

## MUTUAL NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Mutual Nondisclosure and Confidentiality Agreement (the "Agreement") is effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date") by and between TEMPOE, LLC ("TEMPOE"), a Delaware limited liability company with offices located at 1750 Elm Street, Suite 1200, Manchester, NH 03104 and \_\_\_\_\_ ("\_\_\_\_\_"), a \_\_\_\_\_, with offices located at \_\_\_\_\_ (the "Company").

WHEREAS, in connection with discussions about, and the evaluation and negotiation of, a potential business relationship or transaction between the parties, each party is prepared to furnish the other party with certain confidential and proprietary information on the terms set forth in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements and covenants set forth herein, the parties agree as follows:

**1. Definitions.** The following terms shall have the meanings set forth opposite such terms:

1.1 **"Affiliate"** shall mean any partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries, that directly or indirectly, control, are controlled by, or are under common control with a party to this Agreement.

1.2 **"Confidential Information"** means information and related materials (whether disclosed in writing, or orally and reduced to writing promptly thereafter) of one of the parties to this Agreement or its Affiliates (the "Disclosing Party") and disclosed by the Disclosing Party or its representative to the other party hereto (the "Receiving Party") that is (a) not generally known to the public and (b) identified as confidential (or, to a reasonable person, would be expected to be confidential) including, but not limited to: financial information or projections; business trends; lists of and information about suppliers, dealers, potential customers, and associated statistical and financial information; designs, specifications and uses of products and services; information about clients or customers that does not contain personally identifiable information (e.g., zip codes or aggregate statistical data); product research; hardware and software technologies and documentation; sales, applicant underwriting and decision tools and methodologies; marketing, new developments and methods; trade secrets; business and strategic plans; and other significant and valuable business information. "Confidential Information" also includes the terms of this Agreement and the subject matter of the parties' discussions.

1.3 **"Disclosing Party"** means a party or its Affiliate or authorized representative that provides Confidential Information to the other party to this Agreement. "Receiving Party" means a party to this Agreement that receives such Confidential Information from the Disclosing Party.

1.4 **"Recipient"** means a party's directors, officers, employees, partners, co-investors, affiliates, lenders, agents and advisors (including, without limitation, attorneys, accountants, bankers, consultants and financial advisors) to whom the Confidential Information is disclosed.

### 2. Confidentiality Obligations

2.1 Receiving Party shall:

(a) protect the confidentiality of the Confidential Information (using in any case, not less than the efforts such party uses to protect its own confidential information and no less than a reasonable degree of care), and prevent any access to or reproduction, disclosure or use of any of the Confidential Information other than by Receiving Party in pursuance of Receiving Party's business relationship or proposed business relationship with Disclosing Party and then only in strict compliance with the provisions hereof and subject to any applicable laws;

(b) disclose the Confidential Information only to its Recipients who have a legitimate need to know such information in pursuance of Receiving Party's business relationship with Disclosing Party and, in the event the employment of any such person is terminated, use reasonable efforts to recover any Confidential Information in such person's custody or control;

(c) advise its Recipients of the confidential and proprietary nature of the Confidential Information and of the obligations in this Agreement and take appropriate action with its Recipients to bind the Recipients to the confidentiality obligations under this Agreement; and

(d) promptly notify Disclosing Party in writing of any unauthorized use or disclosure of the Confidential Information of which it has knowledge, including a detailed description of the circumstances of the disclosure and the parties involved and responsibly cooperate with the Disclosing Party to obtain the return of such Confidential Information.

2.2 Notwithstanding the provisions of Section 2.1 above, information and materials provided by Disclosing Party shall not be considered Confidential Information to the extent that: (a) such information was known by Receiving Party or any of its Recipients prior to its disclosure by Disclosing Party; (b) such information came into the possession of Receiving Party or any of its Recipients, directly or indirectly, from

persons who were not known by Receiving Party to be under any obligation to maintain the confidentiality of such information; (c) such information has become part of the public domain through no act or fault on the part of Receiving Party in breach of this Agreement; or (d) such information was independently developed by or for Receiving Party or any of its Recipients without the use of Confidential Information and the Receiving Party can verify the development of such information by written documentation.

Additionally, Receiving Party may disclose: (i) Confidential Information where requested or required pursuant to legal or judicial process (e.g., subpoena, interrogatories or similar legal process) or by law or regulation, provided that in such instance the Receiving Party shall use commercially reasonable efforts to provide advance written notice of such event to Disclosing Party and to reasonably cooperate with Disclosing Party (at Disclosing Party's sole expense) so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this Agreement, or both. If, absent the entry of a protective order or receipt of a waiver, the Receiving Party is, on the advice of its legal counsel, legally compelled to disclose such Confidential Information, the Receiving Party may disclose such Confidential Information to the person and to the extent required without liability under this Agreement provided that Receiving Party uses commercially reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed; and (ii) the existence and summary of this Agreement in regulatory filings as required by law, regulation or standard accounting rules (e.g. FASB).

2.3 Nothing herein is intended to limit or abridge the protection of trade secrets under applicable trade secrets law, and the protection of trade secrets by the Receiving Party shall be maintained as such until they fall into the public domain.

**3. Gramm Leach Bliley Act Compliance.** Neither party intends to disclose any personally identifiable information regarding its customers to the other party. If either party is in any inadvertent receipt of such information, the receiving party shall immediately return such information to the other party.

**4. Term.** Receiving Party's obligations hereunder with respect to Confidential Information shall terminate one (1) year after the date of disclosure for such Confidential Information, subject to the exceptions in Section 2.2. Any provision which by its terms is intended to survive termination of this Agreement, including, but not limited to, the provisions of Sections 1, 3, 5, 6, 7, 8, 9 and 10 shall survive any termination or expiration of this Agreement.

**5. No Definitive Agreement.** The parties understand and agree that nothing herein (i) requires the disclosure of any Confidential Information by either party, which shall be disclosed if at all solely at the option of either such party, or (ii) requires either party to proceed with any proposed transaction, business relationship or joint venture, other than pursuant to a separate written agreement between the parties.

**6. Return of Confidential Information.** If either party decides not to proceed with a proposed business relationship, it will promptly inform the other party of that decision. In addition, the Disclosing Party may elect at any time by notice to the Receiving Party to terminate further access to and such party's review of the Confidential Information. In any such case, or upon any other termination of this Agreement, the Receiving Party will (at the Receiving Party's option) promptly return all Confidential Information disclosed to it or will destroy all Confidential Information and any notes related thereto in its possession or control, without retaining any copy thereof. The Receiving Party shall, upon request of the Disclosing Party, certify in writing signed by a principal or officer of the Receiving Party compliance with this paragraph. Nothing herein shall be deemed to prohibit the Receiving Party or any of its Recipients from retaining such copies of the Confidential Information as are required by law, regulation or professional obligations; provided that such retained copy or copies shall not be used for any purpose other than for compliance with such law, regulation or obligation.

**7. Equitable Relief.** Receiving Party agrees that any unauthorized use of the Confidential Information by Receiving Party may cause Disclosing Party irreparable harm for which remedies at law may be inadequate. Therefore, in addition to any other rights it may have at law, Disclosing Party shall be entitled to seek equitable relief.

**8. Litigation.** In the event of litigation relating to this Agreement, the non-prevailing party shall reimburse the prevailing party for all reasonable costs and expenses (including reasonable attorney's fees) incurred in connection with such litigation.

**9. Proprietary Rights and Ownership.** All right, title and interest in and to the Confidential Information shall be and remain vested in Disclosing Party. Nothing in this Agreement shall grant Receiving Party any license or right of any kind with respect to the Confidential Information, other than to review, evaluate and use such information solely in pursuance of Receiving Party's business relationship or proposed business relationship with Disclosing Party. Receiving Party shall not modify or create any derivative works from the Confidential Information.

**10. Acknowledgement.** Both Parties acknowledge that the other party and its Affiliates either presently or may in the future compete in the markets served by either party. The Parties further acknowledge that the other Party and its Affiliates will continue to compete with each other without restriction if a business relationship or transaction is not consummated, except with respect to use of the Confidential Information as contemplated by this Agreement.

**11. General.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the use and disclosure of the Confidential Information in connection with discussions about, and the evaluation and negotiation of, a potential business relationship or transaction between the parties, and supersedes all prior and contemporaneous negotiations, discussions and understandings of the parties, whether written or oral, with respect to such subject matter. This Agreement shall inure to the benefit of,

and may be specifically enforced by, the Affiliates of either party. No waiver or modification of any of the provisions of this Agreement shall be valid unless in writing and signed by both parties. Receiving Party's rights and obligations under this Agreement cannot be assigned, subcontracted or delegated to any third party without Disclosing Party's prior written consent and any attempted or purported assignment, subcontract or delegation of this Agreement without such consent shall be void. This Agreement does not create any agency or partnership relationship. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Ohio, excluding its choice of law provisions. The parties hereby consent to the exclusive jurisdiction of the state courts of Ohio for any actions to enforce or interpret this Agreement or for any actions arising from this Agreement. This Agreement may be executed in one or more counterparts via facsimile, electronic transmission or otherwise, all of which taken together shall constitute one instrument. Should any provision of this Agreement be determined to be void, invalid or otherwise unenforceable, then such determination shall not affect the remaining provisions hereof which shall remain in full force and effect. Both parties shall adhere to all applicable laws, regulations, and rules relating to the export of technical data, and shall not export or re-export any technical data, any products received from a Disclosing Party, or the direct product of such technical data to any proscribed country or person under such applicable laws, regulations or rules. This Agreement shall terminate and be of no further force or effect one (1) year from the date hereof.

**12. Non-Solicitation.** Both Parties agree that for a period of one (1) year from the date hereof, neither they nor any of their Affiliates nor an agent acting on their behalf will, without the prior written consent of the other Party, directly solicit for employment any employees of the other Party with whom they have had contact with during the evaluation of a possible transaction; provided, however, that neither Party shall be prohibited from general solicitations of employment by an employment bureau or a general advertisement or similar notice not directed at employees of the other Party, which shall not constitute a violation of this provision.

INTENDING TO BE LEGALLY BOUND, the parties have executed this Mutual Nondisclosure and Confidentiality Agreement as of the Effective Date.

**TEMPOE, LLC**


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 Signature

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 Typed/Printed Name and Title

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 Month/Day/Year
**[COMPANY]**


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 Signature

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 Typed/Printed Name and Title

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 Month/Day/Year