**CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT**

This CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT (this “Agreement”) is entered into as of **\_\_\_\_\_\_\_\_\_\_\_\_**, 2012 (the “Effective Date”) by and between Elizabethtown College, a Private Not-For-Profit Corporation (Academic Institution) having a principal business address at One Alpha Drive, Elizabethtown, PA 17022 (“COMPANY”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having a principal address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Recipient”).

WHEREAS, COMPANY is [PRODUCT] (hereinafter, the “Product”); and

WHEREAS, COMPANY wishes to engage in discussions with Recipient regarding potentially entering into a business arrangement involving the Product and [PROJECT] (the Project).

NOW THEREFORE, the parties hereto, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged and agreed, and with the parties intending to be legally bound do hereby agree as follows:

1. Confidential Information. “Confidential Information” shall mean any information, documents, materials or data of a confidential or proprietary nature furnished by or otherwise emanating from COMPANY or any of its members, directors, managers, employees, agents, representatives, divisions or subsidiaries to Recipient or its subsidiaries, affiliates or any of their directors, partners members, equityholders, officers, employees, agents, representatives or professional advisors (collectively, “Recipient Representatives”) either before or after the Effective Date, including without limitation, business plans and concepts, financial, marketing, and other information, data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, samples, reports, customer lists, pricing information, studies, findings, inventions, ideas, patent filings, mobile device applications, trade names and trademarks and all analyses, compilations, data, studies or other documents containing, or based in whole or in part on, any of such information in whatever media, in each and every case, whether or not it is identified as confidential at the time of disclosure.
2. Handling of Confidential Information.
   1. Recipient shall maintain the Confidential Information in confidence and shall exercise equivalent security measures and degree of care as those which the Recipient applies to its own confidential information and, in any event, no less than a reasonable degree of care.
   2. Recipient shall use Confidential Information solely for the purpose of evaluating the Products for purposes of the Project. Recipient shall not use, or permit the use of, the Confidential Information for any purpose unrelated to the Project without the prior written consent of COMPANY.
   3. Confidential Information may be disclosed only to Recipient Representatives having the need to know the same for the purpose of evaluating or assisting on the Project, and who have been bound in writing to maintain Confidential Information in confidence both during and after the term of their employment or association with Recipient. Recipient shall be responsible for any breach of this Agreement by any Recipient Representative.
   4. Recipient shall not copy, reproduce, or reduce to writing any part of the Confidential Information except as is necessary for evaluation of or activities associated with the Project and all such copies, reproductions, and reductions to writing shall be handled as Confidential Information under this Agreement and shall be deemed the property of COMPANY. Upon demand, all such copies, reproductions, or reductions to writing shall be returned to COMPANY.
   5. Recipient shall mark “Confidential” and promptly disclose to COMPANY all reports, summaries, analysis or other work product produced that relates to the evaluation of or activities associated with the Product, the Project or the Confidential Information, and all such reports and work product, and all rights therein, are and shall remain the exclusive property of COMPANY. Such work product includes any inventions, improvements, trade names, trademarks, logos, designs and know-how, whether or not suitable for patent, trademark or copyright protection, and any formulas, recommendations, analysis, programs or any other type of information or material developed, conceived or reduced to practice in the course of evaluating the Product, the Project and Confidential Information for COMPANY or involving the Confidential Information.
   6. If Recipient develops a work product which, in the sole opinion of COMPANY, might have involved the use of any Confidential Information, Recipient shall, at the request of COMPANY, promptly supply dated records and all information reasonably necessary to establish and substantiate that the Confidential Information has not been improperly used or disclosed.
3. Limitations on Confidential Information. The obligations of confidentiality in Section 2 above shall not apply to any Confidential Information which Recipient can prove:
   1. was in the public domain at the time of disclosure;
   2. becomes part of the public domain without breach of this Agreement;
   3. was in the possession of Recipient prior to receipt from COMPANY as shown by Recipient’s prior written records; or
   4. is obtained from a third party free to divulge such information.
4. Term.
   1. This Agreement shall commence upon the Effective Date and continue for a period of five (5) years, unless the parties agree in writing to extend the term.
   2. Upon expiration or termination of this Agreement, completion of the evaluation process, or upon request of COMPANY, Recipient shall cease to use the Confidential Information and shall return all Confidential Information and any copies thereof to COMPANY. Upon the request of COMPANY, Recipient shall sign a statement warranting that all Confidential Information and any copies thereof have been returned to COMPANY as required in this clause.
5. Legal Requirements. If Recipient is requested or required to disclose Confidential Information pursuant to a subpoena or an order of a court or governmental agency, Recipient shall promptly notify COMPANY, cooperate with COMPANY’s efforts to resist or narrow the request and furnish only such portion of the Confidential Information as Recipient is advised by counsel is legally required to be disclosed.
6. Ownership; No Granting of Rights. All of the Confidential Information belongs and shall continue to belong to COMPANY and Recipient has no ownership interest or other license or right with respect thereto.
7. No Other Obligations. No contract or any other binding obligation exists or shall arise between COMPANY and Recipient regarding the Project or any other possible transaction except by a written agreement which has been duly authorized, executed and delivered by all parties thereto. Furthermore, except for this Agreement, Recipient shall not assert the existence of any agreement, right, privilege or obligation with respect to the Project or any other possible transaction unless and until a written agreement is concluded as described above. Nothing in this Agreement shall obligate COMPANY to disclose any Confidential Information to Recipient.
8. Relationship; Expenses. No agency, partnership or joint venture relationship is created by this Agreement or the exchange of information hereunder. Except as the parties may otherwise agree in writing, each of the parties shall be responsible for its costs and expenses incurred in connection with the discussions contemplated by this Agreement.
9. Disclaimer. Recipient acknowledges that neither COMPANY nor any of its officers, employees, agents, representatives or professional advisors shall have any liability to Recipient as a result of the disclosure or use of the Confidential Information to or by Recipient.
10. Remedies. The parties acknowledge that the provisions of this Agreement are fair and reasonable and that a violation or threatened violation of this Agreement may cause irreparable injury to COMPANY, the remedy at law for which may be inadequate. Consequently, in the event of threatened or actual breach of this Agreement, COMPANY shall be entitled to seek injunctive relief in addition to other remedies and relief that would be available without the necessity of proving actual damages.
11. Assignment and Amendment. This Agreement is not assignable, contains the entire agreement of the parties with respect to its subject matter and supersedes all prior understandings in connection with such subject matter. No modification or alteration hereof shall be binding unless executed in writing by the parties. No waiver of any provision of this Agreement shall be deemed or construed a waiver of any other provision hereof.
12. Severability. If any portion of this Agreement is determined to be invalid or unenforceable, the other portions of the Agreement shall not be affected, and shall be given full force and effect without regard to the invalid or unenforceable portion. If any covenant is unenforceable, the court making such determination shall have the power to reduce the scope of such covenant to the extent required to make such covenant enforceable as so reduced.
13. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania, without regard to principles of conflict of laws.
14. Counterparts. This Agreement may be executed in one or more counterparts, each of which when executed shall be deemed an original, but all of which together shall constitute one and the same instrument. The exchange by facsimile or other means of electronic transmission of executed counterparts of this Agreement shall be deemed execution and delivery thereof.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

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| **Elizabethtown College**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **[[RECIPIENT]]**  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Printed Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |