

## Confidentiality and Non-Disclosure Agreement

This Confidentiality and Non-Disclosure Agreement (“**Agreement**”) entered into as of \_\_\_\_\_, 2023 sets forth mutually agreeable provisions that will govern the conduct of Crimson Engineered Solutions, L.L.C. dba Certrec Corporation (“**Certrec**”), and \_\_\_\_\_, a \_\_\_\_\_ (“\_\_\_\_\_”), in certain respects as Certrec and \_\_\_\_\_ explore a potential mutually beneficial transaction (the “**Proposed Transaction**”) pursuant to which Certrec and \_\_\_\_\_ would share confidential information.

In connection with discussions among Certrec and \_\_\_\_\_ (each individually, a “**Party**,” and collectively, the “**Parties**”) concerning the Proposed Transaction, the Parties may provide certain written and oral information concerning their business operations (the “**Businesses**”), which may include “**Evaluation Material**.” For purposes of this Agreement, “**Evaluation Material**” is oral, written or electronic confidential, proprietary, or non-public information that is provided by or on behalf of one Party to the other Party, before, on or after the date of this Agreement, pursuant to this Agreement, but excludes all such information described in Section 3 below. Evaluation Material shall include, without limitation, all information, knowledge or data containing or relating to the disclosing Party's financial condition, profits, losses, sales, managerial methods, customers, suppliers, research, products, services, marketing, facilities, ideas, discoveries, processes, developments, know-how, purchasing methods, managerial methods, sales forecasts, strategic plans, advertising, leases, ownership, stockholders, securities, and any other information, knowledge or data however recorded concerning or relating to the business affairs of the disclosing Party which is not generally known by the public at large and further includes, without limitation, all reports, documents, presentations, analyses, notes, copies, compilations, studies, interpretations, and information regardless of the form in which it is communicated or maintained or the person who prepared such material, that are based on, contain, or otherwise reflect Evaluation Material provided by or on behalf of one Party to the other Party.

In consideration of each Party furnishing the other Party with Evaluation Material, the Parties agree as follows:

**1. Confidentiality.** Each Party acknowledges the confidential or proprietary nature of the Evaluation Material and agrees to maintain the Evaluation Material in confidence in the same manner as it maintains its own confidential or proprietary information and to use the Evaluation Material solely for the purpose of evaluating the Proposed Transaction. Unless and until the Proposed Transaction has been completed pursuant to a written definitive agreement (the “**Definitive Agreement**”), and thereafter to the extent provided by the Definitive Agreement, the Evaluation Material will be maintained and used by the receiving Party as provided in the preceding sentence, except that the Evaluation Material or portions thereof may be disclosed to those directors, officers, shareholders, employees, clients, agents, and attorneys of each Party (collectively “**Representatives**”) who are actively and directly participating in the evaluation of the Potential Transaction or who otherwise need to know the Evaluation Material for the purpose of completing the Potential Transaction and who are bound by obligations of confidentiality that are substantially similar to those in this Agreement. Any breach by any of a Party's Representatives of the terms of this Agreement shall be deemed a breach by such Party, and such Party shall be fully responsible therefor. A receiving Party and its Representatives shall in no event utilize any Evaluation Material to the technical or economic disadvantage and/or detriment of the disclosing Party.

**2. Mandatory Disclosure.** If any Party or its Representatives are requested or required as a result of a judicial or regulatory proceeding (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process, or otherwise) to disclose any Evaluation Material, such Party shall, to the extent permitted by law, provide the other with prompt notice

thereof so that the other Party may seek, at its sole expense, an appropriate protective order. Each Party shall cooperate reasonably with the other Party in its efforts with respect thereto. If, in the absence of a protective order, a Party or its Representatives are, in the opinion of its counsel, required to disclose any portion of the Evaluation Material, such Party may disclose to the person compelling disclosure only the portion of the Evaluation Material that it reasonably believes is required by law to be disclosed (in which case, prior to such disclosure, the non-disclosing Party will be, to the extent permitted by law, advised and consulted as to such disclosure and the nature and wording of such disclosure) and each Party will use its reasonable effort to obtain confidential treatment therefore.

**3. Information That is Not Evaluation Material.** The term “Evaluation Material” does not include any information that: (i) the receiving Party can show that it knew or had in its possession prior to receipt from the other Party, provided the receiving Party can also show that such information became known or was received from a source other than the other Party and the source of the information was not known by the receiving Party to have violated an obligation to keep the information confidential; (ii) is or becomes public knowledge or in the public domain (through no failure of the receiving Party to perform its obligations hereunder); (iii) is in the future received from a third party not known by the receiving Party to have violated an obligation to keep it confidential; (iv) is now or in the future approved in writing by the other Party for release, publication, dissemination, or use; (v) is independently developed by the receiving Party without use of or reference to the Evaluation Material; or (vi) is required by applicable law to be disclosed to a governmental authority or under order of a court of competent jurisdiction, subject, however, to Section 2 of this Agreement.

**4. Return of Evaluation Material.** If the Proposed Transaction is not consummated, or if a Party is no longer actively pursuing in good faith the Proposed Transaction, each Party will promptly (i) notify the other Party; (ii) return to the other Party or destroy or delete, as applicable, all copies (whether in hard copy or electronic format) of any written or electronic Evaluation Material in its possession or in the possession of its Representatives; and (iii) certify in writing to the other Party that all Evaluation Material has been so returned, destroyed or deleted, as the case may be. Upon the request of a Party, the other Party and its Representatives will return or destroy or delete all copies of any written Evaluation Materials in accordance with (ii) and (iii) of the preceding sentence (provided the portion thereof contained in analyses, notes, compilations, interpretations and the like prepared by the receiving Party or its Representatives shall be destroyed or deleted and not returned). For purposes hereof, destruction or deletion of Evaluation Material in electronic format shall mean that all Representatives of the other Party having access to the same shall have deleted the same from their personal computer hard drives. Notwithstanding the foregoing, the receiving Party may retain, to the extent required by applicable law or the receiving Party’s customary record-keeping policies, one copy of the disclosing Party’s Evaluation Material solely for archival purposes; and further, electronic archival copies of Evaluation Material need only be destroyed in accordance with the receiving Party’s standard destruction policy for such archival copies. Any Evaluation Material so retained will continue to be held confidential pursuant to the terms of this Agreement for so long as such Evaluation Material is so retained.

**5. Non Disclosure.** Without the prior written consent of the other Party, neither Party shall, and each shall direct its Representatives not to, disclose to any person (i) the fact that Evaluation Material has been made available, or that a Party has inspected any part of the written Evaluation Material; (ii) the fact that discussions or negotiations are taking place concerning the Proposed Transaction between the Parties; or (iii) any of the terms, conditions, or other facts with respect to the Proposed Transaction (including the status thereof, except in each case as required by law or except as otherwise provided in Section 2 of this Agreement, and then, to the extent permitted by law, only with prompt prior written notice to the other Party).

**6. Due Diligence Procedure.** If requested and mutually agreed to by the Parties, each Party will arrange for appropriate contacts for due diligence purposes. Unless otherwise agreed to by a Party, all (i) communications regarding the Proposed Transaction; (ii) requests for additional information; (iii) requests for facility tours or management meetings; and (iv) discussions or questions regarding procedures, will be submitted or directed to the designated representatives of each Party.

The designated representative of Certrec is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

The designated representative of \_\_\_\_\_ is:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Email: \_\_\_\_\_

**7. Remedy on Breach of Agreement.** Each Party agrees that money damages would not be a sufficient remedy for any breach of this Agreement and the non-breaching Party shall be entitled to specific performance and injunctive and other equitable relief as a remedy for any such breach. Each Party waives, and shall use its commercially reasonable efforts to cause its Representatives to waive, any requirement for the securing or posting of any bond in connection with such remedy. Specific performance shall not be deemed to be the exclusive remedy for any breach of any provision of this Agreement but shall be in addition to all other remedies provided by law or equity. In the event either Party takes legal proceedings to protect its rights under this Agreement, it will be entitled to payment of all costs and expenses including, without limitation, legal fees and disbursements incurred by it in such proceedings in the event that it prevails against the breaching Party. Each Party agrees to defend, indemnify and hold the other Party harmless from and against any loss, cost, liability, damage, or expense, arising, directly or indirectly, from any breach by such Party and/or its Representatives of any of its and/or their obligations under this Agreement.

**8. Non-Binding.** This Agreement does not constitute an agreement or obligation of any kind to negotiate or enter into any transaction, or affiliation or any other relationship. The Parties agree that any transaction or affiliation arrangement may occur only after a negotiation of mutually acceptable agreements and approval of those agreements by the respective governing authorities of the Parties, as well as receipt of any other necessary corporate or regulatory approvals.

**9. Execution in Counterparts.** This Agreement may be signed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same Agreement. For purposes hereof, facsimile and electronically scanned copies hereof and facsimile and electronically scanned signatures hereof shall be authorized and deemed effective.

**10. Successors and Assigns.** This Agreement may not be assigned without mutual written consent.

## **11. No Representations, Etc.**

(a) Each of the Parties understands and acknowledges that neither the other Party nor its Representatives make any representation or warranty, express or implied, as to the accuracy or completeness of the Evaluation Material provided by them. Each of the Parties agrees that neither of the Parties nor their respective Representatives, nor their respective officers, directors, stockholders, owners, affiliates, agents or representatives shall have any liability to the other Party, the other Party's Affiliates or to any of the other Party's Representatives relating to or resulting from the use of the Evaluation Material by them. Only those representations or warranties that may be made in the Definitive Agreement for a Proposed Transaction, when, as and if executed, and subject to such limitations and restrictions as may be specified therein, will have any legal effect, and each of the Parties agrees that if it determines to engage in a transaction such determination will be based solely on the terms of the Definitive Agreement.

(b) Each of the Parties also hereby agrees that no contract or agreement providing for a transaction will be deemed to exist between the Parties unless and until the Definitive Agreement has been signed, executed and delivered by each of the Parties. Moreover, unless and until such the Definitive Agreement is entered into, executed and delivered, none of the Parties or their respective Affiliates will be under any legal obligation of any kind whatsoever with respect to any transaction except for the matters specifically agreed to in this Agreement or any subsequent written agreement executed by the Parties.

(c) Each of the Parties acknowledges and agrees that no license of any patent, trademark, trade secret or any other intellectual property right of the other Party is either granted or implied by this Agreement or any disclosure of Evaluation Material hereunder, including, but not limited to, any license to make, use or sell any product embodying any Evaluation Material.

**12. Non-Use.** In the event that no Proposed Transaction between the Parties shall be consummated, then each of the Parties shall not, and each of the Parties shall cause its Representatives to agree not to, use any of the Evaluation Material in furtherance of its or their businesses or the business of anyone else, whether or not in competition with it or for any purpose whatsoever.

**13. No Waiver.** No failure or delay by either Party or its agents or representatives in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. To the extent that any Evaluation Material includes materials subject to the attorney-client privilege, the disclosing Party is not waiving, and shall not be deemed to have waived or diminished, its attorney work-product protections, attorney-client privileges, or similar protections and privileges as a result of disclosing any Evaluation Material (including Evaluation Material related to pending or threatened litigation) to a receiving Party or any of its Representatives

**14. Entire Agreement.** This Agreement embodies the entire understanding and agreement between the Parties with respect to the Evaluation Material, the Proposed Transaction, and the other matters which are the subject hereof, and supersedes any prior understandings and agreements, written or oral, relating thereto.

**15. Miscellaneous.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law. In the event any provision of this Agreement is held to be overly broad as written, then such provision will be deemed amended to narrow its application

to the extent necessary to make the provision enforceable in accordance with applicable law and will be enforced as so amended. This Agreement may be modified only by a separate writing signed by both Parties hereto, expressly so modifying this Agreement. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right.

**16. Termination.** The obligations of the Parties under this Agreement shall terminate on the fifth anniversary of the date hereof; provided that with respect to Evaluation Material that constitutes a trade secret under the laws of any jurisdiction, such rights and obligations will survive such expiration until, if ever, such Evaluation Material loses its trade secret protection other than due to an act or omission of a receiving Party or its Representatives.

**17. Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws (as opposed to conflict of laws provisions) of the State of Texas. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Agreement, in the courts of the State of Texas or the United States of America located in Fort Worth, Tarrant County, Texas, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

**18. Notice.** All notices and other communications required or permitted under this Agreement must be in writing and will be duly given (a) when delivered in person to the contact person for the receiving Party; (b) upon email transmission to the contact person for the receiving Party at the email address designated for such contact person; or (c) three (3) business days after being mailed by either registered or certified U.S. mail, return receipt requested, postage prepaid, to the contact person for the receiving Party at the mailing address designated in the opening paragraph of this Agreement for each such contact person. Each Party may designate an alternative contact person or contact information for notice at any time by advanced, written notification to the other Party delivered in accordance with this Section 18.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

\_\_\_\_\_:

\_\_\_\_\_,

a \_\_\_\_\_

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Certrec:**

Crimson Engineered Solutions, L.L.C.,  
a Texas limited liability company

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_