



MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This Mutual Confidentiality and Non-Disclosure Agreement (this “Agreement”) made as of the _____ day of _____ 20__ between Chief Enterprises, Inc., on behalf of itself and certain of its Affiliates (collectively, “**Chief Enterprises**”), and _____ (the “**Company**”).

WITNESSETH:

WHEREAS, the parties to this Agreement (each a “**Party**” and collectively, the “**Parties**”) have entered into discussions regarding a possible transaction or series of transactions between them relating to _____ (the “**Transaction**”), and in connection with such discussions, each Party has furnished or may furnish to the other Party and/or its Affiliates (as hereinafter defined) and their respective Representatives (as hereinafter defined) information regarding their products, services, technology, business, customers, clients, working capital, affairs, assets, condition (financial or otherwise) and/or prospects which is either non-public, confidential or proprietary in nature;

WHEREAS, the Parties recognize the importance of preserving the confidential and proprietary nature of such information; and

WHEREAS, as a condition to the Parties hereto proceeding with those discussions and the furnishing of information, each of the Parties requires that this Agreement be entered into;

NOW THEREFORE, in consideration of the premises and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.** The following terms, as used herein, shall have the following meanings:
 - (a) “**Affiliate**” means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified of a Party.
 - (b) “**Confidential Information**” means all information, whether visual, written, electronic or oral, (including any information furnished prior to the execution of this Agreement) related to the products, services, technology, business, customers, working capital, affairs, assets, condition (financial or otherwise) or prospects of a Disclosing Party which is furnished by such Disclosing Party, or otherwise disclosed by such Disclosing Party, to a Receiving Party in connection with the consideration and evaluation of the Transaction (including, without limitation, samples, compounds and ingredients thereof, prototypes, formulae, technical know how, technical data, financial information, payment terms, performance data, product specifications and customer and/or supplier information) and all reports, analyses, compilations, data, studies and other

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materials (in whatever form maintained, whether documentary, computer storage or otherwise) prepared by the Receiving Party containing or reflecting such furnished information. All such Information shall be identified as confidential and/or proprietary in accordance with the following: (i) in the case of written or electronic information, such Information shall be identified at the time of disclosure with an appropriate legend, marking, stamp, or positive written identification on the face thereof or by an accompanying written statement; (ii) in the case of visual information, such Information shall be identified as confidential at the time of disclosure or as soon thereafter as is reasonably practicable; and (iii) with respect to oral information, such information shall be reduced to written or language form, marked as confidential with an appropriate legend, marking, stamp, or positive written identification, and transmitted to the Receiving Party within thirty (30) days following the oral disclosure. The term “**Confidential Information**” does not include information (i) which is or becomes generally available to the public other than as a result of a disclosure by the Receiving Party or anyone to whom the Receiving Party transmits any Information, (ii) which is or becomes known or available to the Receiving Party on a non-confidential basis and not in contravention of applicable law from a source (other than the Disclosing Party) which has represented to the Receiving Party (which the Receiving Party has no reason to disbelieve after due inquiry) that it is entitled to disclose it to the Receiving Party on such basis or (iii) which a Receiving Party can prove (1) was lawfully in its possession at the time of disclosure by the Disclosing Party or (2) was developed by the Receiving Party independently of any Information received from the Disclosing Party and without otherwise violating any of the terms of this Agreement.

(c) “**Disclosing Party**” means a Party and/or its Affiliates and their respective Representatives that furnishes specified Confidential Information to the other Party and/or its Affiliates and Representatives.

(d) “**Person**” shall mean any natural person; corporation, firm, body corporate, joint venture, general partnership, limited partnership, union, association, or other similar legal business entity; court, agency, government, tribunal, instrumentality, commission, arbitrator, board, bureau, or other entity or authority.

(e) “**Receiving Party**” means a Party and/or its Affiliates and their respective Representatives that receives or otherwise obtains specified Confidential Information from a Disclosing Party.

(f) “**Representatives**” means all Persons acting on behalf of a specified Party or its Affiliates, including without limitation, its directors, officers, lenders, employees, agents, representatives, financial advisors, attorneys, accountants, consultants, reserve and valuation and other experts.

2. **Use of Confidential Information; Confidentiality.**

(a) Each Receiving Party shall keep all Confidential Information it receives or obtains from a Disclosing Party confidential and shall not, without the prior written consent of the Disclosing Party, disclose such Confidential Information, in whole or in part, and shall not use such Confidential Information, directly or indirectly, for any purpose other than in connection with evaluating the Transaction. The exposure of the Receiving Party to the Confidential Information or its disclosure shall not be construed in any way to grant to the Receiving Party any right or license with respect to the Information other than the right to use such Confidential Information

strictly in accordance with this Agreement. Moreover, each Receiving Party shall have the right to disclose that it is evaluating the Transaction and transmit Confidential Information to its Representatives only if and to the extent that such Representatives need to know the Confidential Information for the purpose of evaluating the Transaction and are informed by such Receiving Party of the confidential nature of the Confidential Information and agree (in writing) to be bound by the terms of this Agreement. Each Party shall be responsible for any actions by its Affiliates and/or Representatives which are not in accordance with the agreements herein regarding the conduct of its Affiliates and/or Representatives. Visitors shall not take photographs or otherwise record the activities at the other party's facilities.

(b) Promptly following the request of the Disclosing Party, the Receiving Party shall, as directed by the Disclosing Party, (i) destroy (and confirm such destruction in writing to the Disclosing Party) or (ii) return all Information it receives or obtains from a Disclosing Party and all copies thereof, as well as all other materials containing Confidential Information in the Receiving Party's possession (including, without limitation, notes), without retaining any copies or extracts thereof.

(c) Should it be necessary for a Receiving Party, or anyone to whom it transmits Confidential Information pursuant to this Agreement, to disclose any of the Confidential Information it received from a Disclosing Party in order to comply with applicable law or legal process (including, without limitation, the disclosure requirements of any securities exchange), the Receiving Party will provide the Disclosing Party with prompt written notice of such requirement(s) so that the Disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. In any event, the Receiving Party or such Person to whom it transmits Confidential Information pursuant to this Agreement will disclose only that portion of the Confidential Information which, in the reasonable opinion of its legal counsel, it is legally required to disclose and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information.

(d) Each Party agrees to submit to the other Party all advertising, sales, and promotional materials, press releases and other publicity materials relating to the Transaction wherein the name and/or mark of the other Party is mentioned or containing language from which the connection of said names or marks may be inferred or implied. The Parties further agree not to publish or use such advertising, sales and promotional materials, press releases, or other publicity materials before receiving the prior written approval from the other Party. Such approval shall not be unreasonably withheld or delayed. Without the consent of the other Party, neither Party nor any of its Affiliates or Representatives will disclose to any other Person any information regarding its participation in discussions regarding, and evaluation of, the Transaction, including that Information has been made available or the status of the discussions and evaluations, except as required by law and then only with prior written notice as soon as practicable to the other Party.

3. **Indemnification.** In the event any Representative of a Party is permitted at any time to visit any of the business or project sites of another Party or any of its Affiliates, such visiting Party shall indemnify and save such other Party harmless from and against any and all claims and liabilities, including actual out-of-pocket costs and expenses for loss, injury to or death of any such person, and any loss, damage to or destruction of any property, incurred by such other Party or any of its Affiliates resulting directly or indirectly from the negligence or misconduct of any of such Representatives during any such visit. In no event shall the indemnifying Party be liable for consequential damages.

4. **Equitable Relief.** Each Party acknowledges that the other Party would be irreparably injured by a breach of this Agreement by a Receiving Party or its Affiliates or Representatives and that each Party shall be entitled to equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement by any of the other Parties. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or equity.

5. **No Grant of Rights.** No license, intellectual property right or other ownership or use right is conveyed solely by this Agreement, except the limited right to use Confidential Information described in Sections 1 and 2 of this Agreement.

6. **Contact with Employees, Customers, Suppliers, etc.** Except in the ordinary course of business, neither the Company nor any of its Affiliates or Representatives will initiate or maintain contact with any Person employed by Chief Enterprises or its Affiliates or with any customer or supplier of Chief Enterprises or its Affiliates, regarding the business, prospects, operations or finances of Chief Enterprises or its Affiliates except with the prior written consent of Chief Enterprises.

7. **Non-Solicitation.** The Company acknowledges that Chief Enterprises has invested and will continue to invest significant time and money to develop valuable, continuing relationships with existing and prospective clients and customers of Chief Enterprises. The Company further recognizes that it will obtain valuable Confidential Information about Chief Enterprises customers, clients, suppliers, business partner, and/or vendors, and their business requirements. The Company agrees that, for the term of this Agreement and for two (2) years following its termination, Company will not directly or indirectly, solicit or assist others in soliciting, or attempt to solicit or assist others in attempting to solicit, (i) any existing customers, clients, suppliers, business partners, and/or vendors of Chief Enterprises with or about whom the Company obtained Confidential Information, or (ii) any prospective customers, clients, suppliers, business partners, and/or vendors of Chief Enterprises with or about whom the Company obtained Confidential Information and with whom Chief Enterprises took significant steps to do business with during the term of this Agreement, for the purpose or effect of inducing such existing or prospective customers, clients, suppliers, business partners, and/or vendors to cease doing business or reduce their business with Chief Enterprises or to purchase, lease, or utilize products or services that are competitive with, similar to, or that may be used as substitutes for any products or services offered by Chief Enterprises.

8. **Non-Waiver.** No failure or delay by either Party in exercising any right, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise of any right, power or privilege hereunder.

9. **Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Illinois applicable to agreements made and to be performed within such State and all disputes shall be venued exclusively in state or federal courts situated in Chicago, Illinois.

10. **Securities.** Chief Enterprises and the Company each acknowledge that it is aware, and will advise its Representatives, that the United States securities laws prohibit any person who has received from an issuer material, non-public information from purchasing or selling securities of such issuer or from communicating such information to any other person under circumstances in which it is reasonably foreseeable that such person is likely to purchase or sell such securities.

11. **Counterparts.** This Agreement may be executed in any number of counterparts, no one of which needs to be executed by both Parties, and this Agreement shall be binding upon the Parties with the same force and effect as if each Party had signed the same document, and each such signed counterpart shall constitute an original of this Agreement.

12. **Severability.** In the event any provision of this Agreement is invalid as applied to any fact or circumstance, it shall be modified by the minimum extent necessary to render it valid, and its invalidity shall not affect the validity of any other provision or the same provision as applied to any other fact or circumstance.

13. **Notice.** Any notice required or permitted to be given shall be in writing and may be personally served or sent by facsimile or registered mail and shall be presumed to have been given as follows: if personally served, when served; if by fax, on the second business day after transmission thereof on a fax machine to the proper fax number with fax record thereof and confirming letter sent; or if mailed, upon receipt or after the tenth business day after deposit in the mail with airmail postage prepaid and properly addressed, whichever is earlier. For the purposes hereof, the addresses of the Parties hereto (until notice of a change thereof is given as provided in this paragraph) shall be as follows:

If to Chief Enterprises:

Chief Enterprises, Inc.

Facsimile: [_____]

Attention: _____

If to the Company:

Facsimile: [_____]

Attention: _____

14. **Modification.** This Agreement shall not be amended, altered or modified except by an instrument in writing expressly referring to this Agreement and signed by the Parties hereto.

15. **Term and Termination.** This Agreement shall be in effect for a period of two (2) years from the date hereof, provided that (i) either Party may terminate this Agreement by giving 60 days' written notice in accordance with the notice provisions hereof and (ii) with respect to Confidential Information disclosed hereunder, the confidentiality obligations set forth in Paragraph 2(a) shall remain in full force and effect for so long as such Confidential Information remains confidential and non-public. Notwithstanding anything to the contrary herein, information or property which is protected by law for a longer period of time (e.g. trade secrets) shall continue to receive all protections to which it is entitled for so long as it qualifies for protection under the applicable law.

* * *

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Chief Enterprises, Inc.

(Company's Legal Name)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____