

## Mutual NDA

This NDA (“**Agreement**”) is made this date of \_\_\_\_\_ between:

**Epipheo Incorporated**, a Kentucky corporation with its principal place of business at 2692 Madison Rd STE N1 #324, Cincinnati, OH 45209 (“**Epipheo**”); and

\_\_\_\_\_,  
a \_\_\_\_\_, with its principal place of business at  
\_\_\_\_\_  
\_\_\_\_\_

(the “**Company**”). Epipheo and Company shall sometimes be referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, the Parties have expressed an interest in entering into one or more potential business transactions or relationships (collectively, the “Business Relationship”) with each other; and

WHEREAS, the Parties, for their mutual benefit, and with their mutual objective to provide adequate protection and safeguards, may exchange and disclose certain Confidential Information (as hereinafter defined) to each other while exploring the possibility of a and during the Business Relationship.

NOW, THEREFORE, in consideration of the mutual premises recited above, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. From and after the date written above, the Parties agree to hold in trust and confidence and not to disclose to any third party any Confidential Information (as defined below), whether of a written, visual, magnetically stored, and/or electronically retrievable nature, as well as any physical samples thereof, that is disclosed and provided by one Party to the other Party, and to limit its use as set forth in this Agreement.
2. The term “Confidential Information” means information furnished to a Party or its Representatives (as defined below) by or on behalf of the other Party or its Representatives, or, which is hereafter obtained by a Party or its Representatives through oral disclosure, an inspection of the property, operations or documents of the other Party, including, but not limited to: business secrets; business information; business plans; financial and pricing information; business practices; financial statements and reports; project specifications; projections; schematics and drawings; trade secrets; processes; materials; customer lists; supplier lists; sales volume; territories; markets; current, future, or potential acquisitions; technical, production, operational, marketing, or sales information; and any and all other financial, business, organizational, and technological information related to a Party’s or a Party’s subsidiaries, affiliates or parent entities (collectively, “Affiliates”) or Representatives’ business and/or organization, whether or not such information is specifically marked “Confidential” or other similar legend. “Confidential Information” shall also include all information which should reasonably be understood by the receiving Party to be confidential due to the strategic or

sensitive nature of the information. “Confidential Information” shall include (i) the fact that investigations, discussions or negotiations are taking place concerning a possible Business Relationship, (ii) that either Party has received Confidential Information, (iii) any terms, conditions or other facts with respect to any such Business Relationship, and (iv) all writings, notes, memoranda, analyses, compilations, data, studies, interpretations, media or other documents prepared by either Party and/or its Representatives containing or based in whole or in part on any such furnished or obtained information.

3. “Confidential Information” does not include any information that:

- 3.1 at the time of receipt was already possessed by the receiving Party (other than as a result of a disclosure, directly or indirectly, by a Party or its Representatives in violation of this Agreement);
- 3.2 after being provided by the disclosing Party entered the public domain without any action or fault of the receiving Party;
- 3.3 is obtained from any individual, firm, or entity that, to the knowledge of the receiving Party (after due inquiry), had the unrestricted right to disclose it;
- 3.4 subject to the requirements contained below, is required to be disclosed under applicable law, regulatory process, court order, or governmental order (which disclosure receiving Party shall use reasonable efforts to avoid or minimize by providing prior notice to disclosing Party so that the disclosing Party may have the opportunity to intervene, contest such disclosure or seek a protective order, agreement, or otherwise with respect to such Confidential Information); or
- 3.5 is may be shown by written records, is independently developed by the receiving Party without knowledge of or access to the disclosing Party’s Confidential Information.

4. To the extent lawfully permitted to do so and in the event that the receiving Party believes that it is required to disclose Confidential Information pursuant to applicable law, regulatory process, a court order, or other governmental order, the receiving Party shall promptly notify the disclosing Party in writing and provide the disclosing Party with the basis for its belief that it is required to disclose Confidential Information. Prior to any such disclosure, the receiving Party shall provide the disclosing Party with written notice to enable the disclosing Party to seek a protective order or similar measure to protect the Confidential Information from disclosure. If the disclosing Party seeks such an order or other measure, the receiving Party will provide such cooperation as the disclosing Party shall reasonably request. If the disclosing Party does not seek a protective order or similar measure or a protective order or similar measure is not obtained, the receiving Party will disclose only that portion of the Confidential Information which, in the opinion of counsel, is legally required to be disclosed, and the receiving Party will use best efforts to obtain assurances that confidential treatment will be accorded to such Confidential Information. Neither Party will oppose any action by the other Party to obtain an appropriate protective order or similar measure or other reliable assurance that confidential treatment will be

accorded to the Confidential Information. All costs and expenses associated with such protective order or similar measure shall be borne by the disclosing Party.

5. Receiving Party acknowledges and agrees that the disclosing Party has not made any representations or warranty as to the accuracy or completeness of the Confidential Information and that the receiving Party is not entitled to rely on the accuracy or completeness of the Confidential Information and will be entitled to rely solely on such representations and warranties as may be included in any definitive agreement with respect to the Business Relationship.

6. All written Confidential Information shall remain the property of the disclosing Party and immediately upon written request by the disclosing Party at any time (which will be effective upon receipt, or three (3) days after being mailed first class prepaid postage to the receiving Party), the receiving Party will turn over to the disclosing Party or destroy all Confidential Information of the disclosing Party and all notes containing any such Confidential Information and any and all copies or extracts thereof; provided, however, that (i) the receiving Party shall be permitted to retain a file copy of Confidential Information in accordance with the terms of this Agreement to the extent that retention of such Confidential Information is necessary to comply with applicable law or regulation or the receiving Party's internal document retention policies aimed at legal, corporate governance or regulatory compliance and (ii) the receiving Party shall not be deemed to have retained or failed to return or destroy any Confidential Information received or stored in digital format that is deleted from local hard drives so long as no attempt is made to recover such Confidential Information from servers or back-up sources. In the cases of clauses (i) and (ii) above, such Confidential Information must continue to be held confidential subject to the terms of this Agreement and the receiving Party and its Representatives will continue to be bound by the confidentiality and other obligations hereunder.

7. The receiving Party shall use the Confidential Information solely for the following purposes: (i) to evaluate whether to enter into a contemplated Business Relationship; and, (ii) if the parties enter into a Business Relationship, to fulfill each party's commitments under the agreement for such Business Relationship, in the manner and to the extent specified in such agreement (the "**Purpose**").

8. The Receiving Party undertakes:

(a) not to use the Confidential Information otherwise than for the Purpose; (b) to disclose the Confidential Information only to its or its affiliates employees and officers on a "need to know" basis and provided that such employees and officers are already subject to an express duty of confidentiality. The receiving Party shall be liable to the disclosing Party for the actions or omissions of the receiving Party's representatives under this agreement, as if they were the actions or omissions of the receiving Party; and (c) apply the same security measures and degree of care to the Confidential Information as the receiving Party applies to its own confidential information, which the receiving Party warrants as providing adequate protection from unauthorised disclosure, copying or use.

9. Neither party shall assign or transfer any of its rights or obligations under this Agreement without prior written consent of the other.

**10.** This Agreement shall remain in effect until terminated by either party on 30 days' written notice.

**11.** The receiving Party's obligations hereunder are in addition to, and not exclusive of, any and all other obligations and duties owed to disclosing Party and shall remain in effect for the greater of (i) three (3) years from the date of the receiving Party's receipt of such information, or (ii) the term of any definitive agreement entered between Contractor and Company relating to a Business Relationship; provided, however, that with respect to the disclosing Party's employee, customer, or shareholder information, the receiving Party's obligations and duties hereunder shall continue as provided under applicable law. Notwithstanding anything contained herein to the contrary, to the extent that any Confidential Information is considered a trade secret by the disclosing Party, the receiving Party's obligations with respect to that Confidential Information shall continue until the disclosing Party no longer maintains such Confidential Information as a trade secret.

**12.** This Agreement constitutes the entire understanding between the parties and supersedes all prior communications (whether written or oral) between the parties with respect to or in connection with any of the matters or things to which this Agreement applies. It may not be amended, unless in writing and signed by a duly authorized representative of both parties.

**13.** The parties stipulate that serious injury could result to a party and its business if the other party breaches its obligations under this Agreement, and that in the case of such breach damages may be difficult to quantify. As such, each party is entitled to a restraining order, injunction or other injunctive relief if the other party breaches its obligations under this Agreement, in addition to other remedies or damages that would be available at law or in equity.

**14.** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio, excluding its conflicts of law principles, and the parties submit to the exclusive jurisdiction of any federal or state court situated in Hamilton County, Ohio. Without limiting the foregoing, an aggrieved party may seek injunctive relief in any court of competent jurisdiction.

IN WITNESS WHEREOF the parties have executed this Agreement on the date set out above.

SIGNED for and on behalf of  
**EPIPHEO INCORPORATED**



\_\_\_\_\_  
Signature

Lucas Cole  
\_\_\_\_\_  
Name

**COMPANY**

\_\_\_\_\_  
**Legal Name**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date