

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement (the “Agreement”) is entered into effective as of the date set forth below, by and between Adler & Company, Inc. (the “Finder”) and _____ (the “Disclosing Party”).

1. Following the execution of this Agreement, the Disclosing Party may provide to the Finder certain proprietary information relating to the business of the Disclosing Party which has been maintained by the Disclosing Party on a confidential basis. Such information is referred to herein as the “Confidential Information” and may include, but is not limited to, financial statements, business plans, projections, information regarding operations, processes and procedures, customer and supplier lists, and other proprietary information which may be commercial, technological or financial in nature. All Confidential Information received hereunder is subject to the terms and limitations of this Agreement.
2. The Finder will use every reasonable effort to keep Confidential Information received hereunder secret and confidential. However, Confidential Information received hereunder may be provided to agents and representatives of entities interested in acquiring the Disclosing Party’s stock, membership interests or assets, in whole or in part, (“Prospective Purchasers”) including the Prospective Purchasers’ attorneys, accountants, technical advisors, potential investors, members, managers, and investment bankers (specifically including Adler & Company, Inc.), provided that the Finder takes reasonable steps to cause such parties to continue to respect the confidentiality of the Confidential Information received hereunder, or, at the Disclosing Party’s request, to have Prospective Purchasers provide the Disclosing Party with a separate non-disclosure agreement.
3. The Confidential Information received hereunder may be used by the Finder or Prospective Purchaser in connection with an evaluation and consideration of a purchase of the stock, membership interests or certain assets of the Disclosing Party (the “Transaction”) for technical and commercial evaluation purposes. The Finder will not disclose any such Confidential Information received hereunder to any third party except as permitted herein or as otherwise agreed to by the Disclosing Party.
4. Notwithstanding anything in this Agreement to the contrary, the Disclosing Party represents and warrants that it may rightfully disclose or make available the Confidential Information to the Finder hereunder without the violation of any contractual, legal, fiduciary or other obligation to any person, and agrees to indemnify and hold harmless the Finder and its representatives against any and all damages, costs and expenses of any nature whatsoever (including but not limited to attorneys’ fees) incurred by the Finder or its representatives in connection with the breach of such representation and warranty.
5. Notwithstanding anything in this Agreement to the contrary, any information which meets any of the following criteria shall not be deemed to be Confidential Information hereunder and may be freely used or disclosed by the Finder, without liability or obligation.

- i. Information or data which, at the time it is disclosed or received hereunder, is already available to the public on an unrestricted basis;
 - ii. Information or data which, after it is disclosed or received hereunder, is published or otherwise becomes available to the public through no fault of the Finder.
 - iii. Information or data which already has been disclosed to, received by, or is in the possession of the Finder.
 - iv. Information or data which is received by the Finder from an independent third party;
 - v. Information or data which is independently developed by the Finder or its representatives; or
 - vi. Information or data which, on the advice of counsel, is required to be disclosed by law or legal process.
6. For purposes of this Agreement, the officers, directors, partners, and employees of the Disclosing Party (collectively, the “Disclosing Party Representatives”) are deemed to be agents of the Disclosing Party and disclosure of Confidential Information by the Disclosing Party Representatives hereunder shall have the same effect as disclosure by the Disclosing Party. Any Confidential Information disclosed hereunder by the Disclosing Party Representatives shall be deemed to be disclosed as Confidential Information hereunder, which is subject to the terms and limitations set forth in this Agreement unless otherwise specified.
7. Upon written request by the Disclosing Party, the Finder shall destroy or return all materials constituting Confidential Information received hereunder by the Finder from or on behalf of the Disclosing Party and any copies of such Confidential Information.
8. The rights and obligations of the parties hereunder shall terminate twelve (12) months after the disclosure of the last item of Confidential Information to Finder hereunder that is subject to this Agreement.
9. The Finder agrees that, unless and until a definitive agreement between the Disclosing Party and a Prospective Purchaser with respect to the Transaction has been executed and delivered, neither the Disclosing Party nor the Finder will be under any legal obligation of any kind whatsoever with respect to the Transaction by virtue of this or any other written or oral expression by it or any of its respective representatives except, in the case of this Agreement, for the matters specifically agreed to herein.
10. This Agreement may be modified or waived only by a separate writing executed by all of the parties hereto.

11. During the course of the Finder's or a Prospective Purchaser's investigation of the Disclosing Party and consideration of the Transaction, the Finder or Prospective Purchaser may, at their option, elect to disclose to the Disclosing Party or the Disclosing Party Representatives certain confidential or proprietary information related to the Finder or the Prospective Purchaser, such as a business plan, information regarding other transactions, etc. Any such information shall be subject to all of the same restrictions, limitations, and provisions contained herein regarding Confidential Information of the Disclosing Party hereunder.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of _____, 200__.

DISCLOSING PARTY:

By: _____
Name: _____
Its: _____

FINDER:

By: _____
Name: _____
Its: _____