

## **MUTUAL NONDISCLOSURE AGREEMENT (NDA)**

THIS MUTUAL NONDISCLOSURE AGREEMENT, (the "Agreement" or "NDA") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_ (the "Effective Date"), and is by and between:

\_\_\_\_\_, a corporation of the State of \_\_\_\_\_ / an individual, having an address or principal place of business at \_\_\_\_\_ (hereinafter referred to as "CONFIDANT"),

and

**ERIN GERITH DOTY**, an individual having a place of residence at 1890 Limehouse St., Carmel, IN 46032 (hereinafter referred to as "INVENTOR");

Each herein also referred to individually as a "Party", and collectively as the "Parties";

### **WITNESSETH:**

**WHEREAS**, CONFIDANT possesses certain confidential and proprietary information, referred to herein as "CONFIDANT CONFIDENTIAL INFORMATION";

**WHEREAS**, INVENTOR possesses certain confidential and proprietary information, referred to herein as "INVENTOR CONFIDENTIAL INFORMATION";

**WHEREAS**, CONFIDANT CONFIDENTIAL INFORMATION and INVENTOR CONFIDENTIAL INFORMATION is collectively referred to herein as CONFIDENTIAL INFORMATION; and

**WHEREAS**, INVENTOR and CONFIDANT wish to discuss the potential for entrance into and/or expansion of mutually beneficial business undertakings (the "Purpose") in the course of which the Parties may exchange their respective CONFIDENTIAL INFORMATION with each other, in anticipation of which the protections provided herein are agreed to for the mutual benefit of the Parties;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, and in further consideration of the disclosure of CONFIDENTIAL INFORMATION to each other as contemplated and addressed herein, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. For the purposes of this Agreement with respect to any Party, an "Affiliate" shall mean any other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such Party.

2. For the purposes of this Agreement, the CONFIDANT CONFIDENTIAL INFORMATION and the INVENTOR CONFIDENTIAL INFORMATION when referred to hereinafter, individually or collectively, shall be referred to as the "CONFIDENTIAL INFORMATION." Furthermore, with respect to disclosure of the CONFIDENTIAL INFORMATION by CONFIDANT or INVENTOR to the other Party, the disclosing Party shall be referred to hereinafter as "DISCLOSOR" and the recipient Party as "DISCLOSEE." CONFIDENTIAL INFORMATION shall include the existence or status of, and any information concerning, the discussions between the Parties concerning the possible establishment of a business relationship, including the existence and contents of this Agreement.

3. DISCLOSOR and DISCLOSEE agree that all disclosures of CONFIDENTIAL INFORMATION made hereunder shall occur within three (3) years subsequent to the Effective Date (the "Disclosure Term").

4. DISCLOSOR agrees that any and all disclosures of its CONFIDENTIAL INFORMATION to DISCLOSEE are for the sole Purpose set forth above, and DISCLOSEE agrees that any other use whatsoever of the DISCLOSOR'S CONFIDENTIAL INFORMATION and any information relating thereto is strictly prohibited.

5. DISCLOSOR agrees that all CONFIDENTIAL INFORMATION disclosed to DISCLOSEE pursuant to this Agreement shall, to the extent possible, be in a document(s) bearing the designation "CONFIDENTIAL" or words of similar import, and any CONFIDENTIAL INFORMATION disclosed orally shall be confirmed in writing by DISCLOSOR to DISCLOSEE as soon as practicable after such disclosure. Notwithstanding the foregoing, failure to so mark or identify and confirm such designation in writing shall not preclude disclosed information from being deemed CONFIDENTIAL INFORMATION hereunder if DISCLOSEE or any of its employees knew or reasonably should have known that it was the type of information which is or should be considered CONFIDENTIAL INFORMATION, it being the intention of the Parties that all information disclosed in connection with the Purpose shall be considered confidential and subject to the protection of this Agreement, subject only to the exceptions set forth below.

6. DISCLOSEE recognizes and acknowledges the proprietary rights of DISCLOSOR, and agrees to accept, protect and safeguard all contents of the CONFIDENTIAL INFORMATION against unauthorized publication or disclosure, and particularly agrees:

a. Not to use, directly or indirectly, any CONFIDENTIAL INFORMATION for the benefit of DISCLOSEE or for the benefit of any third party, separate and apart from the Purpose of this Agreement; and

b. Not to disclose, publish, sell or reveal in any manner whatsoever, either directly or indirectly, the CONFIDENTIAL INFORMATION or any information relating thereto, except that DISCLOSEE may disclose certain of said CONFIDENTIAL INFORMATION to employees, agents or consultants of DISCLOSEE or its Affiliates, as necessary in furtherance of this Agreement, so long as said employees, agents or consultants are bound by a terms of nondisclosure at least as restrictive as those provided for in this Agreement. DISCLOSEE shall be liable for any actions of its employees, agents and consultants that would constitute a breach of the obligations set out in this Agreement.

7. All obligations of confidence, with respect to any particular item of CONFIDENTIAL INFORMATION, pursuant to and in accordance with the provisions of this Agreement, shall automatically terminate at the earlier of the occurrence of any of the following events:

a. Whenever information disclosing such CONFIDENTIAL INFORMATION is, through no fault of DISCLOSEE, published or otherwise available to the public under circumstances such that the public may utilize such CONFIDENTIAL INFORMATION without any direct or indirect obligation to DISCLOSOR;

b. Whenever such CONFIDENTIAL INFORMATION is or has been, acquired by DISCLOSEE from any third party rightfully possessed of such CONFIDENTIAL INFORMATION and having no direct or indirect obligation of confidentiality or non-use to DISCLOSOR with respect to the same;

c. When and to the extent disclosure is required of DISCLOSEE pursuant to a requirement of law; or

d. Upon the expiration of five (5) years after the expiration of the Disclosure Term as specified in Paragraph 3.

8. The obligations of DISCLOSEE pursuant to Paragraphs 6 and 7 hereof shall not be binding on DISCLOSEE with respect to information that DISCLOSEE's employees independently develop or have previously developed, without access to the DISCLOSOR'S CONFIDENTIAL INFORMATION, providing that the DISCLOSEE can provide credible documentary evidence of such independent development.

9. In the event of the occurrence of any of the conditions set forth in Paragraphs 7 or 8 above, DISCLOSEE, shall notify DISCLOSOR as soon as practicable and shall provide DISCLOSOR with proof thereof.

10. The Agreement hereunder shall be governed as to its validity, interpretation, and effect by the laws of the State of Indiana, without regard to choice of law principles, and the Parties hereby submit to the jurisdiction and venue of the courts (Federal or State, as appropriate) found in Hamilton County in the State of Indiana with respect to any and all disputes concerning the subject matter of this Agreement. The prevailing Party in any such dispute shall be entitled to a reasonable award of costs and attorney fees.

11. DISCLOSEE agrees and represents that it has made no other agreements which conflict with this Agreement.

12. DISCLOSEE shall be responsible for the observance of the terms of this Agreement by the employees, agents or consultants of DISCLOSEE or its Affiliate.

13. Upon expiration of the Disclosure Term or the conclusion of discussions hereunder, and receipt of demand by the DISCLOSOR, the DISCLOSEE shall return all samples and written CONFIDENTIAL INFORMATION, however, DISCLOSEE may retain one copy in its legal files.

14. Because the Parties have devoted considerable time, expense and other resources to the acquisition and development of their CONFIDENTIAL INFORMATION, the Parties hereby mutually and explicitly acknowledge that: , (i) the CONFIDENTIAL INFORMATION has great economic value to the DISCLOSOR and is proprietary to it; (ii) the DISCLOSEE'S violation of this Agreement may cause the DISCLOSOR to suffer irreparable damage; and (iii) the character and periods of restrictions on the DISCLOSEE'S activities required during the term of this Agreement are fair and are reasonably required for the protection of the DISCLOSOR. In light of the above and in light of the Parties' expenditure of time, money and resources, in addition to any other remedies which may otherwise be available under this Agreement or under applicable law, each Party may be entitled to obtain injunctive relief from any court of competent jurisdiction restraining the DISCLOSEE from committing or continuing any violation of this Agreement.

15. Any notices required arising out of any dispute which may arise under or in connection with this Agreement shall be sent by certified mail, return receipt requested, to the Parties at the addresses specified above, unless notice of a different address is given to the other Party.

16. No waiver of any provision, breach or default under this Agreement shall be deemed a waiver of any subsequent provision, breach or default, nor shall any such waiver constitute a continuing waiver.

17. Nothing herein shall be construed as requiring either Party to enter into any commercial relationship with the other Party. Any such relationship must be established by means of a separate written agreement executed by each Party's duly authorized signatory.

18. If the Parties enter into a written contract concerning a business relationship of the type contemplated by this Agreement, the provisions of such contract concerning confidentiality of information will supersede and prevail over any conflicting provisions of this Agreement, but in no event will a Party thereby be relieved of any obligation or liability for any breach by such Party of this Agreement occurring prior to the entering into of such contract. In the absence of a written contract or any such provision in a written contract, the terms of this Agreement will continue in force.

19. In the event that any portion of this Agreement may be held to be invalid or unenforceable for any reason, it is hereby agreed that said invalidity or unenforceability shall not affect the other portions of this Agreement and that the remaining terms and conditions or portions thereof shall remain in full force and effect and any court of competent jurisdiction may so modify the objectionable provision so as to make it valid, reasonable and enforceable. Words in any gender shall include the other gender.

20. Neither this Agreement nor the providing of confidential or proprietary information shall extend any guarantees or warranties, express or implied, to a receiving Party, including the DISCLOSEE, and whether or not meeting the definition of CONFIDENTIAL INFORMATION as provided herein.

21. This Agreement constitutes the entire understanding of the Parties with regard to the subject matter hereof and may not be modified, supplemented or rescinded except by an agreement in writing signed by the Parties hereto. This Agreement shall not be assignable (by operation of law or otherwise) by either Party without the prior written consent of the other Party; provided, however, that CONFIDANT or INVENTOR shall have the right to assign this Agreement to its Affiliates or to an acquiring third party which acquires greater than 51% of the total assets of either Party.

22. This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same instrument and to the extent signed and delivered by means of a facsimile machine or pdf or other electronic transmission, shall be treated in all manner and respects and for all purposes as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version hereof delivered in person.

IN WITNESS WHEREOF, the Parties hereto have duly caused this Agreement to be executed and to be effective as of the date first set forth above. The person, who is signing this Agreement on behalf of INVENTOR and CONFIDANT, warrants that he/she has the authority to execute, deliver and bind, respectively, the INVENTOR and the CONFIDANT to the terms of this Agreement.

**FOR CONFIDANT:**

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

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

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

**FOR INVENTOR:**

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

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

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