



## NONDISCLOSURE AGREEMENT

This Nondisclosure Agreement (this "Agreement") is made between **Mr. Lister and their clients** (collectively, the "Disclosing Party") and \_\_\_\_\_ (the "Receiving Party"). The Disclosing Party possesses certain confidential business information that it may disclose to the Receiving Party for the purpose of evaluating a potential business opportunity between the parties. The Receiving Party agrees to receive such information solely for that purpose. For clarity, the Receiving Party will not disclose any of its own confidential information under this Agreement.

**The parties therefore agree as follows:**

### **1. Confidential Information**

**Definition.** In connection with the purpose stated above, the Disclosing Party may disclose certain of its confidential and proprietary information to the Receiving Party. "Confidential Information" means:

(a) information relating to the Disclosing Party or its current or proposed business, including but not limited to financial statements, budgets, projections, customer identifying information, potential and intended customers, employees, products, computer programs, specifications,

manuals, software, analyses, strategies, marketing plans, business plans, and other confidential information, whether provided orally, in writing, or by any other medium, that was or will be: (i) provided or shown to the Receiving Party by or on behalf of the Disclosing Party; or (ii) obtained by the Receiving Party through review of documents or property of the Disclosing Party, or through communications with the Disclosing Party; and

(b) all notes, analyses, compilations, studies, summaries, and other material (whether in oral, written, electronic, or any other form) that contain or are based on the information described in subsection (a) (collectively, the "Derivative Materials").

(c) The Disclosing Party shall use reasonable efforts to identify Confidential Information disclosed only orally within a reasonable time after disclosure. However, the failure to specifically identify information as confidential or proprietary will not be construed as an admission or acknowledgement that such information is not Confidential Information.

## **2. Obligation to Maintain Confidentiality**

**(a) Confidentiality.** The Receiving Party shall keep all Confidential Information strictly confidential and shall not, except as otherwise required by law, disclose any Confidential Information to any person or entity other than those representatives of the Receiving Party who **(i)** have a need to know such information for the purpose of the Receiving Party's business dealings with the Disclosing Party, and **(ii)** are bound by confidentiality obligations at least as restrictive as those contained in this Agreement, without the prior written consent of the Disclosing Party. The Receiving Party shall not use any Confidential Information for any purpose other than the purpose of evaluating or pursuing the business opportunity with the Disclosing Party as contemplated by this Agreement. The Receiving Party shall ensure that each of its employees, officers, directors, agents, or other representatives who has access to Confidential Information is made aware of its confidential nature and is bound to maintain its confidentiality under the terms of this Agreement. The Receiving Party shall promptly notify the Disclosing Party of any unauthorized disclosure or use of the Confidential Information, or of any subpoena, court order, or legal process requiring disclosure of any Confidential Information, so that the Disclosing Party may seek a protective order or other appropriate remedy.

**(b) No Reverse Engineering.** The Receiving Party shall not reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects which embody the Disclosing Party's Confidential Information and are provided to the Receiving Party under this Agreement.

**(c) Term.** The Receiving Party's duty to protect Confidential Information under this Agreement shall continue until the earlier of: **(i)** such time as all Confidential Information disclosed hereunder becomes publicly known and made generally available through no breach of this Agreement by the Receiving Party; or **(ii)** five (5) years from the date of disclosure.

Notwithstanding the foregoing, to the extent that any Confidential Information disclosed hereunder constitutes a trade secret under applicable law, the Receiving Party shall protect that trade secret for as long as the information remains a trade secret.

### **3. Exclusions**

The obligations and restrictions of this Agreement shall not apply to any information that the Receiving Party can demonstrate, through competent evidence:

- was or becomes publicly available or in the public domain through no breach of this Agreement or wrongful act of the Receiving Party;
- was already known by or in the possession of the Receiving Party on a non-confidential basis prior to disclosure by the Disclosing Party, **provided that** (i) the source of such information was not bound by any confidentiality obligation to the Disclosing Party with respect to that information, and (ii) the Receiving Party provides the Disclosing Party with written notice of such prior possession either before the effective date of this Agreement or promptly upon becoming aware of the Confidential Information;
- is legally required to be disclosed (by law, regulation, court order, subpoena, or other governmental demand), **provided that** the Receiving Party gives the Disclosing Party prompt written notice of such requirement (to the extent permitted by law) and cooperates with the Disclosing Party's reasonable requests, at the Disclosing Party's expense, in seeking a protective order or other appropriate remedy. If no such protective order or remedy is obtained, and if the Disclosing Party waives compliance with this Agreement, the Receiving Party may disclose only that portion of the Confidential

Information that its legal counsel advises in writing is legally required to be disclosed, and the Receiving Party will use reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed; or

- was or is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information and without breaching any obligation under this Agreement.

#### **4. Return of Property**

All documents, files, and other tangible materials (including all copies thereof) containing or representing Confidential Information that have been disclosed by the Disclosing Party to the Receiving Party shall remain the property of the Disclosing Party. Upon the written request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party or destroy, at the Disclosing Party's option, all such documents or other materials, including all copies, summaries, or extracts thereof, and provide written certification of such destruction if requested. Notwithstanding the return or destruction of materials, the Receiving Party will continue to be bound by its obligations of confidentiality and other obligations hereunder.

#### **5. Ownership Rights**

The Receiving Party acknowledges that all Confidential Information is and shall remain the sole and exclusive property of the Disclosing Party. Any intellectual property, inventions, or developments of the Disclosing Party that may be disclosed under this Agreement shall remain the Disclosing Party's exclusive property, and no license or other rights to such Confidential Information are granted or implied hereby. Even if the Receiving Party provides comments, feedback, or suggestions regarding the Confidential Information, and such feedback is incorporated into the Confidential Information, the Confidential Information (as modified) remains solely the property of the Disclosing Party. The Disclosing Party's disclosure of Confidential Information shall not constitute an express or implied recommendation or endorsement of any business or product, and the Disclosing Party is not soliciting or inducing any change in the Receiving Party's business or organization by providing the Confidential Information. The disclosure of Confidential Information under this Agreement shall not be

construed as an intent by the Disclosing Party to purchase any products or services from the Receiving Party, nor as encouragement for the Receiving Party to expend funds in development or research. Confidential Information may relate to prospective or unannounced products, services, or business ventures of the Disclosing Party. The Receiving Party shall not use the Disclosing Party's Confidential Information as a basis to develop or have a third party develop any competing or similar product, service, plan, or undertaking.

## **6. No Obligation**

Nothing in this Agreement shall obligate either party to proceed with any transaction or business relationship between them. Either party may, in its sole discretion, terminate discussions or negotiations with respect to the potential business opportunity at any time. Either party may also decide at any time to cease providing or accepting Confidential Information under this Agreement by giving written notice to the other party. Any decision by the parties to enter into any further agreement or business arrangement shall be made in a separate written agreement executed by both parties.

## **7. No Warranty**

All Confidential Information is provided by the Disclosing Party on an "AS IS" basis. The Disclosing Party makes no representations or warranties, express or implied, as to the accuracy, completeness, or fitness for a particular purpose of any Confidential Information or any other information or materials provided to the Receiving Party. The Disclosing Party shall not be liable for any damages arising out of the use of or inability to use the Confidential Information, except as may be agreed in a future definitive agreement between the parties.

## **8. Miscellaneous**

**Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to its conflict of laws principles.

**Equitable Relief.** The Receiving Party acknowledges that any breach or threatened breach of this Agreement may cause irreparable harm to the Disclosing Party, for which monetary damages

would be inadequate. In the event of any breach or threatened breach of this Agreement by the Receiving Party, the Disclosing Party shall be entitled to seek injunctive relief, specific performance, or other equitable relief to prevent or restrain such breach, without the requirement to post a bond or other security, in addition to any other remedies available at law or in equity.

**Amendments.** This Agreement may not be amended or modified except by a written agreement signed by **both parties**(or their authorized representatives).

**No Assignment.** Neither party may assign or transfer any rights or obligations under this Agreement, in whole or in part, without the prior written consent of the other party. Any attempted assignment in violation of this section will be null and void.

**Electronic Signatures.** This Agreement and any counterparts hereof may be executed and delivered by electronic or digital signature (including by PDF or email transmission of an image file), and any such electronic signatures shall be treated as original signatures for all applicable purposes.

**Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, that provision shall be enforced to the maximum extent permissible and the remaining provisions of this Agreement shall remain in full force and effect. The invalid or unenforceable provision shall be deemed modified to the minimum extent necessary to make it valid and enforceable, if possible.

**Waiver.** No failure or delay by either party in exercising any right, power, or privilege under this Agreement shall operate as a waiver thereof. No waiver of any breach of any provision of this Agreement shall be effective unless made in writing and signed by the party against whom enforcement is sought. A waiver of a particular breach shall not be deemed a waiver of any other breach or of the same breach on a future occasion.

**Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous understandings or agreements, whether written or oral, regarding such subject matter. Each party acknowledges

that it is not entering into this Agreement on the basis of any representations not expressly contained herein.

**Effectiveness and Counterparts.** This Agreement shall become effective as of the date of the last signature below. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all counterparts together shall constitute one and the same instrument.

**Disclosing Party: Mr. Lister and their clients**

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

**Name:** Mr. Lister

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Receiving Party:** \_\_\_\_\_

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

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_