

Mutual Nondisclosure Agreement

THIS AGREEMENT is made as of _____ by and between Choose an item. and _____

WHEREAS, each party represents that it has developed and possesses certain information including technical and/or business information, some of which it considers to be confidential ("Confidential Information").

WHEREAS, the parties desire to exchange certain Confidential Information to evaluate the possibility of entering into a business arrangement with one another relating to a potential vendor relationship (the "Purpose").

WHEREAS, during the course of their dealings with each other in connection with such activities, the parties may periodically disclose (the "Disclosing Party") to one another (the "Recipient") Confidential Information only in support and furtherance of such activities.

NOW, THEREFORE, it is mutually agreed as follows:

1) Confidential Information

- a) **Marking.** All information to be treated as Confidential Information shall be marked by the Disclosing Party to the extent practical as "Confidential".
- b) **No Obligation to Receive.** Nothing in this Agreement shall require either party to receive or accept disclosure of Confidential Information from the other.
- c) **Scope of Use.** Confidential Information shall be used only for the Purpose stated herein. Each party hereby agrees to keep in confidence and not disclose to any third party, including any subsidiary, affiliate or parent of Recipient, any Confidential Information disclosed by the other party during the course of their dealings with each other, except as hereinafter provided. Confidential Information may be disclosed to employees of the Recipient who have a need to know such information and who have legally enforceable nondisclosure obligations to the Recipient. The Recipient may also disclose Confidential Information to consultants or other third parties provided that the Recipient first obtains written permission from the Disclosing Party. Confidential Information shall not be reproduced in any form except as required to accomplish the Purpose of this Agreement. Each Party is entitled to audit the other's compliance with the Scope of Use of Confidential Information.
- d) **Security Incident.** Recipient agrees to immediately notify Discloser in writing in the event that there is a disclosure of Confidential Information other than authorized by this Agreement ("**Security Incident**"), either intentionally or inadvertently, and to assist the other Party in recovering any such Confidential Information and/or mitigating harm to the other Party as a result of such Security Incident.
- e) **Return of Confidential Information.** Upon the request of either party hereto, the parties agree to promptly return or destroy each other's Confidential Information, in whatever form, without retaining any copies or excerpts thereof, provided, however, that the Recipient's counsel may retain one copy of the returned or destroyed items for archival purposes.
- f) **No Warranties, Representations or Liability.** All Confidential Information is provided "AS IS" without warranty or guarantee of any kind as to its accuracy, completeness, operability, fitness for particular purpose, or any other warranty, express or implied. Neither party shall be liable to the other for any damages, loss, expense or claim of loss arising from use of or reliance on the Confidential Information of the other.

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- g) **Independent Development.** The terms of confidentiality under this Agreement shall not be construed to limit either party's right to independently develop or acquire products without the use of the other party's Confidential Information.

2) Information Not Subject To Confidentiality

The obligations set forth above shall not in any way restrict or impair the right of either party, to the extent permitted by law, to disclose the following:

- (a) information which at the time of disclosure has been published or is otherwise in the public domain;
- (b) information which, after disclosure, becomes part of the public domain other than through a breach of this Agreement;
- (c) information which was known to the Recipient prior to receipt from the Disclosing Party, provided such prior knowledge can be adequately substantiated;
- (d) information which becomes known to the Recipient from a source which legally derives such information independently of the Disclosing Party under this Agreement;
- (e) information which the Recipient can demonstrate that it developed without reference to any Confidential Information provided pursuant to this Agreement;
- (f) information which is freely disclosed by the owner of the Confidential Information to a third party without an obligation of confidentiality or nondisclosure; or,
- (g) information which is disclosed pursuant to law, regulation or lawful order or process. In such event, the party from whom disclosure is required shall promptly notify the owner of the Confidential Information of the disclosure requirement, to permit the owner to oppose or limit such disclosure.

3) Ownership

Confidential Information may be used only as provided herein. Each party shall retain ownership of all rights, including all intellectual property rights, in its Confidential Information. No other right, immunity or license to the Confidential Information, either expressed or implied, is granted by either party to the other pursuant to this Agreement under any patent, patent application, copyright, trademark or other intellectual property right, now or hereafter owned or controlled by either party.

4) Term of This Agreement

This Agreement shall terminate 10 years from its effective date, but may be terminated by either party giving thirty (30) days written notice to the other party. Termination, however, shall not affect the rights and obligations arising under this Agreement with respect to Confidential Information disclosed prior to termination, including without limitation the 10 year Confidentiality Period set forth herein.

5) Confidentiality Period

Unless otherwise agreed to in writing, neither party shall have any obligations of confidentiality under this Agreement after 10 years) from the date of disclosure.

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6) Notices

Any notice provided in connection with this Agreement shall be given in writing by certified mail, prepaid, return receipt requested, directed to the responsible officer of the party at their last known address.

7) No Formal Business Obligations

Nothing in this Agreement or in any of the discussions the parties have engaged in or in the correspondence between the parties, shall constitute a confirmation, approval, consent or other agreement, to begin any project or any other business in the future between the parties hereto. The parties intend to effect a legally binding agreement with respect to any project or business transaction only by the execution and delivery of a definitive, written agreement. In the absence of such definitive agreement, any costs incurred by either party will be incurred at such party's risk and will be the sole responsibility of that party.

8) Miscellaneous

- a) **Governing Law.** The provisions of this Agreement shall be governed by the laws of State of Michigan.
- b) **Entire Agreement.** This Agreement contains the sole and entire agreement between the parties relating to the subject hereof and any representation, promise, or condition not contained herein, or any amendment hereto shall not be binding on either party unless set forth in a subsequent written agreement signed by an authorized representative of the party to be bound thereby.
- c) **Publicity.** Neither party shall issue any public disclosures or statements regarding this project without the prior written consent of the other.
- d) **Assignment.** This Agreement is personal to the parties hereto and neither party may assign or transfer its rights, interests or obligations hereunder without the prior written consent of the other.
- e) **Export Laws.** Each party hereto shall abide by all export/import laws of the United States of America, and any applicable foreign nation, when making disclosure of Confidential Information to the other party.
- f) **Remedies.** In the event of any breach or threatened breach of this Agreement, the Disclosing Party shall be entitled to equitable relief, including injunction and specific performance, in addition to remedies at law.
- g) **Non-solicitation.** During the term of this Agreement, and/or any business agreement between the parties, whichever is longer, and for a period of one (1) year thereafter, neither party shall encourage or solicit any employee or independent contractor of the other party to leave or terminate his/her/its relationship with that party for any reason.
- h) **No Disclosure of Third Party Information.** The parties hereby state that they do not desire to acquire from each other, and they hereby agree not to furnish to one another, any trade secret, proprietary knowhow or confidential information acquired from third parties. Further, each party represents and warrants to the other that it is free to divulge, without any obligation to or violation of the rights of any third party, any and all information which it will demonstrate, divulge or in any other manner make known to the other pursuant to this Agreement. Each party shall and does hereby exonerate, indemnify and hold harmless the other from and against any and all liability, loss, cost, expense, damage, claims or demands for actual violation of the rights of any third party in any trade secret, proprietary know-how or other confidential information by reason of the other's use of the services of or receipt of information disclosed hereunder.

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AGREED AND ACCEPTED

(Select Company) Choose an item.

By: _____
(signature)

Name: _____

Title: _____

Date: _____

By: _____
(signature)

Name: _____

Title: _____

Date: _____