

MUTUAL NON-DISCLOSURE AGREEMENT

This mutual non-disclosure agreement (the “Agreement”) is made and entered into by and between The XD Agency and **Joshua Howard**. The parties agree this Agreement is effective as of **2/10/2022** and applies to all Confidential Information (as defined below) the parties may exchange during the term in connection with discussions concerning a possible business transaction.

1. Definition of Confidential Information and Exclusions.

A. “Confidential Information” means nonpublic information that a party to this Agreement (“Disclosing Party”) designates as being confidential to the party that receives such information (“Receiving Party”) or which, under the circumstances surrounding disclosure ought to be treated as confidential by the Receiving Party. “Confidential Information” includes, without limitation, information in tangible or intangible form relating to and including, information concerning the marketing, promotion or planning of any product or business initiative of the Disclosing Party, Disclosing Party’s business policies or practices, non-public financial information of the Disclosing Party, information concerning the employees, vendors, clients or prospects of the Disclosing Party and information received from others that Disclosing Party is obligated to treat as confidential. Except as otherwise indicated in this Agreement, the term “Disclosing Party” also includes all Affiliates of the Disclosing Party and, except as otherwise indicated, the term “Receiving Party” also includes all Affiliates of the Receiving Party. An “Affiliate” means any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with a party.

B. Confidential Information shall not include any information, however designated, that: (i) is or subsequently becomes publicly available without Receiving Party’s breach of any obligation owed Disclosing Party; (ii) became known to Receiving Party prior to Disclosing Party’s disclosure of such information to Receiving Party pursuant to the terms of this Agreement; (iii) became known to Receiving Party from a source other than Disclosing Party other than by the breach of an obligation of confidentiality owed to Disclosing Party; or (iv) is independently developed by Receiving Party.

2. Obligations Regarding Confidential Information.

A. Receiving Party shall:

(i) Refrain from disclosing any Confidential Information of the Disclosing Party to third parties for two (2) years following the date that Disclosing Party first discloses such Confidential Information to Receiving Party, except as expressly provided in Sections 2(b) and 2(c) of this Agreement;

(ii) Take reasonable security precautions, at least as great as the precautions it takes to protect its own confidential information, but no less than reasonable care, to keep confidential the Confidential Information of the Disclosing Party; and

(iii) Refrain from disclosing, reproducing, summarizing and/or distributing Confidential Information of the Disclosing Party except in pursuance of Receiving Party’s business relationship with Disclosing Party, and only as otherwise provided hereunder.

B. Receiving Party may disclose Confidential Information of Disclosing Party in accordance with a judicial or other governmental order, provided that Receiving Party either (i) gives the Disclosing Party reasonable notice prior to such disclosure to allow Disclosing Party a reasonable opportunity to seek a protective order or equivalent, or (ii) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation.

C. The Receiving Party may disclose Confidential Information only to Receiving Party's employees and consultants on a need-to-know basis. The Receiving Party will have executed or shall execute appropriate written agreements with its employees and consultants sufficient to enable Receiving Party to enforce all the provisions of this Agreement.

D. Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach of this Agreement by Receiving Party and its employees and consultants, and will cooperate with Disclosing Party in every reasonable way to help Disclosing Party regain possession of the Confidential Information and prevent its further unauthorized use or disclosure.

E. Receiving Party shall, at Disclosing Party's request, return all originals, copies, reproductions and summaries of Confidential Information and all other tangible materials and devices provided to the Receiving Party as Confidential Information, or at Disclosing Party's option, certify destruction of same.

3. Remedies. The parties acknowledge that monetary damages may not be a sufficient remedy for unauthorized disclosure of Confidential Information and that Disclosing Party shall be entitled, without waiving any other rights or remedies, to such injunctive or equitable relief a may be deemed proper by a court of competent jurisdiction.

4. Term. The term of this Agreement shall be for a period one (1) year from the date hereof provided, however, that either party may terminate this Agreement earlier upon thirty (30) days written notice to the other party. Notwithstanding any termination of this Agreement, the party's respective confidentiality obligations shall survive for a period of two (2) years from the date of disclosure of any Confidential Information.

5. Miscellaneous.

A. All Confidential Information is and shall remain the property of Disclosing Party. By disclosing Confidential Information to Receiving Party, Disclosing Party does not grant any express or implied right to Receiving Party to or under any patents, copyrights, trademarks, or trade secret information except as otherwise provided herein. Disclosing Party reserves without prejudice the ability to protect its rights under any such patents, copyrights, trademarks, or trade secrets except as otherwise provided herein.

B. Each party hereto acknowledges and agrees that the Disclosing Party makes no express or implied representations or warranty as to the accuracy or completeness of any Confidential Information provided by the Disclosing Party and each party expressly disclaims any liability that may be based on the Confidential Information.

C. The parties agree to comply with all applicable international and national laws that apply to (i) any Confidential Information, (ii) any product (or any part thereof), process or service that is the direct product of the Confidential Information.

D. The terms of confidentiality under this Agreement shall not be construed to limit either the Disclosing Party or the Receiving Party's right to independently develop or acquire products without use of the other party's Confidential Information.

E. No provision of this Agreement shall be deemed to have been waived by any act or acquiescence on the part of Disclosing Party, the Receiving Party, their agents, or employees, but only by an instrument in writing signed by an authorized employee of Disclosing Party and the Receiving Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision(s) or of the same provision on another occasion.

F. Neither the existence of this Agreement nor a provision of this Agreement shall obligate either party hereto to pursue any business transaction with the other party.

G. This Agreement shall be binding upon and inure to the benefit of each party's respective successors and lawful assigns; provided, however, that neither party may assign this Agreement (whether by operation or law, sale of securities or assets, merger or otherwise), in whole or in part, without the prior written approval of the other party. Any attempted assignment in violation of this Section shall be void.

H. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

I. This Agreement shall not be modified except by a written agreement dated subsequent to the date of this Agreement signed by both parties.

J. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous non-disclosure agreements or communications.

CLIENT-COMPANY-VENDOR

By _____
Name _____
Title _____

The XD Agency

By _____
Name _____
Title _____