

# CONFIDENTIALITY AGREEMENT

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This Confidentiality Agreement (this "Agreement") is entered into as of February 20, 2020 (the "Effective Date") by and between:

The BIG Company, a Delaware Corporation ("T.B.C"), of 123 Montpellier Ave, Chicago, DE 22222

AND

David Moore, as an Individual ("David"), of 123 Casual Rd, Chicago, DE 22222

The BIG Company and David Moore have indicated an interest in exploring a potential business relationship (the "Transaction"). In connection with its respective evaluation of the Transaction, each party, their respective affiliates and their respective directors, officers, employees, agents or advisors (collectively, "Representatives") may provide or grant access to certain confidential and proprietary information. The party disclosing its Confidential Information to the other party is hereafter referred to as "T.B.C." The party receiving the Confidential Information provided by T.B.C is hereafter referred to as "David." In consideration for being furnished Confidential Information, T.B.C and David agree as follows:

## 1. Confidential Information

The term "Confidential Information" as used in this Agreement shall mean any data or information that is competitively sensitive material and not generally known to the public, including, but not limited to, information relating to any of the following: product development and plans, proprietary concepts, documentation, marketing strategies, finance, operations, which T.B.C considers confidential.

## 2. Exclusions from Confidential Information

The obligation of confidentiality with respect to Confidential Information will not apply to any information if the information is disclosed by David with the prior written permission and approval by T.B.C OR:

- a. If the information is or was received by David from a third party source which, to the best knowledge of David or their Representatives, is or was not under a confidentiality obligation to T.B.C with regard to such information;
- b. If the information is or becomes publicly known and available other than as a result of prior unauthorized disclosure by David or any of their Representatives;
- c. If the information is independently developed by David prior to disclosure by T.B.C and without the use and benefit of any of the Confidential Information; or
- d. If David or any of their Representatives is legally compelled by applicable law, by any court, governmental agency or regulatory authority or by subpoena or discovery request in pending litigation but only if, to the extent lawful, David or their Representatives give prompt written notice of that fact to T.B.C prior to disclosure so that T.B.C may request a protective order or other remedy to prevent or limit such disclosure and in the absence of such protective order or other remedy, David or their Representatives may disclose only such portion of the Confidential Information which it is legally obligated to disclose.

### **3. Obligation to Maintain Confidentiality**

With respect to Confidential Information:

a. David and their Representatives agree to retain the Confidential Information of T.B.C in strict confidence, to protect the security, integrity and confidentiality of such information and to not permit unauthorized access to or unauthorized use, disclosure, publication or dissemination of Confidential Information except in conformity with this Agreement;

b. David and their Representatives shall adopt and/or maintain security processes and procedures to safeguard the confidentiality of all Confidential Information received by T.B.C using a reasonable degree of care, but not less than that degree of care used in safeguarding their own similar information or material;

c. If there is an unauthorized disclosure or loss of any of the Confidential Information by David or any of their Representatives, David will promptly, at their own expense, notify T.B.C in writing and take all actions as may be necessary or reasonably requested by T.B.C to minimize any damage to T.B.C or a third party as a result of the disclosure or loss; and

d. Upon the termination of this Agreement, David will ensure that all documents, memoranda, notes and other writings or electronic records prepared by them that include or reflect any Confidential Information are returned or destroyed as directed by T.B.C.

### **4. Non-Disclosure of Transaction**

Without the prior written consent from T.B.C, neither David nor their Representatives shall disclose to any other person, except to the extent, the provisions of Paragraph 2 apply: (a) the fact that Confidential Information has been made available to it or that it has inspected any portion of the Confidential Information; (b) the fact that T.B.C and David are having discussions or negotiation concerning the Transaction; or (c) any of the terms, conditions or other facts with respect to the Transaction.

### **5. Non-Compete**

David agrees that at no time from the date of this Agreement until February, 20 2025 will David engage in any business activity which is competitive with T.B.C, nor work for any company which competes with T.B.C.

### **6. Non-Solicitation**

From the date of this Agreement until February 20, 2025, David agrees not to solicit any employee or independent contractor of T.B.C on behalf of any other business enterprise, nor shall David induce any employee or independent contractor associated with T.B.C to terminate or breach an employment, contractual or other relationship with T.B.C.

### **7. Representatives**

David will take reasonable steps to ensure that their Representatives adhere to the terms of this Agreement. David will be responsible for any breach of this Agreement by any of their Representatives.

### **8. Disclaimer**

There is no representation or warranty, express or implied, made by T.B.C as to the accuracy or completeness of any of its Confidential Information. Except for the matters set forth in this Agreement,

neither party will be under any obligation with regard to the Transaction. Either party may, in its sole discretion: (a) reject any proposals made by the other party or its Representatives with respect to the Transaction; (b) terminate discussions and negotiations with the other 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.

## **9. 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 a court of competent jurisdiction determines in a final non-appealable order that one 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.

## **10. 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.

The BIG Company  
Taylor Johnson, Marketing Director  
123 Montpelier Ave  
Chicago, DE 22222  
Phone number: (222) 222-2222  
Fax number: (222) 222-2222

David Moore  
123 Casual Rd  
Chicago, DE 22222  
Phone number: (222) 222-2222  
Fax number: (222) 222-2222

## **11. Termination**

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.

## **12. Amendment**

This Agreement may be amended or modified only by a written agreement signed by both of the parties.

## **13. General Provisions**

The obligation not to disclose Confidential Information shall survive the termination of this Agreement, and at no time will David or any of their Representatives be permitted to disclose Confidential Information,

except to the extent that such Confidential Information is excluded from the obligations of confidentiality under this Agreement pursuant to Paragraph 2 above.

This Agreement will be governed by and construed in accordance with the laws of the State of Delaware, without regard to the principles of conflict of laws. Each party consents to the exclusive jurisdiction of the courts located in the State of Delaware for any legal action, suit or proceeding arising out of or in connection with this Agreement. Each party further waives any objection to the laying of venue for any such suit, action or proceeding in such courts.

#### **14. Miscellaneous**

This Agreement will inure to the benefit of and be binding on the respective successors and permitted assigns of the parties. Neither party may assign its rights or delegate its duties under this Agreement without the other party's prior written consent. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable in whole or in part, the remaining provisions shall not be affected and shall continue to be valid, legal and enforceable as though the invalid, illegal or unenforceable parts had not been included in this Agreement. Neither party will be charged with any waiver of any provision of this Agreement, unless such waiver is evidenced by a writing signed by the party and any such waiver will be limited to the terms of such writing.

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

The BIG Company

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

Name: Taylor Johnson

Title: Marketing Director

David Moore

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