NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement (the “NDA”), entered into by and between ACME, Inc. (“ACME”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Receiving Party”), shall be effective as of 2022-08-17. ACME and Receiving Party may be referred to individually as a “Party,” or collectively as the “Parties.”[[1]](#footnote-1)

The Parties are interested in exploring whether to enter into a (or expand upon an existing) business relationship with each other, and as part of performing their due diligence prior to making such a determination (“Due Diligence”), ACME intends to provide Receiving Party with certain Confidential Information that ACME wishes to keep confidential. [*As used in this NDA, the term “Confidential Information” shall mean all non-public information belonging to ACME that it reasonably considers proprietary or confidential, in whatever form (oral, visual, written, electronic, tangible, or intangible), whether labeled “confidential” or otherwise, and including, without limitation, information related to ACME’s: (i) internal operations (e.g., its owners/managers and their respective roles); (ii) clients/customers (e.g., names, phone numbers, email addresses, social media information, order preferences, pricing, etc.); (iii) technical data; (iv) know-how; (v) non-publicized areas of research; (vi) profitable markets; (vii) lines of distribution; (viii) marketing plans, strategies, and resources; (ix) pricing and pricing models; (x) software, programs, algorithms, and source code; (xi) developments, inventions, processes, and formulas; (xii) new technology and designs; (xiii) financial data, including billing and collections practices; and (xiv) any other information deemed to be a trade secret or confidential within the meaning of Civil Code section 3426 et seq.*]

Confidential Information shall *not* mean or refer to information that: (i) is already in the public domain (or that becomes so) through no fault of Receiving Party; (ii) Receiving Party already possessed, as evidenced by documents in Receiving Party’s possession dated prior to the time that ACME provided Receiving Party with the Confidential Information; (iii) is received in good faith from a source other than ACME or its Representatives, provided that such source is not bound by a confidentiality agreement, or other contractual, legal, or fiduciary duty of confidentiality to ACME; or (iv) ACME authorized Receiving Party in writing to release.

Receiving Party acknowledges and agrees that ACME’s Confidential Information constitutes a special, unique, and valuable asset to ACME. Consequently, Receiving Party agrees that it must: (i) limit its use of ACME’s Confidential Information *solely* to conducting its Due Diligence; (ii) hold the Confidential Information in strict confidence; (iii) take all reasonable precautions to prevent the inadvertent disclosure of the Confidential Information; and (iv) not disclose such Confidential Information to any person or entity other than its Representatives who: (a) reasonably require access to it as part of Receiving Party’s Due Diligence; (b) are informed of the information’s confidential nature; and (c) are bound by written confidentiality obligations at least as protective of the Confidential Information as are the provisions of this NDA. Such signed writings must be presented to ACME upon request.

The Confidential Information is provided AS IS and without warranty of any kind, whether express or implied, including, without limitation, implied warranties of merchantability, fitness for a particular purpose, or title. ACME, therefore, shall not be liable to Receiving Party for errors or omissions in any of the Confidential Information, or for that matter, any decisions made by Receiving Party in reliance upon any of the Confidential Information.

With respect to ACME’s Confidential Information, about which a third party is seeking disclosure through operation of law (e.g., subpoena, court order, deposition, etc.), prior to any disclosure of the Confidential Information, Receiving Party must take all reasonable steps to provide ACME with prompt notice sufficient to permit ACME to contest such disclosure (e.g., by filing a motion for a protective order).

The Parties acknowledge and agree that any unauthorized use or disclosure of the Confidential Information shall constitute unfair competition within the meaning of applicable California law. The Parties agree, therefore, that in the event of a breach (or alleged breach) by Receiving Party or its Representatives of any of the covenants contained in this NDA, ACME will have suffered irreparable injury and damage for which money damages may not be adequate and/or which may be difficult to ascertain. Consequently, in the event of such a breach, or a reasonably anticipated breach, in addition to ACME’s other legal and equitable remedies, ACME shall be entitled to seek injunctive relief against Receiving Party without the necessity of posting a bond.

The Parties acknowledge and agree that, regardless of whether or not the Parties enter into a contract regarding a future business relationship, the obligations contained in this NDA shall continue in full force and effect for a period of three (3) years following the last transfer of any Confidential Information to Receiving Party.

The Parties further acknowledge and agree that within seven (7) calendar days of the ACME’s written request, Receiving Party will promptly either destroy or return to ACME all Confidential Information in its (and its Representatives’) possession, custody, or control (including the removal or destruction of information from any electronic retrieval and/or backup systems).

Likewise, within those same seven (7) calendar days, and also upon ACME’s written request, Receiving Party shall provide ACME with a sworn written declaration, signed by an authorized representative of Receiving Party under penalty of perjury under the laws of the State of California and the United States, that the destruction and/or return required in the prior section actually took place.

For a period of one (1) year after the Parties sign this NDA, Receiving Party agrees not to solicit for employment, or in any way compensate, any of ACME’s employees or other Representatives.

All notices to the other Party required under this NDA shall be in writing and shall be delivered to the addresses set forth below (or any subsequent address provided in writing by a Party) via: (i) certified mail, return receipt requested; (ii) personal delivery if accompanied by proof of delivery; or (iii) a nationally recognized delivery service (e.g., Federal Express, United Parcel Service, etc.) requiring proof of delivery. Notwithstanding the foregoing, if the Parties subsequently agree in writing, whether via electronic mail or in one of the three methods referenced above, to permit notices to be delivered solely via electronic mail, then all subsequent notices may be delivered in that manner.

If to ACME: *123 Fake St*

If to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This NDA embodies the final and complete understanding between the Parties regarding the disclosure of ACME’s Confidential Information, replacing and superseding all previous oral or written agreements, understandings, or arrangements between the Parties with respect to such disclosure. This NDA may not be modified or amended except in a writing signed by the Parties. This NDA shall be governed by and construed in accordance with the laws of the State of California, with venue in the County of USA. In the event that any provision of this NDA shall, for any reason, be held to be invalid, unenforceable, or illegal, such provision shall be severed from this NDA, and such invalidity, unenforceability, or illegality shall not affect any other provisions of this NDA. This NDA has been entered into at arm’s length and between Parties who had the terms of the NDA specifically explained to them and who either had, or had the opportunity to seek, independent counsel of their own choosing. Accordingly, any rule of law or legal decision that would require interpretation of this NDA against the drafter, including without limitation, Civil Code section 1654, is not applicable and is irrevocably and unconditionally waived. No waiver by either Party of any breach by the other of any of the provisions of this NDA shall be deemed a waiver of any preceding or subsequent breach. And a waiver of any provision of this NDA on any particular occasion shall not constitute a permanent waiver of that provision. If any legal action is brought to enforce or interpret this NDA, the prevailing Party shall be entitled to recover its reasonable attorneys’ fees and costs.

The Parties have signed this NDA as of the date(s) set forth below.

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

ACME, Inc.

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

Name & Position:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

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

Name & Position:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. A “Party” (or “Parties”) shall also mean and refer to each Party’s affiliates, officers, directors, managers, members, shareholders, attorneys, accountants, financial advisors, partners, agents, employees, independent contractors, service providers, licensees, and subcontractors (these may also, but need not, be referred to collectively as “Representatives” when the context so dictates). [↑](#footnote-ref-1)