

Confidentiality Agreement

THIS CONFIDENTIALITY AGREEMENT (the "Agreement") is entered into as of [effective date] (the "Effective Date"), by and between CU*ANSWERS, INC., a Michigan cooperative, whose address is 6000 28th Street SE, Suite 100, Grand Rapids, Michigan 49546 ("CU*ANSWERS"), [REPLACE WITH NAME], a [replace with type] whose address is [replace with address], ("PARTNER"), and [REPLACE WITH NAME], a [replace with type], whose address is [replace with address] ("CLIENT").

RECITALS

- A. CLIENT desires to enter into a possible business relationship and/or certain transactions with PARTNER (collectively, the "Transaction"), requiring access to information or systems owned and/or operated by CU*ANSWERS.
- B. The parties may exchange certain Confidential Information (defined below) in connection with the proposed Transaction.

AGREEMENT

NOW, THEREFORE, the parties agree as follows:

1. Definitions.

- (a) The term "Disclosing Party" refers to each party providing Confidential Information to the other party, all of such providing party's affiliates, and all of such providing party's and its affiliates' respective officers, directors, shareholders, members, managers, equity owners, agents, representatives, or advisors (collectively, the "Representatives").
- (b) The term "Recipient" refers to each party receiving Confidential Information from the other party, any of such receiving party's affiliates, and all of such receiving party's and its affiliates' respective Representatives.
- (c) The term "Confidential Information" includes written information marked as "Confidential", "Proprietary", or a similar legend, or is any of the following:
 - (i) Non-public personal information.
 - (ii) Supplier or vendor information.
 - (iii) Computer software, modules, source code, object code, or programming or system designs.
- (d) The term "Residual Information" means the ideas, know-how, methods, and techniques that would be retained in the unaided memory of an ordinary person skilled in the art, not intent on appropriating the Confidential Information of the Disclosing Party, as a result of such person's access to, use, review, evaluation, or testing of the Confidential Information of the Disclosing Party.

A person's memory is "unaided" if such person has not intentionally memorized the Confidential Information for the purpose of retaining and subsequently using or disclosing it.

2. Confidentiality Obligations.

Subject to Section 3 below, the Recipient agrees to all of the following:

- (a) To keep all of the Disclosing Party's Confidential Information strictly confidential.
- (b) To take all precautions with the Disclosing Party's Confidential Information that it takes with its own confidential information, which, at a minimum, shall be taking all steps reasonably necessary to insure the maintenance of confidentiality.
- (c) Prior to any disclosure of Confidential Information to any of its Representatives, to inform such Representatives of the confidentiality obligations contained in this Agreement.
- (d) To use its best efforts to monitor and ensure that such Representatives comply with the terms of this Agreement.
- (e) To promptly supply the Disclosing Party with written notice of any violation of this Agreement by the Recipient or its Representatives.
- (f) To immediately take all actions necessary to prevent further breach of this Agreement.
- (g) To be responsible and liable to the Disclosing Party for any violation of this Agreement by the Recipient or its Representatives.

3. Exclusions.

The obligations set forth in Section 2 of this Agreement shall not apply to the Recipient with respect to any of the Disclosing Party's Confidential Information which is any of the following:

- (a) Is or subsequently comes within the public domain without any violation of this Agreement or any other duty of confidentiality by the Recipient.
- (b) Is disclosed independently to the Recipient on a non-confidential basis by a third party whom Recipient reasonably believes is not obligated to maintain the confidentiality with respect to such information.
- (c) The Recipient can demonstrate through written documentation was known by the Recipient before it was disclosed to the Recipient by the Disclosing Party and is not subject to any other obligation of confidentiality of the Recipient.
- (d) The Recipient can demonstrate through written documentation was independently developed by the Recipient, without the use of any of the Disclosing Party's Confidential Information or any other information obtained or used by the Recipient in violation of a duty of confidentiality.
- (e) Is Residual Information.

4. Obligations of Law.

If the Recipient is required by law, order, or regulation to disclose Confidential Information, to the extent allowed by applicable law, order, or regulation, the Recipient may disclose Confidential Information provided that all of the following is met:

- (a) Recipient notifies the Disclosing Party promptly of such disclosure requirement.
- (b) Upon the Disclosing Party's request and expense, Recipient reasonably assists in challenging the obligation to disclose the Confidential Information.
- (c) Any such disclosure is limited to that required by applicable law, order, or regulation.

5. Limitation of Liability.

CLIENT agrees that the disclosure of Confidential Information pursuant to this Agreement is solely for CLIENT's benefit. CLIENT shall indemnify CU*ANSWERS, its directors, officers, employees and agents and shall hold it and them harmless from and against any actions, suits, damages, judgments, costs, charges, expenses, attorney fees, and consequences of any liabilities of any nature, incurred, made or suffered by any third party in connection with the access or Confidential Information provided to PARTNER by CU*ANSWERS. Notwithstanding this provision, CLIENT shall not indemnify CU*ANSWERS for damages caused by the grossly negligent or intentional acts of CU*ANSWERS or its employees.

6. Freedom to Innovate and Agreement not to Sue.

Each party to this Agreement offers or may in the future offer products and services that compete with and may be similar to the products and services of the other party. Consequently, notwithstanding anything in this Agreement to the contrary:

- (a) This Agreement shall not in any way restrict the Recipient's ability to market to, solicit, or accept business from any customers, including, without limitation, the Disclosing Party's customers or potential customers.
- (b) No customer transition between the parties shall be considered a violation of this Agreement.
- (c) Either party may solicit for employment, retention (including, without limitation, retention as an independent contractor), or a similar relationship any person who is now employed or retained (including, without limitation, retention as an independent contractor) by or has a similar relationship with the other party.
- (d) Each party agrees not to institute or initiate, not to cause any third party to institute or initiate, or not to participate in any action, administrative action, or other suit against the other party (or such party's customers, distributors, re-sellers, or the like) with any federal, state, or local court, agency, or other tribunal related to any infringement or misappropriation of the Disclosing Party's intellectual property, now or hereafter owned or licensed (including, without limitation, copyrights and patents), but excluding trademarks and trade dress, that could arise due to the designing, marketing, or selling of a competing product or service (whether designed, marketed, or sold now or in the future), and each party understands and agrees that this section may be pleaded as a complete defense with respect to any action.

7. No Representations.

The Recipient acknowledges that the Disclosing Party, its affiliates, or its and their Representatives do not make any representation or warranty, express or implied, with respect to any Confidential Information or other information provided to the Recipient, including, without limitation, with respect to the accuracy or completeness of such information. Neither party shall have any obligation to disclose any particular Confidential Information to the other party, and each party may in its sole discretion withhold and/or refuse to disclose any particular item of Confidential Information to the other party. Each party hereby agrees that the Disclosing Party (including any affiliates or Representatives) shall not have any liability resulting from or related to the Recipient's use of the Disclosing Party's Confidential Information or any inaccuracy or other defect in such Confidential Information.

8. Return of Information.

Upon the receipt of a request from the Disclosing Party, the Recipient shall return or destroy all of the Disclosing Party's Confidential Information, including all copies, reproductions, summaries, and synopses of Confidential Information and regardless of the medium (e.g. hard copy, CD, DVD, email, etc.), within one (1) week of receipt of a request for the return or destruction of Confidential Information. The Recipient shall confirm in writing that it has retained no copies, notes, or other records of the Confidential Information in any medium whatsoever. After the return or destruction of all Confidential Information but before the expiration or termination of this Agreement, the Recipient shall continue to be bound by its obligations of confidentiality contained in this Agreement until the expiration or termination of those obligations.

9. No Obligation.

Neither party is under any obligation as a result of this Agreement to continue negotiations related to the Transaction or to accept any offer or proposal which may be made by or on behalf of either party. In the event that the parties desire to pursue a Transaction, the Transaction shall be governed by a separate written agreement.

10. No Further Rights Granted.

Nothing in this Agreement shall be construed as granting any right, title, grant, option, ownership, interest in, or license from one party to the other party relating to any Confidential Information, including, without limitation, any patents, copyrights, trademarks, trade secrets, or any other intellectual property. All proprietary rights (including, without limitation, all rights related to patents, copyrights, trademarks, or trade secrets) in and to the Confidential Information shall remain the property of Disclosing Party.

11. Term.

This Agreement shall expire one (1) year from the Effective Date. All obligations of the parties under this Agreement shall continue in force for a period of two (2) years after the expiration or termination of this Agreement, subject to the following terms:

- (a) With respect to any Confidential Information that constitutes a trade secret of the Disclosing Party, the rights and obligations of the parties shall survive the expiration or termination of this Agreement until such Confidential Information no longer constitutes a trade secret.
- (b) The provisions of Section 5 shall not expire and shall continue indefinitely. Expiration of the obligations of the parties pursuant to this section shall not affect the liability of any party for any breach of this Agreement prior to such expiration or termination.

12. Remedies.

Each party hereby acknowledges that a violation by it of this Agreement would result in irreparable harm to the other party and that damages would be an inadequate remedy. In addition to all other remedies available to a party, each party shall be entitled to equitable relief, including, without limitation, the right to obtain an injunction to secure the specific performance of this Agreement or to prevent a breach or contemplated breach of this Agreement, without any requirement that such party post a bond as a condition of such relief.

13. Notices.

All notices and demands required or permitted by this Agreement shall be in writing addressed to the relevant address set forth above or such other relevant address as may be specified in writing by the relevant party. All notices and demands required or permitted by this Agreement shall be deemed properly made through any of the following methods:

- (a) Upon personal delivery.
- (b) Three (3) days after deposit in the United States mail, postage prepaid, registered or certified mail.
- (c) One (1) day after deposit with a recognized overnight courier, postage prepaid. Proof of sending any notice, demand, or payment shall be the responsibility of the sender.

14. Miscellaneous.

This Agreement and the rights and obligations of the parties under this Agreement will be governed, construed, interpreted and enforced in accordance with the laws of the State of Michigan, without regard to its conflict of laws principles. To the extent permitted under applicable law, any and all actions concerning any dispute arising under this Agreement shall be filed and maintained in the Circuit Court of Kent County, Michigan or the Federal District Court for the Western District of Michigan. The parties specifically consent and submit to the jurisdiction and venue of such state or federal court, and irrevocably waive any objections any party may have based on improper venue or forum non conveniens to the conducting of any proceeding in any such court. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and lawful assigns. Each party agrees to cause any purchaser or assignee of its intellectual property subject to this Agreement or a successor to its business to expressly agree to be bound by the provisions of this Agreement and to deliver to the other party an executed instrument, which will be in a form reasonably satisfactory to the other party, evidencing the purchaser's or assignee's agreement to be so bound no later than the date of consummation of the applicable transaction. This Agreement cannot be amended, altered, supplemented or modified, unless done so in a writing, signed by a duly authorized representative of the party against whom such modification is sought to be enforced. No provision of this Agreement shall be waived by any party, unless such waiver is in a writing, signed by a duly authorized representative of the party against whom such waiver is sought to be enforced. A waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party shall not be construed as or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement. If any portion of this Agreement is found to be invalid or unenforceable for any reason, any court or other tribunal adjudicating the rights and duties of the parties under this Agreement shall alter, modify, or strike portions of the Agreement so that it will be enforceable to the fullest extent permitted by law and consistent with the intent and purpose of the parties. If any provision of this Agreement is held, in whole or in part, to be invalid, the remainder of such provision and this Agreement

shall remain in full force and effect. This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement. The provisions of this Agreement shall supersede all contemporaneous oral agreements, communications, and understandings and all prior oral and written communications, agreements, and understandings between the parties with respect to the subject matter of this Agreement. This Agreement may be executed in one or more counterparts (including via facsimile or other electronic transmission), each of which shall be deemed to be an original, but all of which shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CU*ANSWERS, INC.

REPLACE WITH NAME

Geoff Johnson
CEO

[Replace With Name]
[Replace with Title]

Date

Date

REPLACE WITH NAME

[Replace With Name]
[Replace with Title]

Date