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Thrive Startup Documents

**MUTUAL NONDISCLOSURE AGREEMENT**

This **Mutual Nondisclosure Agreement** (this “**Agreement**”), dated as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, is made between [INSERT COMPANY NAME] (the “**Company**”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Vendor**”). Company and Vendor are collectively referred to herein as the “**Parties**” and each individually as a “**Party**.”

The Parties would like to protect the confidentiality of, maintain their respective rights in and prevent the unauthorized use and disclosure of their valuable confidential information. Accordingly, the Parties hereby agree as follows:

# Proprietary Information. “**Trade Secrets**” means information that: (i) derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, other persons who can obtain economic value from its disclosure or use; (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and (iii) includes but is not limited to, patents, patent applications, computer object or source codes, research, inventions, technical or nontechnical data, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, designs, engineerings, processes, financial data, financial plans, product or service plans, marketing activities, lists of actual or potential customers or suppliers, and technology, deemed a trade secret under applicable law. “**Confidential Information**” means all nonpublic information, other than Trade Secrets, disclosed by one Party, its directors, officers, employees, contractors, affiliates, advisors, lenders or agents (collectively, the “**Disclosing Party**”) to the other Party, its directors, officers, employees, contractors, affiliates, advisors, lenders or agents (collectively, the “**Receiving Party**”). Confidential Information includes, without limitation, nonpublic information relating to the Disclosing Party’s (a) financial statements, reports, documents and financial projections; (b) contracts and agreements to which the Disclosing Party is a party or pursuant to which the Disclosing Party conducts its business and affairs; (c) customers and customer information, prospective customers and related information; (d) sales and marketing plans and practices; (e) suppliers and supplier information; (f) specifications, design plans and drawings; (g) planned or actual computer software programs, code, documentation, data, know-how or other technical or business information; (h) third party information that the Disclosing Party is obligated to keep confidential; and (i) any other information that the disclosing party designates as “Confidential Information” prior to its disclosure. As used in this Agreement, “**Proprietary Information**” includes Trade Secrets and Confidential Information.

# Exclusions. Proprietary Information does not include any information that (i) is or becomes publicly available without breach of this Agreement, (ii) can be shown by reliable documentation to have been known to the Receiving Party at the time of its receipt from the Disclosing Party and is not subject to any confidentiality agreement and was not acquired by any wrongful or tortious act, (iii) is received from a third party not under any obligation of confidentiality to the Disclosing Party and who did not acquire or disclose such information by a wrongful or tortuous act, (iv) is approved for disclosure in writing by the Disclosing Party, or (v) can be shown by reliable documentation to have been independently developed by the Receiving Party without the use of, or reference to, any Proprietary Information of the Disclosing Party.

# Use of Proprietary Information. The Parties wish to discuss a potential business relationship with one another (the “**Proposed Relationship**”), and the Parties contemplate that they will disclose Proprietary Information in connection with such Proposed Relationship. The Receiving Party may use Proprietary Information only for its internal investigation of the Proposed Relationship with the Disclosing Party and only in accordance with this Agreement. Except as expressly provided in this Agreement, the Receiving Party will not use, and will not permit the use of, the Disclosing Party’s Proprietary Information and will not disclose, or permit the disclosure of, such Proprietary Information to anyone without the Disclosing Party’s prior written consent. The Receiving Party will take all reasonable measures to avoid unauthorized disclosure, dissemination or use of the Disclosing Party’s Proprietary Information, including, at a minimum, those measures it takes to protect its own Proprietary Information.

# Receiving Party Personnel. The Receiving Party will restrict the possession, knowledge and use of Proprietary Information to its directors, officers, employees, contractors, affiliates, advisors, lenders or agents (collectively, “**Personnel**”) who (i) have a bona fide need to know Proprietary Information in connection with the Receiving Party’s evaluation of the Proposed Relationship and (ii) have executed written agreements obligating them to protect the Proprietary Information in a manner similar to the protections imposed by this Agreement.

# Disclosures to Governmental Entities. The Receiving Party may disclose Proprietary Information as required to comply with binding orders of governmental entities that have jurisdiction over it, provided that the Receiving Party (i) gives the Disclosing Party reasonable prior written notice to allow the Disclosing Party to seek a protective order or other appropriate remedy, (ii) discloses only such information as is required by the governmental entity, and (iii) uses all commercially reasonable efforts to obtain confidential treatment for any Proprietary Information so disclosed.

# Ownership of Proprietary Information; No Obligation to Disclose. All Proprietary Information will remain the exclusive property of the Disclosing Party. Neither this Agreement nor the Disclosing Party’s disclosure of Proprietary Information to the Receiving Party will constitute an express or implied grant to the Receiving Party of any license, title or other rights to or under the Disclosing Party’s patents, copyrights, trade secrets, trademarks or other intellectual property rights. Neither Party shall alter or obliterate any notice of any propriety right of the other Party on any copy of the other Party’s Proprietary Information. Neither party is obligated to disclose any of its Proprietary Information to the other party.

# No License or Warranty. The Receiving Party acknowledges that neither the Disclosing Party, nor its Personnel nor any other person makes any express or implied representation or warranty as to the accuracy or completeness of the Proprietary Information, and the Receiving Party agrees that no such Disclosing Party, Personnel or other person will have any liability relating to the Proprietary Information or for any errors therein or omissions therefrom. Each party acknowledges and agrees that Proprietary Information transmitted or exchanged under this Agreement is provided “as-is,” and no warranty of merchantability or fitness for a particular purpose is provided hereunder for any Proprietary Information. A Receiving Party shall use and rely upon Proprietary Information at its sole risk and expense.

# Notice of Unauthorized Use.The Receiving Party will notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Proprietary Information or any other breach of this Agreement by the Receiving Party. The Receiving Party will cooperate with the Disclosing Party in every reasonable way to help the Disclosing Party regain possession of such Proprietary Information and prevent its further unauthorized use or disclosure.

# Return of Proprietary Information. The Receiving Party will return or destroy, at the Disclosing Party’s option, all tangible materials embodying Proprietary Information (in any form and including, without limitation, all derivative materials such as summaries, copies and excerpts of Proprietary Information) within five (5) business days following the Disclosing Party’s written request. At the Disclosing Party’s option, the Receiving Party will promptly provide written certification of its compliance with this Section 9. Notwithstanding the foregoing, nothing shall prevent a Party from retaining a copy of the Proprietary Information that (i) may have been stored by such Party in the course of its ordinary backup and disaster recovery procedures or (ii) is required to be retained by such Party’s record retention policies to comply with its legal and/or regulatory requirements; provided, however, that any such retained Proprietary Information shall remain subject to the terms and conditions of this Agreement, and except for such Party’s compliance with its regulatory requirements, no such retained Proprietary Information shall be accessed, copied or used for any other purpose after this Agreement is terminated.

# Injunctive Relief. The Receiving Party acknowledges that disclosure or use of Proprietary Information in violation of this Agreement could cause irreparable harm to the Disclosing Party for which monetary damages may be difficult to ascertain or an inadequate remedy. The Receiving Party therefore agrees that the Disclosing Party will have the right, in addition to its other rights and remedies, to seek injunctive relief for any violation of this Agreement.

# Scope; Termination. This Agreement is intended to cover Proprietary Information disclosed by each Party both prior and subsequent to the date hereof. This Agreement will terminate automatically upon written notice by one Party to the other Party of its intent to terminate this Agreement; provided, however, that each Party’s obligations with respect to the other Party’s (i) Trade Secrets will survive any termination of this Agreement and remain in effect for as long as such information remains a trade secret under applicable law and (ii) Confidential Information will survive any termination of this Agreement and will continue for three (3) years following any termination of this Agreement.

# Notices. Any notice, request, demand, waiver, consent, approval or other communication that is required or permitted hereunder must be in writing and must be delivered to the following addresses:

Vendor:

Company:

All notices and other communications shall be deemed to be duly given only if personally delivered or if sent for next business day delivery by a nationally recognized overnight delivery service (such as UPS or FedEx) with delivery charges prepaid. Notices shall be deemed received regardless of actual receipt, and shall be effective on the earlier of (a) actual receipt or refusal to accept receipt, if delivered personally and (b) one (1) business day after depositing the same with an overnight delivery service. Any Party may change its address or other information for the purpose of notices to that Party by giving notice specifying such change to the other Parties in accordance with this Section 12.

# Non-Solicitation of Contacted Employees. For the two (2) year period after the date of this Agreement, neither Party shall, without the prior written consent of the other Party, directly or indirectly, solicit or recruit any Contacted Employee of the other Party or induce any Contacted Employee of the other Party to terminate his or her employment relationship with such other Party; provided, however, that general public solicitations or public advertisements by a Party for employment positions with a Party shall not be a violation of this Section 13. For purposes of this Agreement, “**Contacted Employees**” means any employee of a Party that has significant contact with the other Party during the Parties’ discussion of the Proposed Relationship under this Agreement.

# Miscellaneous.

## Each Party shall bear all costs and expenses incurred in connection with this Agreement; provided that a prevailing party in any litigation commenced to enforce or construe the terms of this Agreement shall be entitled to collect from the other party its actual litigation costs, including reasonable attorneys' fees and expenses.

## This Agreement shall not create any agency, joint venture, partnership or other business relationship or entity of any kind, or an obligation to form any such relationship or entity, nor will it prohibit either Party from engaging in similar discussions with any other third party. Each Party will act as an independent contractor and not as an agent of the other Party for any purpose, and neither will have the authority to bind the other.

## This Agreement constitutes the entire agreement between the Parties relating to the matters discussed herein and may be amended or modified only with the subsequent mutual written consent of the Parties. Each Party’s obligations hereunder are in addition to, and not exclusive of, any and all of its other obligations and duties to the other Party, whether express, implied, in fact or in law. Neither Party may assign any of its rights, duties or obligations hereunder, in whole or in part, without the prior written consent of the other Party. Subject to the limitations set forth in this Agreement, this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

## Each Party agrees that, unless and until the Parties have executed and delivered definitive agreements between them with respect to any business dealings that they each have agreed to, neither Party will be under any legal obligation of any kind whatsoever with respect to the Proposed Relationship or any other relationship by virtue of this or any other written or oral expression by it or by any of its representatives except, in the case of this Agreement, for the matters specifically agreed to herein.

## Any failure by either Party to enforce performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

## If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect.

## This Agreement shall be governed by the laws of the State of [INSERT STATE], exclusive of its rules governing choice of law and conflicts of law.  All actions filed to enforce rights or obligations under this Agreement must be filed exclusively in the state courts located in [INSERT COUNTY, STATE] or the United States Federal District Courts located in the State of [INSERT STATE] without regard to any contrary choice of law or conflicts of law principles, and each of the Parties hereby agrees to the venue and irrevocably consents to the personal and subject matter jurisdiction of such courts for such actions.

## The titles of the paragraphs of this Agreement are for convenience of reference purposes only and shall not be referred to in the construction or interpretation of any provision hereof.

## Each Party represents that it has all necessary right, power and ability to enter into this Agreement, and that its undersigned representative has all necessary authority to execute this Agreement on its behalf. This Agreement may be executed in counterparts and delivered by facsimile or electronic delivery, and all counterparts so executed and delivered shall constitute the fully executed, binding and enforceable agreement, binding on the signing Party for all purposes.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

**Company Vendor**

By: By:

Name: Name:

Title: Title: