

## MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Mutual Confidentiality and Nondisclosure Agreement (the “**Agreement**”) is made and entered into effective as of **February 14<sup>th</sup>, 2017** by and between Fenix Group Consulting, LLC (Fenix Group), a Arizona limited liability company, located a(n) 8217 E. Rose Ln. Scottsdale, AZ 85250, its subsidiaries and affiliated companies, \_\_\_\_\_ (“**Company**”) located at \_\_\_\_\_.

### Recitals:

1. The Fenix Group and Company desire to enter into confidential discussions and negotiations with respect to potential contract and/or business relationships or opportunities ( the “**Mutual Business Purpose**”).
2. In order to pursue the Mutual Business Purpose, The Fenix Group and Company recognize that there is a need for each party to disclose to the other party certain of its confidential information to be used only for the mutual business purpose and a need for the party receiving such information (the “**Receiving Party**”) from unauthorized use and disclosure.

### Agreement:

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Definitions.** As used herein, the following terms shall have the following meanings:
  - a. “**Confidential Information**” shall mean any information, technical data or know-how (or compilation of the same) of the Disclosing Party that is not generally known, designated or treated as confidential, or proprietary to the Disclosing Party that is not generally known, designated or including, without limitation, financial data, business and marketing plans and strategies, business operations and systems, intellectual property, databases, information concerning sales representatives, employees, customers and vendors, or technology, such as systems, discoveries, inventions, improvements, research, development, know how, designs, product specifications, software, object code, source code, flow charts, schematics, blue prints, prototypes, devices, hardware, technical documentation and manufacturing processes. All Confidential Information irrespective of its source.
2. **The Receiving Party’s Obligations.** The Receiving Party represents, warrants and covenants to the Disclosing Party, each of the following:
  - a. The Receiving Party shall hold any and all Confidential Information in the strictest confidence and will not disclose, disseminate or publish any Confidential Information to any person or entity whatsoever and will not use any Confidential Information other than in the course of and to further the Mutual Business Purpose, absent the prior express written consent of the Disclosing Party. The Receiving Party shall take all steps necessary to ensure that all Confidential Information is held in the strictest confidence and that the terms and conditions of this Agreement are strictly adhered to by the Receiving Party and its officers, employees and agents. The Receiving Party may provide access to the Confidential Information to its authorized officers, employees and agents on, and only on, a need to know basis that is directly and solely for the authorized purposes under this

Agreement. The Receiving Party shall inform such persons authorized officers, employees and agents of this Agreement and shall ensure that such persons agree to be bound hereunder. The Receiving Party shall be responsible for any breach of the Agreement by its officers, employees and agents.

- b. The standard of care to be utilized by the Receiving Party in the performances of its representations, warranties, covenants and obligations set forth in this Agreement relative to its treatment of the Confidential Information shall be the standard of care utilized by the Receiving Party in treating its own proprietary, secret and confidential information, assuming such information is not subject to any right waiver, but in no even less than the highest standard of care utilized by prudent persons seeking to protect the value of their confidential, proprietary and secret information.
3. **Exclusions.** The Receiving Party shall have no liability to the Disclosing Party under this Agreement with respect to the disclosure and/or use of any Confidential Information that it can establish:
  - a. has become generally known or available to the public without breach of this Agreement by the Receiving Party;
  - b. was known or obtained by proper means by the Receiving Party prior to receiving such information from the Disclosing Party;
  - c. has become known by or generally available to the Receiving Party from a source other than the Disclosing Party, without any breach of any obligation of confidentiality owed to the Disclosing Party, subsequent to the disclosure of such information to it by the Disclosing Party;
  - d. has been independently developed by the Receiving Party without use of or reference to the Confidential Information by persons who had no access to the Confidential Information; or
  - e. has been approved for release or use by written authorization of the Disclosing Party.
4. **Required Disclosures.** The Receiving Party may disclose the Confidential Information if and to the extent that such disclosure is required by applicable law or regulatory agency, provided that the Receiving Party uses reasonable efforts to limit the disclosure by means of a protective order or a request for confidential treatment and provides the Disclosing Party a reasonable opportunity to review the disclosure before it is made and to interpose its own objection to the disclosure.
5. **Return of Confidential Information.** Upon the disclosing party's request, the Receiving Party will promptly return to the Disclosing Party all tangible forms of the Confidential Information, will destroy all notes, abstracts and other documents or any Medium that contain Confidential Information.
6. **No Representations as to Accuracy.** The Disclosing Party warrants that it has the right to make the disclosure of Confidential Information contemplated by this Agreement. In providing the Confidential Information under this Agreement, the Disclosing Party makes no representation, either express or implied, as to its adequacy, sufficiency or freedom from defect of any kind.
7. **Ownership of Confidential Information and Developments.** The Receiving Party acknowledges that the Disclosing Party is the sole owner of the Confidential Information and that this Agreement does not grant the Receiving Party a right or license to use the intellectual property of the Disclosing Party. All developments, designs, improvements and inventions made or developed by the Receiving Party or its Agents that are based on or incorporate the Confidential Information shall be the sole property of the Disclosing Party. The Disclosing Party

retains all rights and remedies with respect to the Confidential Information afforded it under the patent and other laws of the United States and the States, both during and after the term of this Agreement, including, without limitation, any trade secret or other laws designed to protect proprietary or Confidential Information.

8. **Term of Agreement; Survival.** This Agreement shall terminate five (5) years from the last date on which a party discloses Confidential Information to another party. Each party acknowledges that the return or destruction of the Confidential Information shall not terminate the obligations of the parties hereunder.
9. **Public Announcement.** All public announcements or other statements to third parties related to the discussions referred to in the recitals of this Agreement by either of the parties shall be subject to prior approval by the other party, except for such statements as may be necessary, in the opinion of their respective counsel, to comply with the requirements of any law, governmental order or regulation.
10. **Rights and Remedies.** The Receiving Party shall notify the Disclosing Party in writing immediately upon discovery by the Receiving Party of any unauthorized use or disclosure of Confidential Information, and will cooperate with the Disclosing Party in every reasonable way to regain possession of the Confidential Information and prevent its further unauthorized use. The Receiving Party acknowledges that the unauthorized use or disclosure of Confidential Information would cause irreparable harm to the Disclosing Party. Accordingly, the Receiving Party agrees that the Disclosing Party will have the right to obtain an immediate injunction against any breach or threatened breach of this Agreement, without the need to post any bond or other security, as well as the right to pursue any and all other rights and remedies available at law or in equity for such a breach.
11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the United States of America and the State of Arizona without regard to choice of law provisions that would cause the application of the law of another jurisdiction.
12. **Entire Agreement, Amendments, Prior Discussions.** This Agreement constitutes the final, exclusive and complete statement of the parties agreement respecting the subject matter addressed herein and supersedes all prior agreements between the parties with respect to the subject matter hereof. This Agreement may not subsequently be amended or modified except by a writing signed by the parties hereto. The Receiving Party hereby confirms that any information disclosed to it by the Disclosing Party, or any discussions held between the parties, prior to the date of this Agreement and relating to the Business Purpose shall be subject to the terms of this Agreement.
13. **Assignment; Successors.** Neither party may assign their rights under this Agreement. This Agreement shall be binding on, and shall inure to the benefit of, the parties to it and their respective legal representatives, successors and permitted assigns.
14. **Waiver.** No waiver of any obligation under this Agreement shall be effective unless in writing, and shall then be effective only for the specific instance for which such waiver was given and no other.

15. **Severability.** If one or more of the provisions contained in this Agreement are found to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not be affected and invalid provision will be amended to achieve as nearly as possible the same economic effect as the original provision.
  
16. **Attorneys' Fees to Prevailing Party.** In the event any suit or other action is commenced to construe or enforce any provision of this Agreement, the prevailing party, in addition to all other amounts such party shall be entitled to receive from the other party, shall be paid by the other party a reasonable sum for attorneys' fees and costs.
  
17. **Headings.** The section and subsection headings have been used in this Agreement as a matter of convenience only and shall not be used in the interpretation of any provision of this Agreement.
  
18. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Mutual Confidentiality and Nondisclosure Agreement as of the date first set forth above.

**Fenix Group Consulting**

[COMPANY}

By: \_\_\_\_\_

By: \_\_\_\_\_

(Signature)

(Signature)

\_\_\_\_\_

\_\_\_\_\_

(Print or Type Name)

(Print or Type Name)

\_\_\_\_\_

\_\_\_\_\_

(Title)

(Title)

\_\_\_\_\_

\_\_\_\_\_

(Date)

(Date)