

**CONFIDENTIALITY AGREEMENT**

**Between**

**New Jersey Economic Development Authority**

*and*

\_\_\_\_\_

This Agreement dated \_\_\_ 20\_\_\_, by and between \_\_\_\_\_ ("Applicant") having an address at \_\_\_\_\_ and the New Jersey Economic Development Authority ("NJEDA"), a public body corporate and politic constituting an instrumentality of the State of New Jersey having an address at 36 West State Street, P.O. Box 990, Trenton, NJ 08625-0990.

Applicant has, or is about to make application to NJEDA for financial assistance and in connection with such application for financial assistance, Applicant will be providing NJEDA with certain confidential information.

THE PARTIES AGREE AS FOLLOWS:

1. This Agreement shall be effective as of the date hereof and shall continue in effect for a period of five (5) years.
2. "Confidential Information" shall mean any information or records, unless exempted by the provisions of paragraph 7 hereof, provided by Applicant to NJEDA in connection with its application for financial assistance if the information or records contain or pertain: (a) to financial records, to proprietary information, or to personal matters; and (b) Applicant notifies NJEDA, in writing, of such classification at the time the information is provided to NJEDA.
3. NJEDA shall use the Confidential Information received from Applicant solely for the purpose of evaluating Applicant's application for financial assistance or servicing any financial assistance relationship that might be agreed to by the Applicant and NJEDA.
4. Subject to Paragraph 13 and Paragraph 14 below, NJEDA shall be obligated to maintain as secret and confidential the Confidential Information and shall not disclose any of such information, directly or indirectly, to any third party, other than its employees, consultants, affiliates and agents ("Representatives"), all of whom shall be informed of this Confidentiality Agreement and all of whom shall be bound by its terms.
5. Confidential Information shall remain the property of Applicant. No rights or licenses to any Confidential Information are granted or implied by this Agreement. Notwithstanding the forgoing, the NJEDA shall have the right to retain copies of any financial information received by it from the Applicant, or on behalf of the Applicant, submitted in connection with its application for financial assistance.
6. Except as is required to complete its evaluation of Applicant's application for financial assistance or servicing any financial assistance relationship that might be agreed to by the Applicant and NJEDA, NJEDA shall not make copies of any Confidential Information without Applicant's prior consent.

7. It is understood that the term "Confidential Information" does not include information which:
  - a. prior to disclosure by Applicant or Applicant's agents hereunder, was within the possession of NJEDA, as evidenced by their records; or
  - b. prior to disclosure was, or subsequent to disclosure becomes, generally known to the public or in the public domain through no fault of NJEDA; or
  - c. subsequent to disclosure is obtained on a non-confidential basis by NJEDA from a third party not bound by a confidentiality agreement with Applicant; or
  - d. is requested by any federal or state investigatory or regulatory agency, including the United States and New Jersey Departments of Labor and Workforce Development; or
  - e. NJEDA is requested or required to provide to the New Jersey Department of the Treasury, the Department of Environmental Protection and the Department of Labor and Workforce Development in carrying out NJEDA's responsibilities under the \_\_\_\_\_ ("Program")
8. This Agreement is intended to cover only the matter of maintaining the confidentiality of Confidential Information.
9. None of the terms or conditions hereof may be changed, modified, waived or canceled except by a writing signed by both parties hereto, specifying such change, modification, waiver or cancellation.
10. If any of the provisions of this Agreement are held by a court to be unenforceable then such holding shall be enforced to the maximum extent permitted by law and the remaining provisions of this Agreement shall remain in full force and effect.
11. This Agreement shall be construed and governed in accordance with the laws of the State of New Jersey in the United States of America.
12. In the event that NJEDA or its Representatives are requested or required (by either the N.J. Open Public Records Act, New Jersey Right to Know statutory law or case law, oral questions administered under oath in a court or investigative proceeding, interrogatories, depositions, subpoena or other judicial or investigative process) to disclose any Confidential Information supplied to NJEDA or its Representative, such party shall provide to \_\_\_\_\_, via FAX/EMAIL: \_\_\_\_\_, (or at such other address that Applicant has provided the NJEDA at least fifteen (15) days notice of) prompt notice of such requests so that Applicant may seek a protective order or other appropriate relief from such request or requirement to disclose Confidential Information. If in the absence of a timely protective order or other relief, upon the advice of counsel of their own choosing, NJEDA or its Representative determine that disclosure of any Confidential Information is compelled under penalty of contempt or liability, NJEDA or its Representative may disclose such Confidential Information without liability hereunder.
13. **Applicant acknowledges that NJEDA is an authority of the State of New Jersey which is subject to the N.J. Open Public Records Act (N.J.S.A. 47:1A-A et. seq.). Applicant acknowledges that a copy of the N.J. Open Public Records Act is made available at <http://www.state.nj.us/grc/act.html>**

**Applicant further acknowledges that the N.J. Open Public Records Act set forth very strict time frames for responding to requests for public records and severe penalties for failure to comply with the N.J. Open Public Records Act. Applicant understands and agrees that it shall not be a violation of this Agreement and that NJEDA shall have no liability to Applicant for releasing documents under an N.J. Open Public Records request if NJEDA determines, in its best judgment, that such documents were required to be released under the N.J. Open Public Records Act.**

14. **Applicant also acknowledges that NJEDA is an authority of the State of New Jersey which is required to operate under the N.J. Open Public Meetings Act (N.J.S.A. 10:4-6 et. seq.). Applicant further acknowledges that its application for financial assistance cannot be approved without Applicant's application and financial information being presented to and discussed by the NJEDA Board of Members at an open, public meeting. Applicant understands and agrees that it shall not be a violation of this Agreement and that NJEDA shall have no liability to Applicant for any discussions by NJEDA Board members or NJEDA staff members regarding Applicant's application or financial information during such an open and public NJEDA Board meeting.**
15. Any and all claims made or to be made against NJEDA based in tort law for damages shall be governed by and subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. Notwithstanding any provision in this Agreement to the contrary, Company agrees that any and all claims made or to be made against NJEDA based in contract law for damages shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.
16. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same agreement.

Please indicate NJEDA's acceptance of the foregoing terms and conditions by signing the enclosed duplicate copy of this Agreement and returning it to Applicant.

Very truly yours,

\_\_\_\_\_

By \_\_\_\_\_

\_\_\_\_\_

Accepted and Agreed to this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

New Jersey Economic Development Authority

By \_\_\_\_\_

\_\_\_\_\_  
Print Name

Its \_\_\_\_\_

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Title