## Mutual Non-Disclosure Agreement

**THIS AGREEMENT** is made and entered into on **(DATE)** by and between **[Agency]**(“[Agency]”), a New York limited liability corporation with principal place of business at [ADDRESS] and **(NAME)**, (hereinafter referred to as the "Individual") to establish terms governing the use and protection of confidential and/or proprietary information that either party may disclose to the other party.

**NOW, THEREFORE,** in consideration of the mutual covenants and promises contained herein, the parties hereto agree as follows:

1. Confidential Information.

1.1 In efforts to further the business relationship between the two parties, either party (the "Discloser") may make available to the other party (the "Recipient") information which is confidential and/or proprietary to Discloser, including without limitation, all information and property relating to (including without limitation its internal processes, procedures, and functions), products, technology, development plans, potential or pending acquisitions, trade secrets, specifications and data, financial information, projections, forecasts, formulae, know-how, designs, marketing plans and strategies, customer and supplier lists, Internet implementation and operation processes and policies, and other valuable business information which is proprietary and/or strictly confidential to Discloser (“Confidential Information”). Confidential Information shall include only that information furnished, disclosed or transmitted to the Recipient, whether disclosed orally or in writing, which is clearly identified by the Discloser as being "confidential" or “proprietary”, or which by the nature of the information and/or the manner or circumstances of its disclosure would reasonably indicate its confidential or proprietary nature. However, Confidential Information shall not include any information which:

(a) is or becomes publicly known through no wrongful act or failure to act on the part of Recipient;

(b) is known by the Recipient without any proprietary restrictions at the time of receipt of such Confidential Information from the Discloser or becomes known to the Recipient without proprietary restrictions from a source other than Discloser; or

(c) is shown by the Recipient to have been developed by its employees wholly without reference to the Confidential Information of the Discloser.

1.2 Information disclosed under this Agreement shall not be deemed to be within the foregoing exceptions merely because such information is embraced by more general information in the public domain or in the Recipient’s possession. In addition, any combination of features shall not be deemed to be within the foregoing exceptions merely because individual features are in the public domain or in the Recipient’s possession, but only if the combination itself and its principle of operation are in the public domain or in the Recipient's possession.

1.3 The Recipient agrees to receive the Confidential Information in confidence and to make no disclosure whatsoever of the Confidential Information to third parties unless specifically authorized to do so in writing by Discloser, and to keep the Confidential Information secret and confidential using the same degree of care as is issued by the Recipient to protect its own confidential information, but in no event less than a reasonable degree of care.

2. Ownership Rights.

Discloser shall retain all ownership rights in and to the Confidential Information it discloses to Recipient. No licenses or rights under any patent, copyright, trademark, trade secret or other intellectual property rights granted or implied under this Agreement. Recipient shall not remove or alter any notice of copyright, trademark or other intellectual, property right or disclaimer contained in or on the Confidential Information and shall ensure that every copy or portion thereof made by Recipient contains such notices.

3. Limitation on Use.

3.1 The Recipient shall use such Confidential Information only in connection with the furtherance of the business relationship between the parties, and the Recipient shall make no further use, in whole or in part, of any such Confidential Information. However, nothing in this Agreement shall restrict the Discloser from using, disclosing or disseminating its own Confidential Information in any way. [Agency] and the Individual will also take all steps which are reasonable to prevent their employees and consultants from using or disclosing any of the other party's proprietary information except as required for the performance of their duties hereunder

* 1. The Recipient further agrees to disclose the Confidential Information only to its employees whose services are required in furtherance of the objectives of the business relationship between the parties, and to require each of its employees to comply with the terms of this Agreement, prior to the disclosure to such employees.

3.3 Recipient shall not use any of the Confidential Information to create any derivative work thereof, except solely as permitted under a definitive written agreement executed by both parties that expressly permits such creation.

1. Disclosure Required by Law.

If any applicable law, regulation or court order requires Recipient to disclose any of Discloser’s Confidential Information, recipient shall promptly notify Discloser in writing prior to making any such disclosure, in order to facilitate Discloser’s efforts to protect its Confidential Information. In such circumstances, Recipient shall cooperate with Discloser, at Discloser’s reasonable expense, in seeking and obtaining protection for Discloser’s Confidential Information.

1. Independent Development and Residuals.

# The terms of confidentiality under this Agreement shall not be construed to limit either party’s right to develop independently or acquire products without use of the Discloser’s Confidential Information. The Discloser acknowledges that the Recipient may currently or in the future be developing information internally or receiving information from third parties that is similar to the Confidential Information. Accordingly, nothing in this Agreement will prohibit the Recipient from proceeding with its plans or techniques contemplated by or embodied in the Confidential Information, provided that Recipient does not violate any of its obligations under this Agreement in connection with such plan.

1. Return or Destruction of Confidential Information.

The Recipient shall not make any additional copies of Confidential Information without the express written consent of the Discloser. The Recipient agrees that it will within ten (10) days after written request by the Discloser, return or destroy all documents and tangible property in its possession which contain any part of the Confidential Information disclosed to the Recipient by the Discloser hereunder.

7. Disclaimer.

No rights or obligations other than those expressly recited herein are implied by this Agreement. In particular, no license is hereby granted directly or indirectly under any patent or copyright now held by, or which may be obtained by or which is or may be licensed by either party.

8. Equitable Relief.

The parties acknowledge that Information is unique and valuable, and that Discloser will have no adequate remedy at law if Recipient does not comply with its obligations under this Agreement. Therefore, Discloser shall have the right, in addition to any other rights it may have, to seek in any court of competent jurisdiction temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any obligations of Recipient if Recipient fails to perform any of its obligations under this Agreement.

9. Enforceability.

In the event of the invalidity or unenforceability of any provision of this Agreement under any applicable law, the parties agree that such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Agreement.

10. Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the state of New York.

11. Integration.

This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof and supersedes, cancels, and merges all agreements, negotiations, commitments, writings, and discussions between them as to the subject matter prior to the date of this Agreement. Neither of the parties shall be bound by any condition or representation with respect to such subject matter, other than as expressly provided in this Agreement or as duly set forth on or subsequent to the date of this Agreement in writing, and signed by a proper and duly authorized representative of the parties.

1. Term.
This Agreement shall govern all communications between the parties that are made during the period from the effective date of this Agreement to the date on which either party receives from the other written notice that subsequent communications shall not be so governed, provided, however, that each party’s Non-disclosure and Non-use Obligations with respect to Confidential Information of the other party which it has previously received shall survive this Agreement for a period of three (3) years from the date this Agreement is executed by the last party to sign, and thereafter shall terminate and be of no further force or effect.
2. No Warranty.

All Confidential Information is provided “AS IS” and without any warranty, express, implied or otherwise, regarding its accuracy or performance.

1. Assignment.
Either party may assign or transfer any rights or obligations under this Agreement to a parent, subsidiary, or affiliated entity so long as notice of the assignment is received within five (5) business days after the assignment.
2. Notices.
Any notice required or permitted by this Agreement shall be in writing and shall be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally; (ii) by overnight courier upon written verification of receipt; (iii) by telecopy or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notice shall be sent to the addresses set forth above or such other address as either party may specify in writing.

**IN WITNESS WHEREOF**, each of the parties to this Agreement has caused this Agreement to be executed by its duly authorized officers as of the date first above written.

**Individual [Agency]**

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

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Date Date