

State of **[INSERT STATE]**

## NON-DISCLOSURE AGREEMENT

### **Background:**

This Non-Disclosure Agreement (the "Agreement") is created and effective as of the **[INSERT DATE]** (the "Commencement Date").

The Agreement is between:

- a. **[INSERT PARTY 1 DETAILS]** ("Party 1") ("Discloser")
- b. **[INSERT PARTY 2 DETAILS]** ("Party 2") ("Receiver")

Collectively the "Parties".

The Parties agree to the following terms with the intention to be legally bound:

### **Background:**

1. Party 2 intends to receive Confidential Information from Party 1.
2. The Parties have agreed to comply with this Agreement in connection with the disclosure and use of Confidential Information.
3. The purpose of this Agreement relates to **[INSERT BUSINESS PROJECT OR IDEA]** and the Parties intention to keep this information confidential (the "Transaction").

### **Confidential Information:**

4. **[“Confidential Information” relates to all Confidential Information relating to the Transaction which the Discloser or its representatives directly or [indirectly] disclose or makes available to the Recipient or its Representatives after the date of this Agreement. This includes:**
  - a. **The fact that discussions and negotiations are taking place concerning the Transaction and the status of those discussions and negotiations;**
  - b. **[the [existence and] terms of this Agreement;]**
  - c. **All confidential or proprietary information relating to:**
    - i. **The business, assets, affairs, customers, clients, suppliers [, OR or] plans [, intentions or market opportunities] of the Discloser; and**
    - ii. **The operations, processes, product information, know-how, technical information, designs, trade secrets or software of the Discloser;**
  - d. **any information, findings, data or analysis derived from Confidential Information;**  
**[and]**
  - e. **any other information that is identified as being confidential or proprietary in nature**  
**[; and OR .]**
  - f. **[INSERT OTHER.]]**

**OR [“Confidential Information”, relates only to information marked ‘Confidential’.**  
**Confidential Information shall be identified or marked by as such by a stamp or marking on each document exchanged designating the information as confidential or proprietary.]**

**OR [“Confidential Information” relates only to specific information. The term ‘Confidential Information’ as used in this Agreement shall relate to any data or information that is competitively sensitive material and not generally known to the public, including, but not**

limited to, information relating to any of the following, which the Discloser considers confidential:

- a. ['Accounting Information' which includes all books, tax returns, financial information, financial forecasts, pricing lists, purchasing lists and memos, pricing forecasts, purchase order information, supplier costs and discounts, or related financial or purchasing information.]
- b. ['Business Operations' which includes all processes, proprietary information or data, ideas or the like, either in existence or contemplated related to the Disclosing parties daily and long-term plans regarding the conducting of the Disclosing's party business.]
- c. ['Computer Technology' this includes all computer hardware, software or other tangible and intangible equipment or code either in existence or development.]
- d. ['Customer Information' includes the names of entities or individuals, including their affiliates and representatives, that the Disclosing party provides and sells its services or goods to, as well as any associated information, including but not limited to, leads, contact lists, sales plans, and notes, shared and learned sales information such as pricing sheets, projections or plans, agreements, or such other data.]
- e. ['Intellectual Property' this includes patents, trademarks, service marks, logos, trade names, internet or website domain names, rights in designs and schematics, copyrights (including rights in computer software), moral rights, database rights, in each case whether registered or unregistered and including applications for registration, in all rights or forms anywhere in the world.]
- f. ['Marketing and Sales Information' this includes all customer leads, sales targets, sales markets, advertising materials, sales territories, sales goals and projections, sales and marketing processes or practices, training manuals or other documentation and materials related to the sales, marketing and promotional activities of the Disclosing party and their products or services.]
- g. ['Procedures and Specifications' this shall includes all procedures and other specifications, criteria, standards, methods, instructions, plans or other directions prescribed by the Disclosing party for the manufacture, preparation, packaging and labelling, and sale of their products or services.]
- h. ['Product Information' which includes the Disclosing party's products which are being contemplated for sale, manufactured, marketed, listed, or sold, including any fixes, revisions, upgrades, or versions, of which consists of all data, software and documentation related thereto.]
- i. ['Proprietary Rights' which includes any and all rights, whether registered or unregistered, in and with respect to patents, copyrights, trade names, domain names, logos, trademarks, service marks, confidential information, know-how, trade secrets, moral rights, contract or licensing rights, whether protected under contract or otherwise under law, and other similar rights or interests in intellectual property.]
- j. ['Service Information' which means the services provided by the Disclosing party, including the method, details, means, skills and training, which consists of all data, software and documentation related thereto.]
- k. ['Software Information' which means the proprietary computer programs of the Disclosing party, including all fixes, upgrades, new versions, new enhancements, modifications, edits, conversions, replacements, or the like, in machine readable form or documentation and materials, and all copies and translations of such

computer programs, documentation and materials, regardless of the form or media of expression or storage.]

i. [INSERT OTHER].

#### **Excluded Confidential Information:**

5. The following information shall not be considered as Confidential Information for the purpose of this Agreement if it is disclosed by the Receiving party with the prior written permission and approval of the Discloser:
  - a. If the information is or was received by the Receiving party from a third party to the best knowledge of the Receiving party or their representatives, is or was under a confidentiality obligation to the Disclosing party with regard to that information;
  - b. If the information is or becomes publicly known and available, except if due to a prior unauthorized disclosure by the Receiving party or any of their representatives;
  - c. If the information is independently developed by the Receiving party prior to the disclosure by the Disclosing party and without the use and benefit of any of the Confidential Information; or
  - d. If the Receiving party or any of their representatives is legally compelled by applicable law, court, governmental agency, regulatory authority, subpoena, or a discovery request in pending litigation but only to the extent that its lawful. The Receiving party or their Representatives must give the Discloser prompt written notice in order to give the Discloser adequate time to request a protective order other remedy to limit the disclosure. In the absence of such an order, the Receiver may disclose the Confidential Information that it is legally obligated to disclose.

#### **Obligations:**

6. The Receiving party and their representatives agree to:
  - a. keep the Confidential Information secret and confidential;
  - b. not use or exploit the Confidential Information in any way except for the purpose of the Transaction;
  - c. not directly or indirectly disclose or make available any Confidential Information in whole or in part to any person, except as expressly permitted by, and in accordance with this agreement;
  - d. [not copy, reduce to writing or otherwise record the Confidential Information except as strictly necessary for the Purpose. Any such copies, reductions to writing and records shall be the property of the Discloser;]
  - e. [not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means outside its usual place of business;]
  - f. [apply the same security measures and degree of care to the Confidential Information as the Recipient applies to its own confidential information, which the Recipient warrants as providing adequate protection from unauthorized disclosure, copying or use;]
  - g. [keep a written record of:
    - i. any document or Confidential Information received from the Discloser in intangible form; and
    - ii. any copies made of the Confidential Information;]

- h. [ensure that any document or other records containing Confidential Information shall be kept at its premises at [INSERT PREMISES] and shall not remove or allow those documents and records to be moved from those premises [; and OR.]]
  - i. [[INCLUDE ANY OTHER SPECIFIC REQUIREMENTS.]]
7. The Receiver shall establish and maintain adequate security measures (including any reasonable security measures proposed by the Discloser from time to time) to safeguard the Confidential Information from unauthorized access or use.
  8. The Receiver shall take reasonable steps to ensure that its Representatives adhere to the terms of this Agreement.
  9. The Receiving party is responsible for any breach of this Agreement by any of its Representatives.
  10. The obligation not to disclose the Confidential Information shall [survive termination of this Agreement. At no point during or following termination shall the Receiver disclose the Confidential Information, except to the extent that such Confidential Information is excluded from the confidentiality obligations under this Agreement.] OR [ remain in effect for the duration of this Agreement and [INSERT MONTHS] following the Confidential Information ceasing to be a trade secret, except to the extent that such Confidential Information is excluded from the obligations of confidentiality under this Agreement.]

**Restrictive Covenants:**

11. In order to protect the Confidential Information, the Receiving party warrants to the Discloser that they shall not:
  - a. For [INSERT TIME PERIOD] months after termination solicit or endeavor to entice away from the Discloser any business, custom, employee or independent contractor of the Discloser;
  - b. For [INSERT TIME PERIOD] months after Termination, offer to employ or engage or otherwise endeavor to entice away from the Discloser any business activity that is in competition with the Discloser;
  - c. [For [INSERT TIME PERIOD] months after Termination engage in any business activity which would be in competition with the Discloser, or work for any company which competes with the Discloser.]

**Disclaimer:**

12. The Discloser makes no representation or warranty, express or implied, with regards to the accuracy or completeness of any of its Confidential Information. Subject to the matters set forth within this Agreement, neither party is under any obligation in respect of this Transaction.
13. Either party, at its sole discretion, may:
  - a. Reject any proposals made by the other party or its Representatives with respect to the Transaction;
  - b. Terminate discussions and negotiations with the other party or its Representatives at any time and for any reason or no reason at all;
  - c. Change the procedures relating to the consideration of the Transaction at any time without prior notice to the other party.

**Notices:**

14. A notice given to a party under or in connection with this Agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post, recorded delivery or special delivery in each case to that party's address.
15. Notices issued to the Discloser shall be made to:
  - a. **[INSERT CONTACT DETAILS]**
16. Notices provided to the Receiver shall be made to:
  - a. **[INSERT CONTACT DETAILS]**

**No Variation and Waiver:**

17. No variation of this Agreement shall be effective unless it is in writing and signed by or on behalf of each party for the time being. A waiver of any right or remedy under this Agreement or by law is only effective if it is given in writing and is signed by the party waiving such right or remedy. Any such waiver shall apply only to the circumstances for which it is given and shall not be deemed a waiver of any subsequent breach or default.

**Survival:**

18. This Agreement (other than obligations that have already been fully performed) remains in full force after the Transaction.
19. If any provision or part-provision of this agreement is or becomes invalid, illegal, or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 19 shall not affect the validity and enforceability of the rest of this Agreement.

**Entire Agreement:**

20. This Agreement (together with the documents referred to in it) constitutes the entire Agreement between the parties and supersedes and extinguishes all previous discussions, correspondence, negotiations, drafts, agreements, promises, assurances, warranties, representations, arrangements, and understandings between them, whether written or oral, relating to its subject matter.
21. Each party acknowledges that in entering into this Agreement (and any documents referred to in it), he does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or those documents. Nothing in this clause 56 shall limit or exclude any liability for fraud.

**Assignment and Other Dealings:**

22. No party shall assign, transfer, mortgage, charge, subcontract, declare a trust over a deal in any other manner with any or all of his rights and obligations under this Agreement (or any other document referred to in it) without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed). Each party confirms that he is acting on his own behalf and not for the benefit of any other person.

**Third Parties:**

23. Except as expressly provided elsewhere in this Agreement, no one other than a party to this Agreement, its successors and permitted assignees, shall have any right to enforce any of its terms.

**Remedies:**

24. Each party agrees that monetary damages for the use or disclosure of any Confidential Information in a way that would be inconsistent with this Agreement is not a sufficient remedy alone. The innocent party may also be entitled to all other remedies that may be awarded. These will be additional to any remedies available at law or in equity.
25. In the event of litigation arising relating to this Agreement, if a court of competent jurisdiction determines in a final non-appealable order that one party, or any of its Representatives, has breached this Agreement, such party will be liable for reasonable legal fees and expenses incurred by the other party in connection with such litigation, including, but not limited to, any appeals.

**Termination:**

26. This Agreement shall terminate on the earlier of:
- a. Written agreement of both parties to terminate this Agreement.
  - b. Completion of the Transaction; or
  - c. [INSERT OTHER TIME PERIOD]

**Governing Law and Jurisdiction:**

27. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of [INSERT STATE]. Each party irrevocably agrees that the courts of [INSERT STATE] have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

**Disputes:**

28. If a dispute arises under or in connection with this agreement ("Dispute"), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice ("Dispute Notice") of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 28. Disputes arising under this agreement shall be resolved by: (Insert those that apply)
- a. [Bringing proceedings in the courts of [INSERT STATE].]
  - b. [Arbitration in accordance with the American Arbitration Association.]
  - c. [Mediation. If the parties fail to come to an agreement by mediation, then it shall be resolved through arbitration.]

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Commencement Date.

---

**Discloser Name**

---

**Discloser Signature**

---

**Receiver Name**

---

**Receiver Signature**