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**NON DISCLOSURE AGREEMENT**

This Confidentiality Agreement is made and entered into effective as of \_\_\_\_\_\_ day of August 2020 (the “Effective Date”) by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, located in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (“\_\_\_\_\_\_”) and PetsPHD, of 16652 N 51st St. Scottsdale, AZ an Arizona Limited Liability Company, (“PetsPhd”) pursuant to which confidential and proprietary information of the parties will be disclosed by either party to the other.

\_\_\_\_\_\_\_ and PetsPhd shall be individually referred to as “Party” or collectively as “Parties”.

**WHEREAS,** The Parties may exchange information for PetsPhd to provide \_\_\_\_\_\_ information on PetsPhd clients interested in evaluating the possibility of conducting business with \_\_\_\_\_\_ and for \_\_\_\_\_\_ to provide information regarding their business appropriate for those clients to conduct their evaluation, hereinafter referred to as the “Purpose”.

**NOW THEREFORE** in consideration of the mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Article 1 (Confidential Information)**

1. For the purposes of this Agreement, “Confidential Information” shall mean any and all information and communication provided by each Party or its members, partners, directors, officers, shareholders, employees, agents, attorneys, accountants, consultants, other advisors, sources of capital, affiliates (as defined herein), or the representatives of any thereof (each of the foregoing, other than each Party, hereinafter individually referred to as a “Representative” and collectively referred to as the “Disclosing Party”) to the other Party or its members, partners, directors, officers, shareholders, employees, agents, attorneys, accountants, consultants, other advisors, sources of capital, affiliates, or the representatives of any thereof (each of the foregoing, other than each Party, hereinafter individually referred to as a “Representative” and collectively referred to as the “Receiving Party”) hereunder. For purposes of this Agreement, an “affiliate” of either Party is understood to mean any company or companies controlling, controlled by or under common control with such Party, where control shall mean the direct or indirect possession of at least half the voting securities of any company or the power effectively to direct or cause to be directed, the management and policies of a company through the ownership of voting securities or voting interest or otherwise.
2. In this Agreement, Confidential Information with respect to the above item 1 of this Article 1 is not applicable to information which:
   1. Has come into the public domain, prior to or after the Disclosing Party's disclosure of the Confidentiality Information, through no fault of the Receiving Party, or
   2. Is already in the possession of the Receiving Party on a non-confidential basis at the time of disclosure by the Disclosing Party, as evidenced by written documentation in the files of the Receiving Party, or
   3. Is independently developed in good faith by employees of the Receiving Party who did not have access to the Confidentiality Information and without use of or reference to the Disclosing Party’s Confidential Information, as shown by documents and other competent evidence in the Receiving Party’s possession, or
   4. Has been lawfully received from a third party without an obligation of confidentiality upon the Receiving Party or breach of this agreement, or
   5. Is approved for release by written authorization of the Disclosing Party.

**Article 2 (Confidentiality Obligation)**

1. Receiving Party shall disclose the Confidential Information only to its officers and employees and its Representatives who have a “need to know” in connection with the Purpose and then only on the clear understanding by such employees of their obligation to maintain the confidentiality of the Confidential Information and to use the Confidential Information solely for the purpose of carrying out the Purpose, and not directly or indirectly use the Confidential Information for any other purposes.

1. Without the prior written consent of Disclosing Party, Receiving Party shall not disclose, and shall cause its Representatives not to disclose, to a third party the Purpose, the Receiving Party’s performance of or involvement in the Purpose, proposed terms of the Purpose or other matters related thereto, including the existence of the Purpose or this Agreement.
2. Receiving Party shall ensure the Confidential Information be in its possession and control at all times. Upon request by Disclosing Party, Receiving Party shall provide a list of the Receiving Party’s Representatives who have possession and control over the Confidential Information. Receiving Party shall protect (and shall cause its Representatives to protect) the Confidential Information to at least the same level of protection that Receiving Party uses to protect its trade secrets and other highly confidential and proprietary information, but in any event no less than a reasonable degree of care.
3. Unless with the prior written consent of Disclosing Party, in no event shall Receiving Party or any of its Representatives, make any contact directly or indirectly with any person described in the Confidential Information (or other person related thereto).
4. If Receiving Party or its Representatives is asked to disclose any Confidential Information by a governmental entity or court process, Receiving Party and/or its Representative shall immediately inform Disclosing Party in writing of such request and cooperate with Disclosing Party in any protective measures pursued by Disclosing Party available to it under relevant laws or regulations. If such a protective order is not obtained, the Receiving Party shall only furnish the portion of the Confidential Information required by law to be disclosed. The receiving Party shall furnish a copy of all Confidential Information required to be disclosed to the Disclosing Party prior to furnishing the same to the third party.
5. Receiving Party shall be allowed to disclose the Confidential Information to a third party, provided that the disclosure is necessary for implementing the Purpose and that there is a Disclosing Party’s written consent prior to the disclosure. In such case, Receiving Party shall impose on the said third party the same obligations as Receiving Party bears in this Agreement, and shall be responsible for any breach of such obligations, including but not limited to disclosure of Confidential Information, by such a third party.

**Article 3 (Obligation to Return Information)**

1. Receiving Party shall keep a written record of the Confidential Information provided to Receiving Party, the location of information and the individuals who have access to such information.
2. Receiving Party agrees that any and all rights, title and interest in and to the Confidential Information shall remain the property of Disclosing Party and that Receiving Party is not granted any license, patent, trade secret, copyright or other similar right, title or interest by the receipt of such Confidential Information. Receiving Party further covenants that it shall not (and shall cause its Representatives to not) engage in any act which may adversely impair Disclosing Party’s rights in the Confidential Information or subject Disclosing Party to any liability.
3. If Receiving Party ceases to proceed with the Purpose, if Disclosing Party so requests in writing, or upon termination or expiration of this Agreement, Receiving Party shall immediately return to Disclosing Party or destroy all Confidential Information however stored (including copy, draft, duplicate, and other media of computer, word processor or other similar machine containing Confidential Information) without keeping any duplicates thereof or notes therefrom, in part or in whole. Within five (5) business days of a written request from Disclosing Party, Receiving Party shall certify in writing to Disclosing Party that it has fully complied with its obligations under this Article 3, and it no longer possesses nor have any access to any Confidential Information provided by Disclosing Party.

**Article 4 (Enforcement; Indemnification)**

1. Receiving Party shall indemnify and hold Disclosing Party and its Representatives harmless from and against all claims, damages, losses, expenses, and liabilities arising from or relating to a breach by Receiving Party or its Representatives of this Agreement.
2. Each Party acknowledges that the Confidential Information is valuable and that money damages may not be an adequate remedy for any breach by the Recipient Party of this Agreement. Each Party agrees that the Disclosing Party shall be entitled without proof of special damages to seek an injunction and other equitable relief from any court with competent jurisdiction over the Parties for any actual or threatened breach by the Recipient Party of this Agreement. These remedies are without prejudice to any other rights and remedies that the Disclosing Party may have hereunder or at law.
3. Receiving Party shall be responsible for all actions (and inactions) of its Representatives to duly comply with this Agreement as if they were an original party hereto and any breach by the Representatives of Receiving Party shall be deemed to be a breach by Receiving Party.

**Article 5 (Non-solicitation)**

Receiving Party or its Representatives shall not directly or indirectly solicit or entice away or endeavor to solicit or entice away any person who is:

1. a director, officer or employee of Disclosing Party or otherwise engaged by Disclosing Party; or
2. a customer or client of Disclosing Party, including any vendors to Disclosing Party.

**Article 6 (No Obligation for Disclosing Party)**

Unless otherwise agreed, this Agreement does not constitute an obligation to exchange information. Disclosing Party is free to decide what information it wants to disclose to the Receiving Party. The non-disclosure of information shall not affect the effectiveness of this Agreement. Further, neither Party is under any obligation to participate in any transaction with the other on any matter, and each Party is free to participate with any third party in any transaction subject to such party’s obligations hereunder with respect to confidential information.

**Article 7 (No Rights Granted to Receiving Party)**

It is expressly understood and agreed by the Receiving Party hereto that the disclosure and provision of Confidential Information or Samples under this Agreement shall not be construed as granting to the Receiving Party any rights whatsoever and the transmission of Confidential Information does not constitute an assignment of rights to Receiving Party.

**Article 8 (No Representation or Warranty)**

The Parties expressly disclaims any warranties with respect to the reliability of any confidential information disclosed under this Agreement. This disclaimer shall in and of itself not apply to or limit any specific warranties that the parties may give in any subsequent agreement. Nothing contained in this Agreement obligates the Parties to provide any specific information that it otherwise desires to withhold.

DISCLOSING PARTY WILL NOT BE LIABLE TO RECEIVING PARTY FOR ANY CONSEQUENTIAL, PUNITIVE, INCIDENTAL, EXEMPLARY, OR SPECIAL DAMAGES (including but not limited to loss of business opportunity or loss of profit) ARISING OUT OF ACTIVITIES RELATING TO THIS AGREEMENT.

**Article 9 (Termination)**

Unless sooner terminated by one Party giving thirty (30) days prior written notice to the other Party, this Agreement shall remain in force and effect from the Effective Date hereof until September 30, 2021. On that date, this Agreement shall terminate automatically without the need for further acts by the Parties. The Parties may mutually agree in writing to an extension of the term of this Agreement.

**Article 10 (No Business Entity)**

This Agreement does not establish a joint venture, partnership, or other type of business entity between the Parties and in no event shall either party represent to other persons that a joint venture, partnership, or other type of business entity has been formed.

**Article 11 (Continuing Obligation)**

Each Party’s obligations under this Agreement shall survive termination of this Agreement, and each Party’s obligations shall be binding upon its employees, agents, successors and assigns, and the rights of each Party under this Agreement shall be fully exercisable by any of its successors or assigns for a period of three (3) years from the date of this Agreement.

**Article 12 (Entire Agreement; Amendment)**

This Agreement embodies the complete understanding and agreement between the Parties and supersedes any prior or contemporaneous understanding or agreement. This Agreement may be amended or terminated only by a written instrument signed by both Parties hereto.

**Article 13 (Governing Law/ Venue)**

This Agreement shall be governed by, and construed in accordance with, the laws of the state of California. All disputes, controversies or differences which may arise between the parties, out of or in relation to or in connection with this Agreement, or for the breach thereof, shall be filed in and settled in a court of competent jurisdiction in the state of California.

**Article 14 (Attorneys’ Fees)**

The prevailing Party in any litigation between the Parties regarding this Agreement or the interpretation hereof shall be paid its reasonable attorneys’ fees and court costs by the other Party.

**Article 15 (Section Headings**)

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

**Article 16 (Non-Assignment)**

Neither Party may assign or transfer any rights or duties of this Agreement, in whole or in part, without the prior written consent of the other Party. This Agreement shall supersede all prior representations and understandings between the Parties concerning the subject matter herein, whether oral or written.

**Article 17 (Severability)**

If any individual term or provision of this Agreement is contrary to or in conflict with any requirement of applicable law, then that term or provision shall be severed herefrom and the remainder of this Agreement shall be binding upon the Parties.

**Article 18 (Non-Waiver)**

Either Party's failure in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement or to exercise any right herein conferred shall not be construed as a waiver or relinquishment of that right or of that Party's right to assert or rely upon the terms and conditions of this Agreement. Any express waiver of a term of this Agreement shall not be binding and effective unless made in writing and properly executed by the waiving Party.

**Article 19 (Publications)**

Publication of the Parties cooperation may only be permitted with the mutual written consent of the Parties.

IN WITNESS WHEREOF the undersigned Parties have executed this Agreement as of the Effective Date.

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| --- | --- | --- | --- |
| SIGNED for and on behalf of  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | | SIGNED for and on behalf of  **Petsphd, llc.** | |
| Signature |  | Signature |  |
| Print Name |  | Print Name | Greg Forquer |
| Title |  | Title | Managing Partner |
| Date |  | Date |  |