

# Pronto Commercial Funding

## Mutual Non-Circumvention and Non-Disclosure Agreement

This Agreement is entered into on \_\_\_\_\_, 20\_\_\_\_ by and between \_\_\_\_\_ (hereafter “the Broker”) and Pronto Commercial Funding (hereafter “the Company”). The Broker and the Company (hereafter “the Parties”) hereby enter into this Agreement for the purpose of protecting the clients, business resources, work product, and other financial and business benefits of the Parties derived as a result of the Parties respective professional experience. Therefore, the Parties hereby agree as follows:

### **I. The Broker Non-Circumvention and Non-Disclosure Agreement.**

The Broker agrees and covenants that it shall not convey, divulge, disclose, or reveal by any means, nor attempt to discover, convey, divulge, disclose, or reveal by any means or technology, current or available in the future, to any persons, clients, business interests, representatives or other unauthorized persons, the proprietary information belonging to the Company. Such proprietary information and sources shall be considered the intellectual property of the Company. Such proprietary information is defined as any source or identity of any investors, lenders, banks, associates, correspondents, or funding sources which may or may not be derived by the professional experience of the Company. Such relationships, business partnerships, funding sources, and/or investors are deemed proprietary in nature and scope. In the event the actual source or identity of such relationships, business partnerships, funding sources, and/or investors is discovered by the Broker, the Broker agrees to be bound by this Non- Circumvention and Non-Disclosure Agreement for a period of twenty-four (24) months from the latter of the date of this contract or the date the Broker discovers the information.

For the full duration of the aforementioned term, the Broker agrees that it shall neither attempt to nor actually circumvent or expose said proprietary information to any persons, natural or unnatural entities, contacts, associates, correspondents, business interests, representatives, or subsidiaries, any proprietary information of the Company. Additionally, the Broker agrees to make no effort, either intentionally or not, to financially benefit in any way from said proprietary information except as specifically outlined in the Service Request Addendum.

The Broker agrees that once a Service Request Addendum is signed by the Parties, the Broker shall not enter into any other conflicting agreement with any other person or entity and shall honor the Service Request Addendum for the full duration designated in said Addendum.

The Broker also attests that the Broker has not entered into any other legally binding agreement, either written or verbal, which will compromise the execution of or integrity of the Broker’s compliance with this agreement. In the event any other such agreement is discovered to exist following the date of this Agreement, the Broker agrees this Agreement will supersede any other agreement entered into by the Broker with any other person or entity.

## **Mutual Non-Circumvention and Non-Disclosure Agreement (continued)**

### **II. The Company Non-Circumvention and Non-Disclosure Agreement.**

The Company agrees and covenants that it shall not convey, divulge, disclose, or reveal by any means, nor attempt to discover, convey, divulge, disclose, or reveal by any means or technology, current or available in the future, to any unauthorized persons, clients, business interests, or representatives, the proprietary information belonging to the Broker. Such proprietary information and sources shall be considered the intellectual property of the Broker. Such proprietary information is defined as any source or identity of any client, relationships, marketing interests, associates, correspondents, and business partnerships, which are definitively derived by the professional experience and marketing efforts of the Broker. Such sources or identities of any clients, relationships, marketing interests, associates, correspondents, or business partnerships are deemed proprietary in nature and scope. When it is revealed to the Company by the Broker the actual source or identity of such relationships, or business partnerships, the Company agrees to be bound by this Agreement for a period of eighteen (18) months from the date of the Service Request Addendum.

The Company further agrees to only use the revealed proprietary information of said sources or identities of any clients, relationships, marketing interests, associates, correspondents, or business partnerships to the end of fulfilling the terms of the Service Request Addendum as presented by the Broker. The Company agrees that it shall not endeavor to solicit or market in any way these clients, relationships, marketing interests, associates, correspondents, or business partnerships except for the express purpose as outlined in the Service Request Addendum. For the full duration of the aforementioned term, the Company agrees that it shall neither attempt to nor actually circumvent or expose said proprietary information to any unauthorized persons, natural or unnatural entities, contacts, associates, correspondents, business interests, representatives, or subsidiaries any proprietary information of the Broker. "Authorized persons" shall be determined by the Company exclusively and for the purpose of fulfilling the Service Request Addendum. Additionally, the Company agrees to make no effort, either intentionally or not, to financially benefit in any way from said proprietary information except as specifically outlined in the Service Request Addendum.

### **III. The Broker is Not a Representative of the Company.**

The Broker agrees that it is not a representative of the Company and that it shall never represent itself as such. The Broker agrees that it is in a contractual position with the Company and shall be paid as a contractor and not as an employee. The Broker agrees that it shall be solely responsible for owed taxes on any amount received from the Company.

### **IV. Responsibility of the Company.**

The Company agrees that it is responsible for using its best efforts to secure financing for the project named in the Service Request Addendum. The Broker agrees that the Company has no responsibility, liability, or obligation to the Broker for any project or Service Request not obtained and agrees to hold the Company harmless in all ways if financing is not obtained for any reason.

## **Mutual Non-Circumvention and Non-Disclosure Agreement (continued)**

### **V. Penalties of Violation.**

In the event either of the Parties is found in violation of this Agreement, the offending party shall compensate the offended party as much as 5 times the monetary value of monies diverted from the offended party.

### **VI. Arbitration.**

The Parties agree to mediate any claims they may have against each other. The Parties may submit to binding arbitration any non-reconciled claims they may have against each other, of any nature whatsoever, other than those prohibited by law or for workers compensation, unemployment or disability benefits, pursuant to the rules of the American Arbitration Association. Said arbitration shall be held in Pleasanton, Alameda County, State of California in accordance with the rules then in effect of the American Arbitration Association. The arbitrator may grant injunctions or other relief in such dispute or controversy. The decision of the arbitrator shall be final, conclusive and binding on the Parties. Judgment may be entered on the arbitrator's decision in any court having jurisdiction. The Parties agree that should any action be instituted by either party against the other regarding the enforcement of the terms of this agreement, the prevailing party shall be entitled to all of its expenses related to such litigation including, but not limited to, reasonable attorneys' fees and costs, both before and after judgment in addition to the penalties aforementioned in section V of this Agreement.

### **VII. Limitation of Damages.**

The Parties agree and stipulate that any remedies they may have for the breach of any related obligations contained in this Agreement, whether under law or by way of contract, shall be limited to the equivalent of one (1) year's gross revenue of the offending party. This limitation is inclusive of any claims for special damages, general damage, compensatory damage, loss of income, emotional damage, or punitive damages.

### **VIII. Notices.**

The Parties agree that any notices that are required to be given under this Agreement shall be given in writing, sent by certified mail, return receipt requested, to the principal place of business of the Broker or of the Company as set forth herein.

### **IX. Ambiguity Related to Drafting.**

The Parties agree that any ambiguity created by or in this document shall not be construed against the drafter of the same.

### **X. Statute of Limitations.**

The Parties agree that any and all claims brought against each other must be filed for mediation or arbitration within two (2) years from the date of the incident for which the claim is filed. Any claim not filed within the aforementioned term shall be precluded as a valid claim.

### **XI. Governing Law; Consent to Personal Jurisdiction.**

This Agreement shall be governed by the laws of the state of California without regard for conflicts of laws principles. The Parties hereby expressly consent to the personal jurisdiction of the state and federal courts located in the state of California for any lawsuit filed there against either of the Parties by the other of the Parties for claims or issues arising from or relating to this Agreement.

## **Mutual Non-Circumvention and Non-Disclosure Agreement (continued)**

### **XII. Entire Agreement.**

This Agreement sets forth the entire agreement and understanding between the Parties relating to the subject matter herein and supersedes all prior discussions between the Parties. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless in writing signed by the Parties to be charged. Any subsequent change or changes agreed to by the Parties in relation to this Agreement will not affect the validity or scope of this Agreement.

### **XIII. Severability.**

If one or more of the provisions in this Agreement are deemed void by law, including, but not limited to, the covenant not to compete, the remaining provisions will continue in full force and effect.

### **XIV. Successors and/or Assigns.**

This Agreement shall be binding upon the heirs, executors, administrators and other legal representatives of the Parties and shall be for the benefit of the Company, its successors, and/or its assigns.

### **XV. Construction.**

The language used in this Agreement shall be deemed the language chosen by the Parties to express their mutual intent, and no rules of strict construction shall be applied against either party.

### **XVI. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be enforceable, and all of which together shall constitute one agreement.

### **XVII. Methods of Delivery.**

The Parties agree that signed facsimile or photo copies of this Agreement are accepted as original binding documents.

## **Mutual Non-Circumvention and Non-Disclosure Agreement (continued)**

This Agreement is willfully entered into, as of the date first written above, by:

**The Broker (by signing you allege and admit full authority to act and sign for the Broker as one of its Principals):**

Name: \_\_\_\_\_ (Print) Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

By: \_\_\_\_\_ (Signature)

Its: \_\_\_\_\_ (Title)

**The Company (signing for the Company shall be by a duly authorized Principal):**

Name: \_\_\_\_\_ (Printed) Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

By: \_\_\_\_\_ (Signature)

Its: \_\_\_\_\_ (Title)