proof of damage.
- (c) Subject to any limitations of liability set out below, each Recipient agrees that it shall be responsible for any breach of any of the terms of this Agreement by it or by any of its Authorized Persons, and the Recipient will indemnify the Discloser from and against any such breach including, without limitation, all loss or damage (including but not limited to legal costs) which may arise from the unauthorized disclosure or use of any of the Confidential Information by the Recipient or by any of its Authorized Persons.
- (d)

[Until this Agreement shall expire or be terminated, all of the obligations set out herein in relation to Confidential Information shall extend to any negotiations or discussions of any kind between the parties in relation to the matters raised in this Agreement.]

- (e) Each party shall be solely responsible and liable for its acts or omissions in breach of this Agreement, and no party shall be jointly liable for any act or omission of any other party in breach of this Agreement. The parties are each independent contractors and shall have several, not joint, liability.

[OR Each party is jointly liable for its acts or omissions in breach of this Agreement.]

(f)

[Subject to the following subsections, in no event shall the aggregate liability of any party to the other (whether in contract, tort (including negligence) or otherwise) and in respect of all claims, losses and damages arising under or in connection with this Agreement, including in connection with any indemnity granted under this Agreement, exceed \$[amount] in total in respect of any and all claims, losses and damages of any kind.]

- (g) The parties agree that the limitations on liability in this Agreement are reasonable given their respective commercial positions and ability to purchase relevant insurance in respect of risks under this Agreement.
- (h) Notwithstanding the above or other limitations and exclusions of liability set out in this Agreement, no party excludes or limits any liability for:
- i personal injury (including sickness and death) to the extent that such injury results from the negligence or willful default of a party or its employees; or
 - ii fraud or fraudulent misrepresentation; or
 - iii any other liability to the extent the same cannot be excluded or limited by law.

7 Non-Solicitation

- (a) Without the other party's prior written consent, no party will, during or for [number of weeks or months] from the expiry or termination of this Agreement, directly or indirectly:
- i approach, directly or indirectly solicit for employment, or seek to enter into an agreement for the provision of services on a self-employed basis with, any person who has, at any time during the previous [number of weeks or months], been an employee of or provider of services to another party and who was at any time engaged on such other party's behalf in the Project or other matters referred to in this Agreement; or
 - ii approach or directly or indirectly solicit any [customer and/or supplier] of the other party with whom it came into contact in the previous [number of weeks or months] in connection with the Project or whose particulars it received as part of the Confidential Information provided to it in connection with this Agreement, other than by any such [customer and/or supplier] with whom the party under this obligation had done business or come into contact prior to the date of this Agreement.
- (b) If a party breaches this paragraph, it will pay to any other party affected by such breach, a referral fee equal to [number of weeks/months] gross payment offered or contracted under the new contract between such party and the person, [customer and/or supplier] concerned. The parties acknowledge that this represents a genuine pre-estimate of the loss likely to be suffered through breach of this paragraph.
- (c) If the periods stated in this paragraph are held by a court or tribunal of competent jurisdiction to be void or unenforceable, but would be valid and enforceable if certain words were deleted or the length of the period reduced, such provisions will apply with such modification as required to make them valid and enforceable.

8 No Announcement

- (a) No party shall make any announcement or public statement concerning the existence of this Agreement or matters referred to herein, or disclose to any person any information relating

to, connected with, or arising from this Agreement or matters referred to herein, without the prior written consent of all other parties.

- (b) If such announcement is required by law or regulation, the party that is subject to such legal or regulatory requirement will use all reasonable endeavours to resist an announcement or disclosure of Confidential Information and the other party will use all reasonable endeavours to assist that party in resisting the requirement for an announcement or disclosure.

9 Termination

- (a) Notwithstanding the undertakings given by each Recipient in para. 4 and any other obligations which expressly or by implication are intended to survive termination or expiry of this Agreement, this Agreement shall expire or terminate on the earliest to occur of the following dates or events:

i

the date specified in a written notice of termination served by one party to all the other parties in accordance with this Agreement, being a date not less than [*number of weeks/months*] following the date of service of such a notice;

ii

[for the avoidance of doubt, the expiry or termination of this Agreement with regard to one party shall also terminate the Agreement with regard to all other parties providing notices are provided to all such parties in accordance with this Agreement;]

iii

immediately upon service of a written notice served by one party to all the others in accordance with this Agreement following a breach by any other party of any material term of this Agreement; and

iv

in all other cases, automatically [*number of year(s)*] year[s] after the Commencement Date referred to at the beginning of this Agreement.

- (b) Upon the expiry or termination of this Agreement (howsoever caused) or upon receipt by a Recipient of an earlier written demand from the Discloser:

i

each Recipient shall return or ensure the return to each Discloser (or destruction as the Discloser may require) of any and all documents and other materials and media containing the Confidential Information received from that Discloser together with all copies; and

ii

if the Discloser should so require, the Recipient shall provide to the relevant Discloser a signed certificate or such other evidence as the Discloser may reasonably require duly signed or executed by an officer of the Recipient confirming that the Recipient has complied with all of its obligations under this Agreement as to return, destruction and deletion of Confidential Information and media;

iii

the Recipient shall delete or ensure the deletion of all electronic copies of Confidential Information; and

iv

the Recipient shall make no further Use of the Confidential Information.

- (c) A Recipient's obligations under this paragraph shall extend to ensuring the compliance with this Agreement of any of its Authorized Persons who have been in receipt of Confidential Information.

- (d) A Recipient's obligations under this paragraph shall not extend to circumstances where such Recipient is required to retain a copy of Confidential Information for audit or regulatory purposes.

10 Miscellaneous

- (a) None of the rights or obligations of any party under this Agreement may be assigned or transferred or subcontracted without the prior written agreement of all the parties.
- (b) This Agreement is binding on and shall apply for the benefit of the parties' personal representatives, successors in title and permitted assigns.
- (c) Each party acknowledges that it has not relied on any express or implied statement, representation or warranty given by or for the other in entering into this Agreement.
- (d) Any variation or waiver of any of the terms of this Agreement shall not be binding unless set out in writing, expressed to amend this Agreement and signed by or on behalf of each party.
- (e) If any provision of this Agreement, or any part of a provision of this Agreement, is found to be illegal, invalid or unenforceable, the remaining provisions, or the remainder of the provision concerned, shall continue in effect.
- (f) Unless otherwise agreed, no delay, act or omission by any party in exercising any right or remedy will be deemed a waiver of that, or any other, right or remedy. Consent by a party, where required, will not prejudice its future right to withhold similar consent.
- (g) Each party shall execute such further documents and perform and do such further acts and things as the other may reasonably request in writing in order to carry the provisions of this Agreement into full effect.
- (h) All notices given in connection with this Agreement shall be in writing and shall be sent to all the other parties to this Agreement at their address set out on the first page of this Agreement or to such other address as the addressee may designate by notice given in accordance with the provisions of this paragraph. Any such notice may be delivered personally, electronically, by first-class posted letter or facsimile transmission and shall be deemed to have been served: if by personal delivery, when delivered; or if electronically, on receipt of a [delivery/read] return mail from the correct address; if mailed, [number of days] Business Days after posting; and if by facsimile transmission, when faxed, subject to the production by the sender's facsimile machine of a successful transmission report.
- (i) The rights and remedies provided for in this Agreement are cumulative with, and not exclusive of, any rights or remedies otherwise provided by law or in equity.
- (j) Neither this Agreement nor any future negotiations shall commit any party to proceed with the Project or any further transaction, which shall be subject to a formal written agreement being agreed and signed by the parties.
- (k) The parties are independent businesses and not partners, principal and agent, or employer and employee, and this Agreement does not establish any joint venture or trust relationship.
- (l) Each party is responsible for its own legal and other costs in relation to this Agreement.
- (m) This Agreement may be signed in any number of separate counterparts. Each, when executed and delivered by a party, will be an original; all counterparts will together constitute one instrument.

11 Entire Agreement

- (a) This Agreement contains the entire agreement between the parties relating to its subject matter and supersedes any prior agreements, representations or understandings between them unless expressly incorporated by reference in this Agreement. Each party acknowledges that it has not relied on, and shall have no remedy in respect of, any representation (innocent or negligent) made but not expressly embodied in this Agreement. Nothing in this paragraph limits or excludes any liability for fraud or fraudulent misrepresentation.

12 Governing Law and Jurisdiction

- (a) This Agreement shall be governed by and interpreted in accordance with laws of the province of [province] and the laws of Canada as applicable.
- (b) All disputes arising out of or in connection with this agreement, or in respect of any legal relationship associated with or derived from this agreement, will be finally resolved by arbitration under the Arbitration Rules of the ADR Institute of Canada, Inc. The Seat of Arbitration will be [City and Province]. The language of the arbitration will be English.

- (c) The parties agree that any breach of this agreement will result in irreparable harm to the non-breaching party. The non-breaching party shall be entitled to injunctive relief to prohibit any further breach of this agreement without the necessity of establishing such irreparable harm. A party may seek preliminary or interlocutory injunctive relief in any court of competent jurisdiction.

IN WITNESS WHEREOF, each Party hereto has caused this Agreement to be duly executed by an officer authorized in that behalf.

Party One

Per: _____

Name: *[Name]*

Title: *[Title]*

Party Two

Per: _____

Name: *[Name]*

Title: *[Title]*

Party Three

Per: _____

Name: *[Name]*

Title: *[Title]*

[Party [Number]

Per: _____

Name: *[Name]*

Title: *[Title]*

Schedule 1

Authorized Persons

(1) Authorized Persons of *[Party A]*: *[insert details]*

(2) Authorized Persons of *[Party B]*: *[insert details]*

[(3) Authorized Persons of *[Party Number]*: *[insert details]*]

Confidential Information

[Insert details of Confidential Information to be disclosed by Parties One, Two and others as appropriate.]