information;

court,

any

by

law,

applicable

If Receiving Party or any of its Representatives is legally compelled by

e.

Party’s Confidential Information; or

disclosure by Disclosing Party and without the use and benefit of any of the Disclosing

If the information is independently developed by Receiving Party prior to

d.

Party’s prior written permission and approval;

If the information is disclosed by Receiving Party with the Disclosing

c.

governmental

such

to

regard

with

Party

Disclosing

to

obligation

confidentiality

a

under

not

source which, to the best knowledge of Receiving Party or its Representatives, is or was

prompt

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**Confidentiality**

**and**

**Non-Disclosure**

order or other remedy to prevent or limit such disclosure and in the absence of such

Disclosing Party prior to disclosure so that Disclosing Party may request a protective

to

fact

that

of

notice

written

If the information is or was received by Receiving Party from a third party

give

Representatives

its

or

Party

Receiving

subpoena or discovery request in pending litigation but only if, to the extent lawful,

by

or

authority

regulatory

or

agency

1. **Confidential Information.** The term “Confidential Information” as used in this

relationships, customer

lists, customer

strategies, documentation, reports, data, databases, customer

plans, marketing

and

development

product

following:

the

of

any

to

and not generally known to the public, including, but not limited to, information relating

Agreement shall mean any data or information that is competitively sensitive material

profiles, business

and David agree as follows:

“Receiving Party.” In consideration for being furnished Confidential Information, T.B.C

receiving the Confidential Information of a Disclosing Party is hereafter referred to as a

Information to the other party is hereafter referred to as a “Disclosing Party.” A party

A party disclosing its Confidential

certain confidential and proprietary information.

agents or advisors (collectively, “Representatives”) may provide or gain access to

each party, their respective affiliates and their respective directors, officers, employees,

(the “Transaction”). In connection with its respective evaluation of the Transaction,

T.B.C and David have indicated an interest in exploring a potential business relationship

Corporation (“T.B.C”) and David Moore, as an Individual (“David”).

of June 16, 2016 (the “Effective Date”) by and between The BIG Company, a Delaware

This Non-Disclosure and Confidentiality Agreement (this “Agreement”) is entered into as

result

b.

Representatives;

its

of

any

or

Party

Receiving

by

disclosure

unauthorized

prior

of

**Non-Disclosure and Confidentiality Agreement**

a

as

If the information is or becomes publicly known and available other than

a.

respect to Confidential Information will not apply to any information:

2. **Exclusions from Confidential Information.** The obligation of confidentiality with

Party considers confidential.

relating to the past, present or future business activities, design, which the Disclosing

results

performance

internal

and

plans

terms

Disclosing

6. **Disclaimer.** There is no representation or warranty, express or implied, made by

responsible for any breach of this Agreement by any of its Representatives.

be

will

Party

Receiving

Agreement.

this

of

Party

the

to

adhere

Representatives

5. **Representatives.** Receiving Party will take reasonable steps to ensure that its

conditions or other facts with respect to the Transaction.

having discussions or negotiation concerning the Transaction; or (c) any of the terms,

Confidential Information; (b) the fact that Disclosing Party and Receiving Party are

Information has been made available to it or that it has inspected any portion of the

its

**Agreement** (Rev. 1337B55)

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**Confidentiality**

**and**

**Non-Disclosure**

discretion: (a) reject any proposals made by the other party or its Representatives with

under any obligation with regard to the Transaction. Either party may, in its sole

Information. Except for the matters set forth in this Agreement, neither party will be

Confidential

except to the extent, the provisions of Paragraph 2 apply: (a) the fact that Confidential

of

any

of

completeness

or

accuracy

the

to

as

Receiving

Information received by Disclosing Party using a reasonable degree of care, but not less

security processes and procedures to safeguard the confidentiality of all Confidential

maintain

and/or

adopt

shall

Representatives

its

and

Party

than that degree of care used in safeguarding its own similar information or material;

b.

except in conformity with this Agreement;

unauthorized use, disclosure, publication or dissemination of Confidential Information

and confidentiality of such information and to not permit unauthorized access to or

Information of the Disclosing Party in strict confidence, to protect the security, integrity

Receiving Party and its Representatives agree to retain the Confidential

a.

3. **Obligation to Maintain Confidentiality.** With respect to Confidential Information:

only such portion of the Confidential Information which it is legally obligated to disclose.

may be necessary or reasonably requested by Disclosing Party to minimize any

neither Receiving Party nor its Representatives shall disclose to any other person,

4. **Non-Disclosure of Transaction.** Without Disclosing Party’s prior written consent,

above.

from the obligations of confidentiality under this Agreement pursuant to Paragraph 2

be a trade secret, except to the extent that such Confidential Information is excluded

effect until 5 years from the date hereof or until the Confidential Information ceases to

The obligation not to disclose Confidential Information shall remain in

e.

damage to the Disclosing Party or a third party as a result of the disclosure or loss; and

protective order or other remedy, Receiving Party or its Representatives may disclose

promptly, at its own expense, notify Disclosing Party in writing and take all actions as

Information by Receiving Party or any of its Representatives, Receiving Party will

If there is an unauthorized disclosure or loss of any of the Confidential

d.

by Disclosing Party;

that include or reflect any Confidential Information are returned or destroyed as directed

all documents, memoranda, notes and other writings or electronic records prepared by it

Upon the termination of this Agreement, Receiving Party will ensure that

c.

9. **Termination.**

Taylor Johnson, Marketing Director

123 Montpillier Ave

Chicago , DE 2222222

Phone number: (222) 222-2222

Fax number: (222) 222-2222

David Moore

123 Casual Road

Chicago, DE 222222222

Phone number: (222) 222-2222

Fax number: (222) 222-2222

The BIG Company

This Agreement will terminate on the earlier of: (a) the written

agreement of the parties to terminate this Agreement; (b) the consummation of the

Transaction; or (c) 5 years from the date hereof.

10. **Amendment.** This Agreement may be amended or modified only by a written

agreement signed by both of the parties.

**Non-Disclosure**

**and**

**Confidentiality**

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**Agreement** (Rev. 1337B55)

a court of competent jurisdiction determines in a final non-appealable order that one

party or its Representatives at any time and for any reason or for no reason; and (c)

change the procedures relating to the consideration of the Transaction at any time

without prior notice to the other party.

7. **Remedies.** Each party agrees that use or disclosure of any Confidential Information

in a manner inconsistent with this Agreement will give rise to irreparable injury for which:

(a) money damages may not be a sufficient remedy for any breach of this Agreement by

such party; (b) the other party may be entitled to specific performance and injunction

and other equitable relief with respect to any such breach; (c) such remedies will not be

the exclusive remedies for any such breach, but will be in addition to all other remedies

available at law or in equity; and (d) in the event of litigation relating to this Agreement, if

respect to the Transaction; (b) terminate discussions and negotiations with the other

party, or any of its Representatives, has breached this Agreement, such party will be

liable for reasonable legal fees and expenses incurred by the other party in connection

with such litigation, including, but not limited to, any appeals.

8. **Notices.** All notices given under this Agreement must be in writing. A notice is

effective upon receipt and shall be sent via one of the following methods: delivery in

person, overnight courier service, certified or registered mail, postage prepaid, return

receipt requested, addressed to the party to be notified at the below address or by

facsimile at the below facsimile number or in the case of either party, to such other

party, address or facsimile number as such party may designate upon reasonable

notice to the other party.

evidenced by a writing signed by the party and any such waiver will be limited to the

**Agreement** (Rev. 1337B55)

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**Confidentiality**

**and**

**Non-Disclosure**

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

David Moore

Title: Marketing Director

Name: Taylor Johnson

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

The BIG Company

date first written above.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the

terms of such writing.

11. **Jurisdiction.** This Agreement will be governed by and construed in accordance

charged with any waiver of any provision of this Agreement, unless such waiver is

unenforceable parts had not been included in this Agreement. Neither party will be

shall continue to be valid, legal and enforceable as though the invalid, illegal or

unenforceable in whole or in part, the remaining provisions shall not be affected and

consent. In the event that any provision of this Agreement is held to be invalid, illegal or

rights or delegate its duties under this Agreement without the other party’s prior written

respective successors and permitted assigns of the parties. Neither party may assign its

12. **Miscellaneous.** This Agreement will inure to the benefit of and be binding on the

such suit, action or proceeding in such courts.

this Agreement. Each party further waives any objection to the laying of venue for any

of Delaware for any legal action, suit or proceeding arising out of or in connection with

laws. Each party consents to the exclusive jurisdiction of the courts located in the State

with the laws of the State of Delaware, without regard to the principles of conflict of

This page intentionally left blank.

**Non-Disclosure**

**and**

**Confidentiality**

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**Agreement** (Rev. 1337B55)

Where

the

Agreement

applies?

(the

will identify the following basic elements: The

“Jurisdiction”)

“Effective

Date”,

The

“Transaction”,

The

4.

“Confidential

Information”,

The

“Disclosing

Party”,

The

“Receiving

Party”,

The

If a problem grows into a lawsuit, the parties

“Representatives”.

should agree that the laws of one state apply. In

Transaction

example,

the

not use or disclose the protected information

Agreement

could

terminate

whenever

the

with anyone else as they discuss and explore

Agreement

expires,

the

other words, both parties consent to appear in a

is

the

possibility

of

entering

into

a

business

completed; or a specific amount of time has

relationship with each other.

passed.

A simple Confidentiality Agreement or NDA

Confidentiality Agreement or NDA for it to

Confidentiality Agreement or NDA?

business relationship (i.e. the “Transaction”).

A Confidentiality Agreement or NDA may also

Both

parties

should

sign

and

date

the

cover useful details such as : Disclaimer, No

Party in order to explore a potentially fruitful

License,

Non-Disclosure,

Obligations,

No

become a legally binding document.

Obligation, Remedies, Notice.

**Non-Disclosure**

**and**

**Confidentiality**

**Agreement** (Rev. 1337B55)

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1. Who is on the hook? (the “Parties”)

specific state.

**WHAT SHOULD BE INCLUDED?**

It is important to know that some states like

A simple NDA should generally have at least

California

encourage

employees

to

be

the following:

entrepreneurial so the laws there disfavor non-

compete clauses (also known as a “covenant not

For

to compete” or CNC) and employer NDAs that

restrict an employee’s mobility after leaving one

The Disclosing Party, either a person or a

company.

company,

usually

has

valuable

information

that they want to share with the Receiving

5. What other details should be included in a

materials,

one

or

both

parties

have

valuable

information, trade secrets, unpublished patent

information. In order to turn that great idea

applications,

financial

information,

marketing

into cash flow, both parties want to explore a

when

tangible

and

intangible

information,

possible

collaboration

or

business

written

and

verbal

representations

Confidentiality

2.

What

is

Protected?

(the

“Confidential

**GENERAL INSTRUCTIONS**

Information”)

Any data or information that is private, secret,

and

Agreements

or

NDA

(Non-

sensitive,

or

valuable

will

be

protected.

Disclosure Agreements) are commonly used

Confidential information can include: proprietary

is sensitive, technical, or nonpublic and is

promises

to

protect

legally

binding

relationship

between

two

information begin (the “Effective Date”) and for

parties — a Disclosing Party and a Receiving

how long the protected information must not be

Party. Both parties understand the information

share with others (the “Disclosure Period”).

the

valuable for commercial or other purposes.

Usually

the

parties

agree

to

when

the

Confidentiality Agreement or NDA will end (the

Further, the two parties promise that they will

“Termination”

provision).

A

relationship.

communications, etc.

**WHAT**

**IS**

**A**

**NON**

**DISCLOSURE**

3. For how long is everyone on the hook? (the

**AGREEMENT?**

“Effective Date” and “Disclosure Period”)

**Non-Disclosure and Confidentiality Agreement** (Rev. 1337B55)

Confidentiality

Agreement

or

NDA

is

a

The Confidentiality Agreement or NDA should

written document that officially recognizes a

also

spell

out

when