# MUTUAL NONDISCLOSURE AGREEMENT

|  |  |
| --- | --- |
| UPSHOP | Name: |
| 1177 Avenue of the Americas, 5th Floor | Address: |
| New York, NY |  |
| USA 10036 |  |
| Attn: Chief Financial Officer | Attn: . |

This Mutual Nondisclosure Agreement (“AGREEMENT”) is hereby entered into between UPSHOP, a corporation formed under the laws of the State of Delaware, United States, and its wholly-owned subsidiaries and affiliates and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ formed under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and its wholly-owned subsidiaries as of the \_\_\_ day of \_\_\_\_\_\_\_\_\_, 2022. In consideration of each party’s willingness to disclose to the other certain confidential and proprietary information solely for the purpose of pursuing possible business opportunities between the parties (“PURPOSE”), each party hereby agrees to treat said information belonging to the other as follows:

1. **Term and Termination.** RECIPIENT’s (as defined below) obligations under this AGREEMENT with regard to (i) TRADE SECRETs (as defined under applicable law) shall remain in effect for as long as such information remains a TRADE SECRET under applicable law, and (ii) CONFIDENTIAL INFORMATION (as defined below) shall remain in effect for three (3) years after the termination of this AGREEMENT. This AGREEMENT shall be terminated upon (i) written notification from either party, which notice can be given with or without cause; or (ii) termination of negotiations regarding an initial transaction between the parties. Notwithstanding the foregoing, this AGREEMENT shall remain in full force and effect for so long as the parties continue to exchange CONFIDENTIAL INFORMATION.
2. **CONFIDENTIAL INFORMATION.** During the TERM, the party which owns the CONFIDENTIAL INFORMATION (“OWNER”) may disclose to the receiving party (“RECIPIENT,”) or RECIPIENT may acquire knowledge of information and data belonging to the OWNER (including, but not limited to, TRADE SECRETS, patentable and patented inventions, copyrights, source and object codes, concepts, processes, formulae, proprietary programs, software packages, technical know-how, methods and procedures of operation, user’s guides, instruction manuals, and other materials) which has been developed by the OWNER at its time, skill, and expense, are valuable assets of the OWNER, and are confidential and proprietary in nature (“CONFIDENTIAL INFORMATION”). Such CONFIDENTIAL INFORMATION shall be identified as confidential either orally or in writing at the time of disclosure.

Notwithstanding the foregoing, CONFIDENTIAL INFORMATION shall not include information which: (i) is at the time of disclosure, or thereafter becomes, a part of the public domain through no act or omission by the RECIPIENT , its affiliates, officers, directors, employees, agents, or controlling persons; (ii) was in RECIPIENT’s lawful possession, as shown by written records prior to the disclosure, without obligation to keep the information confidential, and had not been obtained by RECIPIENT either directly or indirectly from the OWNER; (iii) was received by RECIPIENT in good faith from a third party lawfully in possession thereof and having no obligation to keep the information confidential; or (iv) is independently developed by RECIPIENT without use of any CONFIDENTIAL INFORMATION received from OWNER.

1. **Nondisclosure of CONFIDENTIAL INFORMATION.** The RECIPIENT will protect the confidentiality of the OWNER’s CONFIDENTIAL INFORMATION in the same manner that it protects the confidentiality of its own CONFIDENTIAL INFORMATION, but in no event less than a reasonable standard of care. RECIPIENT will hold in confidence and not disclose, distribute, reverse engineer, decompile, or transfer, directly or indirectly, in any form, by any means, or for any purpose, the OWNER’s CONFIDENTIAL INFORMATION or any portion thereof except as expressly provided in this AGREEMENT. RECIPIENT must not copy or otherwise reproduce OWNER’s CONFIDENTIAL INFORMATION without OWNER’s prior approval. RECIPIENT may only disclose the OWNER’s CONFIDENTIAL INFORMATION to its employees, attorneys, and accountants (i) to the extent such persons have a specific need to know such information for the PURPOSE, (ii) provided such persons are obligated to hold the CONFIDENTIAL INFORMATION in confidence and otherwise comply with the terms of this AGREEMENT, and (iii) the CONFIDENTIAL INFORMATION will only be used for the internal benefit of the RECIPIENT.

If RECIPIENT receives a subpoena or other validly issued administrative or judicial process demanding OWNER’s CONFIDENTIAL INFORMATION, RECIPIENT must promptly notify OWNER and tender to OWNER the defense of that demand. Unless the demand has been timely limited, quashed, or extended, RECIPIENT will thereafter be entitled to comply with such demand to the extent permitted by law and will disclose only that part of the CONFIDENTIAL INFORMATION which RECIPIENT is required to disclose. If requested by the OWNER, RECIPIENT will cooperate (at the expense of the OWNER) in the defense of a demand.

1. **Warranty.** The OWNER makes no representation or warranty, express or implied, as to the accuracy or completeness of its CONFIDENTIAL INFORMATION. Neither the OWNER, nor any of its respective affiliates, officers, directors, employees, agents or controlling persons shall have any liability to the RECIPIENT or any other person resulting from the RECIPIENT’s or other person’s use of the CONFIDENTIAL INFORMATION.
2. **Ownership.** The OWNER retains all rights, title, and interest in the CONFIDENTIAL INFORMATION. Except for the limited right to review CONFIDENTIAL INFORMATION for the PURPOSE, nothing in this AGREEMENT is intended to or shall grant any rights under any patent, copyright, trademark, TRADE SECRET, or other intellectual property right of the OWNER.
3. **Unauthorized Use.** The parties acknowledge and agree that any unauthorized use of CONFIDENTIAL INFORMATION will cause the OWNER immediate and irreparable harm and that the remedies at law may be inadequate. Accordingly, the OWNER is entitled to seek to obtain injunctive relief for any breach of this AGREEMENT by RECIPIENT, in addition to any other available rights or remedies at law.
4. **Jointly Developed Materials.** If any materials are jointly developed, both parties shall retain ownership, unless otherwise agreed in writing.
5. **Return of CONFIDENTIAL INFORMATION.** Upon the request of the OWNER, the RECIPIENT will return or destroy all the OWNER’s CONFIDENTIAL INFORMATION and any notes, correspondence, analyses, documents, or other records containing the OWNER’s CONFIDENTIAL INFORMATION, including all copies thereof, and in all types of media and computer memory then in the possession of the RECIPIENT or its representatives. Such return, however, does not abrogate the continuing obligations of the RECIPIENT under this AGREEMENT. Nothing in this AGREEMENT shall prohibit or restrict the RECIPIENT from disclosing CONFIDENTIAL INFORMATION required by any governmental authorities. The RECIPIENT shall have the right to retain any copies necessary for such compliance. The RECIPIENT may develop, use, or market products or services similar to or competitive with the CONFIDENTIAL INFORMATION as long as it does not thereby breach this AGREEMENT.
6. **No Agreement to Proceed.** Neither party shall have any obligation to enter into any further agreement with the other or further negotiate or evaluate the PURPOSE.
7. **Relationship of the Parties.** Nothing contained in the AGREEMENT shall be construed as establishing any joint venture, partnership, employment, agency or other business relationship between the parties and neither shall have any authority to incur any obligations or commitments or make any representations, warranties or guarantees or to act for or on behalf of the other.
8. **Non-solicitation.** The parties agree that, without the other party’s prior written consent, it will not for a period of one (1) year from the date hereof directly or indirectly (other than through general non-targeted solicitations) solicit for employment or other services or employ or otherwise engage any person involved in the discussions with respect to the PURPOSE and who is employed by the other party or any of its affiliates as of the date hereof or is so employed or engaged at any time hereafter and prior to the termination of discussions between the parties with respect to the PURPOSE.

This AGREEMENT will be governed by and interpreted in accordance with the laws of the state of Delaware, excluding its conflict of law principles. This AGREEMENT will be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, and legal representatives.

|  |  |
| --- | --- |
| **Accepted by UPSHOP** | **Accepted by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** |
| Signature: | Signature: |
| Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Name: |
| Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Title: |
| Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date: |