MUTUAL NON-DISCLOSURE NON-CIRCUMVENT AGREEMENT

**This Mutual Non-Disclosure Non-Circumvent Agreement (“Agreement”),** dated as of the \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_, 2016,is being entered into by and between:

**FIRST Party:** **DirectLink Capital Corporation** (“DLCC”), an Ohio C-Corporation, located at 972 Youngstown Kingsville Rd, Vienna, OH 44472, with a mailing address of 1100 Boardman Canfield Rd 37B, Boardman, OH 44512; and

**SECOND Party:** [Company Name] (“COMPANY NAME ACRONYM”), a [State of Incorporation/Type of Entity], located at [physical location where business is conducted];

Each "Party" (collectively, "Parties") is entering into this Agreement on behalf of itself, its subsidiaries and its affiliates with respect to projects on which the Parties may in the future collaborate (collectively, “Projects” and each a “Project”).

**WHEREAS**, the Parties have access to (a) Projects, (b) key decision makers who can facilitate such Projects, (c) certain technical and operational expertise related to these Projects, and (d) investors and sources of financing who may be interested in providing financing or other assistance to such Projects, which comprise each Party’s “Expertise” and its “Contacts” and collectively are referred as each Party’s “Contributions;”

**WHEREAS**, to facilitate the cooperation of the Parties and their collaboration on Projects as contemplated herein, the Parties intend to exchange Confidential Information (defined below) regarding their Contributions; and

**WHEREAS**, the Parties wish to protect their Confidential Information by making any disclosure of Confidential Information subject to the confidentiality and non-circumvent provisions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual agreements and covenants contained herein, the Parties hereby agree as follows:

**AGREEMENT**

1. **Definitions.**
2. **Authorized Person** means Recipient’s or its affiliate’s employees, officers, legal counsel, members of Recipient's board of directors or supervisory board, and independent contractors, each of whom Recipient requires to comply with the obligations of Recipient under this Agreement.
3. **Confidential Information** means any information, other than Trade Secrets (as defined below), regardless of form, that is proprietary or maintained in confidence by the party disclosing such Confidential Information (the “Disclosing Party”), including ideas, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents, and formulae related to the current, future, and proposed products and services of each of the Parties, such as information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, investors, employees, business and contractual relationships, business forecasts, sales and merchandising, and marketing plans.
4. **Owner** means the Party disclosing Proprietary Information to the other Party to this Agreement.
5. **Proprietary Information** means Trade Secrets and Confidential Information of Owner (or of a third party providing such information to the Disclosing Party).
6. **Receiving Party** means the Party who receives Proprietary Information under this Agreement, including Authorized Persons.
7. **Third Party** means any person other than an Authorized Person or the Parties hereto.
8. **Trade Secrets** means information constituting a trade secret, including but not limited to technical or non-technical data, plans, formulas, patterns, compilations, programs, devices, methods, techniques, drawings, processes, financial data, financial plans, business plans, organizational structure, product plans, actual or potential customers or suppliers, which derives economic value, actual or potential from not being generally known to, and not being readily ascertainable by other persons who can obtain economic value from its disclosure or use.
9. **Use of Confidential Information**. Each party agrees that its organization, principals, employees and agents (“Representatives”) shall hold all Confidential Information received pursuant to this Agreement in trust and confidence and will not at any time, directly or indirectly, furnish or divulge any of the Proprietary Information to an unauthorized Third Party. The Receiving Party may only disclose the Proprietary Information to an Authorized Person who is made aware of and agrees to be bound by the terms of this Agreement who has a need to know such information. The Receiving Party agrees to not use such information for any purpose other than the Business Purpose specified herein and shall not, without the prior written approval of the Disclosing Party, reproduce any Confidential Information received pursuant to this Agreement. The Receiving Party shall not use or exploit or attempt to use or exploit in any way or manner whatsoever the Proprietary Information for its own private benefit or for the benefit of any person, firm or entity other than the Owner. The Receiving Party shall notify Owner immediately upon discovery of any unauthorized use or disclosure of the Proprietary Information.
10. **Need to Know.** The Receiving Party further agrees to limit disclosure of the Confidential Information received to those of its employees who have a need to know the information to affect the Business Purpose. Neither the Receiving Party nor its Representatives will duplicate any Confidential Information (except as absolutely necessary for the purposes referred to in paragraph 2 above) and the Receiving Party and its Representatives will employ such procedures as reasonably necessary to control the copying and distribution of any Confidential Information.
11. **Further Agreements**. In each instance that the Parties elect to together participate in a Project, the Parties will coordinate with one another and enter into a formal agreement for the development of the Project (the “Project Agreement”). The obligations of this Agreement shall survive until the execution of the Project Agreement (and thereafter the confidentiality provisions in such agreement shall govern). Notwithstanding any provision herein to the contrary, in the event that the Parties enter into a Project Agreement, the obligations of this Agreement shall survive with respect to any Contact that is not a signatory to such Project Agreement.
12. **Exceptions to Definition of Confidential Information.** The Receiving Party will not have any obligations under this Agreement with respect to a specific portion of the Confidential Information of the Disclosing Party if such Receiving Party can demonstrate with competent evidence that such portion of Confidential Information:
    1. was in the public domain at the time it was disclosed to the Receiving Party;
    2. entered the public domain subsequent to the time it was disclosed to the Receiving Party, through no fault of the Receiving Party;
    3. was in the Receiving Party’s possession free of any obligation of confidence at the time it was disclosed to the Receiving Party; or
    4. was independently developed by Recipient without use of and by persons without access to Disclosing Party’s Proprietary Information.
13. **Ownership**. All Confidential Information remains the property of the Disclosing Party and/or its licensors. It is agreed that no license under any invention, patent, copyright, trade secret, or other proprietary right is granted, either directly or indirectly, by this Agreement or by any disclosure of Confidential Information.
14. **Warranty Disclaimer.** The disclosure of any trade secrets and confidential information by the Disclosing Party is made without any warranty or representation of any kind, including any implied warranties of merchantability, non-infringement, or fitness for a particular purpose.
15. **Non-Circumvent**. Neither Party shall directly or indirectly circumvent the other with respect to any Project or Contact introduced to such Party (the “Receiving Party”) by the other (the “Introducing Party”). No Receiving Party shall enter into any agreement with respect to a Project introduced by the Introducing Party, or with any of the Introducing Party’s Contacts, without the Introducing Party’s express written permission, which permission may be withheld for any reason or for no reason. In the event that a Receiving Party would like to (i) further develop a Project, or (ii) pursue any transaction or other relationship with a Contact, (in each case if such Project or Contact was introduced by the Introducing Party) then the Introducing Party must approve (which approval may be withheld for any reason or no reason) each agreement with respect to the development or pursuit of each Project, transaction or relationship with such Contact, prior to the Receiving Party’s proposing such agreements. In the event that the Introducing Party permits the Receiving Party to contact any of its Contacts, then the Receiving Party agrees that it will copy the Introducing Party on all written communications, including those accomplished by electronic mail, and shall send the Introducing Party a written summary of all oral communications with any Contact within 24 hours of such oral communication.
16. **Term of Obligations.** This Agreement shall commence as of the date first set forth. The obligations of confidentiality and non-circumvention contained herein shall survive and continue for a period of five (5) years after expiration or termination of this Agreement, except for Trade Secrets, in which case the Receiving Party’s obligations shall remain in effect for as long as such information remains a trade secret under applicable law.
17. **Assignment.** This Agreement is not assignable except by ASSIGNS to a subsidiary or an affiliate or in connection with a merger, consolidation, or sale of all or substantially all of DLCC’S assets. Subject to the foregoing, this Agreement and each provision hereof, shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.
18. **No Publicity.** Neither party shall publicize the terms, subject matter or existence of this Agreement without the prior written consent of the other party.
19. **Disclosure of Requests.** The Receiving Party shall promptly notify the Disclosing Party of any request or demand by any third party for any Confidential Information. In the event that the Receiving Party or its Representatives are requested or required by law or regulation to disclose any Confidential Information, the Receiving Party will provide the Disclosing Party with prompt written notice of any such request or requirement so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement, and the Receiving Party will cooperate with the Disclosing Party to obtain any such protective order or other remedy. If, failing the entry of a protective order or other appropriate remedy or the receipt of a waiver hereunder, disclosure of any Confidential Information is required, the Receiving Party may disclose that portion of the Confidential Information which its counsel advises that the Receiving Party is legally compelled to disclose and will exercise its, and, if applicable, the Representative’s reasonable efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished. In any event, the Receiving Party will not oppose action by us to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information.
20. **Return of Confidential Information**. In the event that the Parties do not enter into any Project Agreements, upon the written request of either Party, the other Party shall, as soon as practicable following such request, return to the requesting Party all of the Confidential Information in the possession of the other Party or represent in writing to the requesting Party that the other Party has destroyed all copies of the Confidential Information in their possession.
21. **Term of Agreement.** This Agreement shall continue until terminated. Either party may terminate this Agreement with or without cause upon written noticethe written request of either Party, the other Party shall, as soon as practicable following such request, return to the request/destroy all Confidential Information, as instructed by the Disclosing Party. Notwithstanding anything to the contrary in this Agreement, the provisions of Sections 2, 3 and 8 through 16 hereof shall survive termination of this Agreement.
22. **Injunctive Relief**. Each party acknowledges that the violation by it of the restrictions imposed hereunder would cause irreparable harm to the other party and that remedies at law would be inadequate to redress any actual or threatened violation of this Agreement. Each party agrees that, in addition to other relief, injunctive relief may enforce this Agreement. ADDITIONALLY, SEE APPENDIX A TO NCND.
23. **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of Ohio, without regard to principles of conflicts of law. The Parties agree that any difference or dispute arising under, out of or in connection with this Agreement (including with respect to this Section 11), is to be resolved by arbitration in accordance with the Rules of the International Chamber of Commerce, which shall administer the arbitration (the legal seat of which arbitration shall be Ohio, in case the Parties agree for a different destination, then the same shall be at such destination).
24. **Notice**. All notices required or to be given hereunder shall be in writing, addressed to the respective Party set forth in this Agreement or to such other address as a Party may designate by notice hereunder, and shall be delivered (i) by hand, (ii) electronic mail, or (iii) recognized international courier. Notices shall be deemed to be given when received:

If to DLCC: DirectLink Capital Corporation

1100 Boardman Canfield Rd 37B

Boardman, OH 44512

Attn: Keith Goodman

Tel: 330-502-6745

Email: directlinkcapital@yahoo.com

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

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

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

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tel: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**18.** **General Provisions**

10. General Provisions 10. General Provisions 10. General Provisions

(a) **Entire Agreement**. This Agreement constitutes the entire agreement between the parties and supersedes all written or oral communications.

(b) **Amendments**. This Agreement may be amended only in writing.

(c) **Waiver**. **If the disclosure will be made over a long period of time, this is a good provision to have to preserve flexibility.** Waiver of any provision in one instance shall not preclude enforcement on future occasions.

(d) **Costs**. Any award of relief to the owner of Confidential Information in an action for

breach of confidentiality shall include recovery of such owner's costs and expenses of enforcement (including reasonable attorneys' fees and expenses).

(e) **Counterparts**. This Agreement may be executed in counterparts, each of which shall constitute an original.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be duly executed as of the date first above written.

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| **Authorized Name (Print):** |
| **Signature:** |
| **Title:** |
| **On Behalf Of (Company Name):** |
| **Date:** |

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| --- |
| **Authorized Name (Print): Keith D Goodman** |
| **Signature:**  **Keith D Goodman** |
| **Title: Vice President** |
| **On Behalf Of (Company Name): DirectLink Capital Corporation** |
| **Date:** |