

Disclaimer

Torys LLP (“Torys”) makes sample documents (the “Documents”) available to you for general informational purposes only. They do not constitute legal advice and must not be relied upon as such.

No representations or warranties. Torys makes no representations or warranties of any kind as to the accuracy, completeness, or suitability of the Documents for any particular purpose. The Documents are provided on an “as is” basis, and your use or reliance on them is entirely at your own risk.

No solicitor-client relationship. Accessing, downloading, or using the Documents does not create a solicitor-client relationship between you and Torys. and communications made through or in connection with this website are not protected by solicitor-client privilege.

No substitute for independent legal advice. You should not use or rely on any Document without consulting a lawyer who can advise you with respect to your particular facts and circumstances.

By accessing and/or using the Documents, you acknowledge that you have read, understood, and agreed to this notice.

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement (this “**Agreement**”) is entered into and made effective as of [EFFECTIVE DATE] between [COMPANY NAME] and [COUNTERPARTY NAME].

The above named parties desire to engage in discussions regarding a potential agreement or other transaction between the parties (the “**Purpose**”). In connection with such discussions, it may be necessary for the parties to disclose to each other certain confidential information or materials to enable them to evaluate whether to enter into such agreement or transaction.

In consideration of the foregoing, the parties agree as follows:

1. Confidential Information. For purposes of this Agreement, “**Confidential Information**” means all non-public, proprietary or confidential information or materials disclosed by one party to the other party, in oral, visual, written, electronic or other tangible or intangible form, whether or not marked or designated as “confidential” and all notes, analyses, summaries, reports and other materials that contain, are based on or otherwise reflect, to any degree, any of the foregoing. Confidential Information also includes: (x) the fact that the parties are in discussions regarding the Purpose and that Confidential Information has been disclosed; (y) the existence of this Agreement; and (z) any terms, conditions or arrangements being discussed or negotiated by the parties.
2. Obligations and Restrictions. Each party agrees: (i) to maintain the other party’s Confidential Information in strict confidence; (ii) not to disclose such Confidential Information to any third party; and (iii) not to use such Confidential Information for any purpose except for the Purpose. Each party may disclose the other party’s Confidential Information to its employees and consultants who have a bona fide need to know such Confidential Information for the Purpose, but solely to the extent necessary to pursue the Purpose and for no other purpose; provided, that each such employee and consultant first executes a written agreement (or is otherwise already bound by a written agreement) that contains use and nondisclosure restrictions at least as protective of the other party’s Confidential Information as those set forth in this Agreement.
3. Exceptions. The obligations and restrictions in Section 2 will not apply to any information or materials that:
 - (a) were, at the date of disclosure, or have subsequently become, generally known or available to the public through no act or failure to act by the receiving party;
 - (b) were rightfully known by the receiving party prior to receiving such information or materials from the disclosing party;
 - (c) are rightfully acquired by the receiving party from a third party who has the right to disclose such information or materials without breach of any confidentiality obligation to the disclosing party; or
 - (d) are independently developed by the receiving party without access to any Confidential Information of the disclosing party.
4. Compelled Disclosure. Nothing in this Agreement will be deemed to restrict a party from disclosing the other party’s Confidential Information to the extent required by any order, subpoena, law, statute or regulation; provided, that the party required to make such disclosure uses reasonable

efforts to give the other party reasonable advance notice of such required disclosure in order to enable the other party to prevent or limit such disclosure.

5. Return of Confidential Information. Upon the completion or abandonment of the Purpose, and in any event upon the disclosing party's request, the receiving party will promptly return to the disclosing party all tangible items and embodiments containing or consisting of the disclosing party's Confidential Information and all copies thereof (including electronic copies), and any notes, analyses, compilations, studies, interpretations, memoranda or other documents (regardless of the form thereof) prepared by or on behalf of the receiving party that contain or are based upon the disclosing party's Confidential Information.
6. No Obligations. Each party retains the right, in its sole discretion, to determine whether to disclose any Confidential Information to the other party. Neither party will be required to negotiate nor enter into any other agreements or arrangements with the other party, whether or not related to the Purpose.
7. No License. All Confidential Information remains the sole and exclusive property of the disclosing party. Each party acknowledges and agrees that nothing in this Agreement will be construed as granting any rights to the receiving party, by license or otherwise, in or to any Confidential Information of the disclosing party, or any patent, copyright or other intellectual property or proprietary rights of the disclosing party, except as specified in this Agreement.
8. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED BY THE DISCLOSING PARTY "AS IS".
9. Term. This Agreement will remain in effect for a period of [NUMBER OF YEARS] years from the date of last disclosure of Confidential Information by either party, at which time it will terminate.
10. Equitable Relief. Each party acknowledges that the unauthorized use or disclosure of the disclosing party's Confidential Information may cause the disclosing party to suffer irreparable harm and incur significant damages, the degree of which may be difficult to ascertain. Accordingly, each party agrees that the disclosing party will have the right to seek immediate equitable relief to enjoin any unauthorized use or disclosure of its Confidential Information, in addition to any other rights or remedies that it may have at law or otherwise.
11. Miscellaneous. This letter agreement will be governed and construed in accordance with the laws of the Province of [PROVINCE] and the laws of Canada applicable therein, excluding conflict of laws rules. This Agreement is the complete and exclusive understanding and agreement between the parties regarding the subject matter of this Agreement and supersedes all prior agreements, understandings and communications, oral or written, between the parties regarding the subject matter of this Agreement. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, that provision of this Agreement will be enforced to the maximum extent permissible and the other provisions of this Agreement will remain in full force and effect. Neither party may assign this Agreement, in whole or in part, by operation of law or otherwise, without the other party's prior written consent, and any attempted assignment without such consent will be void. This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Delivery of an executed copy of this Agreement by facsimile or electronic transmission constitutes valid and effective delivery. Each party agrees that electronic signatures, whether digital or encrypted, of the

parties as may be included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have executed this Mutual Non-Disclosure Agreement as of the date first written above.

[COMPANY NAME]

[COUNTERPARTY NAME]

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____