

## NON-DISCLOSURE AGREEMENT

This NON-DISCLOSURE AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 20\_\_ by and between Critical Factors (CF), and \_\_\_\_\_. (Client). (The parties executing this Agreement are referred to below collectively as the "Parties" and individually as a "Party").

### Background

1. The Parties are sharing information in connection with consideration of a possible transaction or relationship between them.
2. In the course of considering the possible transaction or relationship, one Party (the "Disclosing Party") may disclose to the other (the "Recipient") confidential, important, and/or proprietary trade secret information concerning the Disclosing Party and its activities.
3. In the course of considering the possible transaction or relationship, one Party (the "Disclosing Party") may disclose to the other (the "Recipient") confidential, important, and/or proprietary trade secret information concerning a 3<sup>rd</sup> Party (3<sup>rd</sup> Party) and its activities.

THEREFORE, the Parties agree to enter into a confidential relationship with respect to the disclosure by one Party to the other of certain information.

1. Definitions. "Confidential Information" as used in this Agreement shall mean any information or material which is proprietary to the Disclosing Party and is marked or otherwise clearly designated as "Confidential," "Proprietary," or with a similar legend and shall include all orally disclosed information that has or could have commercial value or other utility in the business or prospective business of the Disclosing Party if identified in writing as "confidential" and submitted to Recipient within 15 days of disclosure. "Confidential Information" as used in this Agreement shall also mean any information or material which is proprietary to a 3<sup>rd</sup> party and shall be preceded with a copy of an NDA signed with regard to a potential transaction with that 3<sup>rd</sup> Party sent via email with a Return Receipt request. Upon confirmation of receipt, the Receiving Party shall be obligated to abide by the terms of the 3<sup>rd</sup> party NDA. For purposes of this Agreement, references to either Party shall include the Party, and its affiliates and subsidiaries. For purposes of this Agreement, the term "Representative" shall include each Party's directors, officers, employees, agents, and financial, legal, and other advisors.
2. Exclusions. Confidential Information does not include information that: (a) was in the Recipient's possession prior to its being furnished to it under the terms of this Agreement, provided the source of that information was not known by the Recipient to be bound by a confidentiality agreement with or other continual, legal or fiduciary obligation of confidentiality to the Disclosing Party; (b) is now, or hereafter becomes, through no act or failure to act on the part of the Recipient, generally known to the public; (c) is rightfully obtained by the Recipient from a third party, without breach of any obligation to the Disclosing Party; or (d) is independently developed by the Recipient without use of or reference to the Confidential Information.
3. Confidentiality. Each Party and its Representatives shall not disclose any of the Confidential Information in any manner whatsoever, except as provided in paragraphs 4 and 5 of this Agreement, and shall hold and maintain the Confidential Information in strictest confidence for a period of one (1) year from the termination of this agreement. Each Party hereby agrees to indemnify the other Party against any and all losses, damages, claims, expenses, and attorneys' fees incurred or suffered by the Disclosing Party as a result of a breach of this Agreement by the Recipient or its Representatives.
4. Permitted Disclosures. The Recipient may disclose the Disclosing Party's Confidential Information to the Recipient's Representatives, but only to the extent necessary to evaluate or carry out a proposed transaction or relationship with the Disclosing Party.
5. Required Disclosure Notice. The Recipient may disclose Disclosing Party's Confidential Information if and to the extent that such disclosure is required by court order. The Recipient agrees to provide the Disclosing Party with a reasonable prior opportunity to review the disclosure and to formally object to the disclosure by appealing to the appropriate court. However, any motions and/or objections made by the Disclosing Party to any court to fight such court order, shall be undertaken and paid solely by the Disclosing Party. The Disclosing Party agrees to waive all liability or any costs attributed to the Recipient in objecting to any court order(s) that would attempt to stop the disclosure of the Confidential Information. Furthermore, the Recipient shall not be responsible for any damages that the Disclosing Party would incur from the disclosure by the Recipient of Confidential Information ordered by any court, either through actual loss or loss of opportunity.

6. Limits on Use. Recipient and its Representatives shall use the Confidential Information solely for the purpose of evaluating a possible transaction or relationship with Disclosing Party and shall not in any way use the Confidential Information for its own benefit or to the detriment of Disclosing Party. Nothing in this Agreement shall be construed as granting any rights to Recipient, by license or otherwise, to any of Disclosing Party's Confidential Information except for the limited purposes described in this Agreement.
  
7. Return of Documents. If either Party elects not to proceed with the possible transaction with the other, that Party shall notify the other Party of that decision. At that time or at any other time, each Party shall immediately return to the other Party any and all records, notes, and other written, printed or other tangible materials in its possession pertaining to the Confidential Information. The returning of materials shall not relieve either Party from compliance with other terms and conditions of this Agreement.
  
8. No Additional Agreements. Neither the holding of discussions nor the exchange of material or information shall be construed as an obligation of one Party to enter into any other agreement with the other Party or prohibit one Party from providing the same or similar information to other parties and entering into agreements with other parties. Each Party reserves the right, in its sole discretion, to reject any and all proposals made by the other Party or its Representatives with regard to a transaction and to terminate discussions and negotiations at any time. Additional agreements of the parties, if any, shall be in writing signed by both Parties.
  
9. Irreparable Harm. Each Party understands and acknowledges that any disclosure or misappropriation of any of the Confidential Information in violation of this Agreement may cause the other Party irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that the Disclosing Party shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the Disclosing Party shall deem appropriate. Such right is in addition to the remedies otherwise available to Disclosing Party at law or in equity. Such right of Disclosing Party is to be in addition to the remedies otherwise available to Disclosing Party at law or in equity. Each Party expressly waives the defense that a remedy in damages will be adequate and any requirement in an action for specific performance or injunction for the posting of a bond by the other Party.
  
10. Successors and Assigns. This Agreement and each Party's obligations hereunder shall be binding on the representatives, assigns, and successors of such Party and shall inure to the benefit of the assigns and successors of such Party.
  
11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The parties hereby irrevocably consent to the jurisdiction of the state and federal courts located in Los Angeles County in any action arising out of or relating to this Agreement, and waive any other venue to which either party might be entitled by domicile or otherwise.
  
12. Attorney's Fees. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be awarded its attorneys' fees and costs incurred.
  
13. Entire Agreement. This Agreement expresses the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the subject matter. This Agreement is not, however, to limit any rights that either Party may have under trade secret, copyright, patent or other laws that may be available to it. This Agreement may not be amended or modified except in writing signed by each of the Parties. The headings hereof are descriptive only and not to be construed in interpreting the provisions hereof.

Critical Factors \_\_\_\_\_

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

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

Print: David G. Kinney, President

Print: \_\_\_\_\_

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

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