

Mutual Nondisclosure Agreement

This Mutual Nondisclosure Agreement ("Agreement") is made by and between Mahomed Sales & Warehousing, LLC, an Indiana limited liability company ("MSW") and _____, a _____ ("Company"). MSW and Company may be referred to individually as a "Party" and collectively as the "Parties."

1. **PURPOSE.** The purpose of this Agreement is to define the conditions under which any Confidential Information, as defined in this Agreement, will be disclosed by a Party ("Disclosing Party"), at its sole discretion, to the other Party ("Receiving Party") in connection with the business relationship between the Parties ("Purpose").
2. **CONFIDENTIAL INFORMATION.** "Confidential Information," as that term is used in this Agreement, shall mean:
 - a. any information disclosed orally or in writing and on whatever medium by or on behalf of Disclosing Party to Receiving Party and concerning Disclosing Party's business, including without limitation any operations information, strategies, forecasts, and plans; manufacturing processes and techniques, tooling, equipment, products, parts or components, product research, design, and development; facility information; financial information; personnel information; marketing and sales information, strategies, forecasts, and plans; customer or potential customer information; supplier or potential supplier information; ideas, concepts, plans, and prototypes; materials, trade secrets, know-how, formulas, proprietary information; and all other non-public information relating to the current or future business of Disclosing Party; and
 - b. any analyses, compilations, extracts, studies, summaries, or other documentation prepared by Receiving Party or a third party based on the Confidential Information disclosed by Disclosing Party.
3. **MARKING.** All information disclosed in furtherance of the Purpose under this Agreement is deemed Confidential Information, whether or not it is so marked. It is the intent of the Disclosing Party to identify or mark Confidential Information as "confidential" or "proprietary" prior to its disclosure to Receiving Party.
4. **EXCEPTIONS.** Confidential Information shall not include information that Receiving Party can prove was:
 - a. at the time of disclosure, in the public domain or which subsequently enters the public domain through no act or failure to act by Receiving Party; or
 - b. developed by or was in the possession of Receiving Party prior to being furnished to Receiving Party by Disclosing Party, or on its behalf, provided that the source of such Confidential Information was not known to Receiving Party by a legal, contractual, or fiduciary obligation to Disclosing Party; or
 - c. available to Receiving Party on a non-confidential basis from a third party that was not known to Receiving Party to be prohibited from disclosing the Confidential Information to Receiving Party by a legal, contractual, or fiduciary obligation to Disclosing Party; or
 - d. independently developed by Receiving Party, or on its behalf, without use of or reference to Disclosing Party's Confidential Information.
5. **PROTECTION OF CONFIDENTIAL MATERIAL.** Receiving Party agrees that it will use commercially reasonable best efforts to protect the secrecy of and avoid disclosure or improper use of the Confidential Information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such Confidential Information, which measures shall include at least the same degree of care that Receiving Party utilizes to protect its own Confidential Information. Receiving Party will not, directly or indirectly, (i) make use of any of the Confidential Information, except for the purpose of considering, evaluating, and negotiating a possible business relationship between the Parties; or (ii) disclose any of Disclosing Party's Confidential Information to any other party. Receiving Party agrees that while it has access to, custody, or possession of any material containing Confidential Information, Receiving Party will not copy, duplicate, or reproduce any such material in any form or media, except as required for fulfilling of any contractual agreement with Disclosing Party. All permitted copies shall contain, on reproduction by Receiving Party, the same Disclosing Party proprietary and confidential notices and legends, if any, which appear on the original Confidential Information, unless expressly authorized otherwise by Disclosing Party prior to reproduction.

6. **RESTRICTIONS ON DISCLOSURE AND USE.** The Confidential Information shall not be:
- a. directly or indirectly used by Receiving Party in any manner in the furtherance of its business and operations except for the purpose of fulfilling any contractual agreements between Disclosing Party and Receiving Party; or
 - b. directly or indirectly used by Receiving Party to the detriment of Disclosing Party's business or operations; or
 - c. directly or indirectly distributed, disclosed, or otherwise disseminated to any third party without the express written consent of Disclosing Party, unless such disclosure is required by law, rule, or regulation that is binding upon Receiving Party and prior written notice is given to Disclosing Party; or
 - d. disclosed to Receiving Party's representatives, except for those who need to know such Confidential Information in furtherance of the Purpose, who are informed of the confidential nature of the Confidential Information, and who agree to be bound by the terms of this Agreement.
7. **COMPELLED DISCLOSURE.** If Receiving Party become legally compelled under applicable law, regulation, or securities exchange listing agreement, or by a competent governmental, administrative, or regulatory authority, or in a proceeding before a court, arbitrator, or administrative agency to disclose any portion of the confidential information, that investigation, evaluation, discussions, or negotiations have, are, or will take place, or any of the terms, conditions, or other facts with respect to this Agreement, Receiving Party will provide Disclosing Party with prompt written notice of such legal compulsion, and shall delay disclosure, if and to the extent permitted and practicable, until Disclosing Party has had an opportunity to seek a protective order or other appropriate remedy or to waive compliance by Receiving Party with the relevant provisions of this Agreement. Pursuant to 18 U.S.C. § 1833(b), an individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that is made: (1) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney, and solely for the purpose of reporting or investigating a suspected violation of law; or (2) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Additionally, an individual suing an employer for retaliation based on the reporting of a suspected violation of law may disclose a trade secret to his or her attorney and use the trade secret information in the court proceeding, provided that any document containing the trade secret is filed under seal and the individual does not disclose the trade secret except pursuant to court order.
8. **RETURN OF CONFIDENTIAL INFORMATION.** Receiving Party agrees that upon expiration or termination of this Agreement, Receiving Party shall:
- a. discontinue any and all use of the Confidential Information;
 - b. promptly return to Disclosing Party the originals and any copies of the Confidential Information in Receiving Party's possession or control;
 - c. return or destroy all documents, models, products, prototypes, samples, tooling, and other materials produced by Receiving Party that contain, embody, or relate to the Confidential Information; and
 - d. certify in writing to Disclosing Party that Receiving Party has complied fully with this Section.
- Notwithstanding the foregoing and subject to the limitations on disclosure and use provided in this Agreement, Receiving Party shall be permitted to retain a copy of the Confidential Information that it has returned or destroyed to facilitate the resolution of any controversies regarding the Confidential Information, and Receiving Party shall not be under any obligation to erase or destroy Confidential Information retained through routine back-up archival electronic storage in the ordinary course of business until the next regularly-scheduled time at which such information shall be erased or destroyed.
9. **OWNERSHIP OF CONFIDENTIAL INFORMATION.** Nothing in this Agreement is intended to grant any rights to Receiving Party under any patent, copyright, trade secret, or other intellectual property right nor shall this Agreement grant Receiving Party any rights in or to Disclosing Party's Confidential Information, except the limited right to review such Confidential Information solely for the purposes of determining whether to enter into, and the undertaking of or the advising with respect to, a potential business relationship.

10. **TERM.** The obligations of Receiving Party under this Agreement shall be effective and remain in full force and effect for a period of ten (10) years from the Effective Date, as defined herein, or until Disclosing Party provides Receiving Party notice in writing that the Confidential Information shall no longer be considered confidential, whichever occurs earlier. Notwithstanding the foregoing, the obligations of confidentiality under this Agreement with respect to trade secret Confidential Information shall survive expiration or termination of this Agreement indefinitely.
11. **CONFIDENTIALITY OF THIS AGREEMENT.** Except to the extent required by law or provided by this Agreement, Receiving Party shall not, without the prior written consent of Disclosing Party, disclose to any third party:
- a. the fact that Confidential Information has been made available to Receiving Party; or
 - b. the fact that investigation, evaluation, discussions, or negotiations have taken place, are taking place, or will take place concerning a potential business relationship between the Parties; or
 - c. any terms, conditions, or facts with respect to any such potential or actual business relationship or transaction, including the status of any discussions.
12. **REMEDIES.** If Receiving Party attempts to use, copy, license or convey the Confidential Information in any manner contrary to the terms of this Agreement or in competition with Disclosing Party or in derogation of Disclosing Party's proprietary rights, whether those rights are explicitly herein stated, determined by law, or otherwise, Disclosing Party shall have, in addition to any other remedies available, the right to seek injunctive relief, Receiving Party hereby acknowledging that other remedies are inadequate and that Disclosing Party will be irreparably harmed. All costs and expenses incident to the enforcement of this Agreement, including reasonable attorney's fees and expenses, shall be borne by the party which is in violation hereof.
13. **GOVERNING LAW AND FORUM.** Disclosing Party and Receiving Party expressly agree that any and all claims arising out of this Agreement shall be governed by and construed pursuant to the laws of the State of Indiana, other than those relating to conflicts of laws. All disputes arising under this Agreement must be litigated in the State or Federal court having jurisdiction over Marion County, Indiana, and the Parties consent to submit themselves to the exclusive jurisdiction and venue of that Court.
14. **NOTICES.** Any notice or other communication relating to the subject matter of this Agreement shall be deemed sufficiently given if sent by: personal delivery; overnight courier; or registered or certified mail, postage prepaid, return receipt requested. Such notices shall be addressed to the parties at their respective addresses set forth below the signature blocks of this Agreement.
15. **DISCLAIMER.** Disclosing Party has not made any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information made available to Receiving Party. Except as set forth in a definitive agreement, Disclosing Party shall not have any liability to Receiving Party relating to or resulting from the use of the Confidential Information or any errors therein or omissions therefrom. Only those representations or warranties made in a definitive agreement, when, as, and if executed, and subject to such limitations and restrictions as may be specified therein, will have any legal effect.
16. **MISCELLANEOUS.** This Agreement shall be binding upon and inure to the benefit of and shall be enforceable by the Parties hereto, their successors and assigns. Receiving Party will be responsible for any breach of this Agreement by its representatives. Receiving Party may not assign its rights under this Agreement without prior written consent from Disclosing Party, and any purported assignment or delegation in violation of this Agreement will be void and deemed a breach of this Agreement. Notwithstanding the foregoing, MSW may assign this Agreement to an affiliate or an entity that acquires all or substantially all of the business or assets relating to this Agreement without the prior consent of Company. No failure or delay by any Party in exercising any right, power, or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or future exercise thereof or the exercise of any other right, power, or privilege hereunder. If any provision of this Agreement is determined by any court of competent jurisdiction to be invalid or unenforceable, such provision shall be interpreted to the maximum extent to which it is valid and enforceable, all as determined by such court in such action, and the remaining provisions of this Agreement will, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective as of the _____ day of _____, _____. ("Effective Date").

MSW:

Mahomed Sales & Warehousing, LLC

By: _____

Name: _____

Title: _____

Date: _____

Company:

By: _____

Name: _____

Title: _____

Date: _____

Notices to MSW shall be addressed as follows:

Address: _____

Phone: _____

Attention: _____

Notices to Company shall be addressed as follows:

Address: _____

Phone: _____

Attention: _____