



MUTUAL NON-DISCLOSURE AND NON-USE AGREEMENT

This Mutual Non-Disclosure and Non-Use Agreement (“NDA”) is made and entered into as of this ____ day of _____, 2016, by and between Enfusen Corp., an Ohio corporation (“Enfusen”) and _____. Enfusen and _____ are individually referred to as a “Party,” and collectively referred to as the “Parties.”

WHEREAS, the Parties to this NDA wish to explore a business mentoring relationship of mutual interest (the “Disclosure Purpose”); and

WHEREAS, in connection with this mentoring relationship, the Parties wish to establish terms governing the confidentiality and use of certain information that one Party (the “Disclosing Party”) may disclose to the other Party (the “Receiving Party”) and that Disclosing Party desires Receiving Party to treat as confidential.

NOW THEREFORE, in consideration of the mutual promises contained herein, the Parties agree as follows:

1. Confidential Information.

Each Party acknowledges that the other Party has developed, owns, and/or possesses certain proprietary trade secrets, and other confidential information relating to its business, including, without limitation, information regarding customers, suppliers, business arrangements, technical and business data, know-how, processes, specifications, techniques, designs, and ideas (collectively, “Confidential Information”). Confidential Information shall include any and all information of Disclosing Party disclosed to Receiving Party (whether previously disclosed, disclosed simultaneously herewith, or hereafter disclosed), directly or indirectly: (i) in tangible form (including, without limitation, written, graphic, visual or virtual information incorporated in computer software or held in electronic storage media); (ii) contained in oral communications; or (iii) by virtue of Receiving Party’s inspection of tangible objects, including, without limitation, documents, prototypes, samples, plans, or equipment. Confidential Information shall also include confidential, proprietary, and technical information belonging to the Disclosing Party’s clients, customers, vendors, development partners, or other third parties. Confidential Information shall, without limitation, include the specific items set forth in Appendix A, which is incorporated herein by reference.

2. Exclusions from Confidential Information.

The term “Confidential Information” shall not include any information of Disclosing Party that: (i) at the time of disclosure or acquisition was in the public domain or later entered the public domain other than by breach of this NDA or confidentiality obligation owed to the Disclosing Party; (ii) is already known to or had been reduced to writing by Receiving Party at the

time of its disclosure or acquisition, as indicated by Receiving Party's file and records; (iii) is received from a third party that had no duty to maintain the information in confidence; and (iv) is independently developed by Receiving Party without use of or reference to the Disclosing Party's Confidential Information, as shown by documents and other competent evidence in Receiving Party's possession.

3. Handling of Confidential Information.

(a) *Nondisclosure.* Receiving Party agrees to keep Confidential Information in confidence by exercising reasonable precautions to prevent unauthorized disclosure of the received Confidential Information to any third party, in whole or in part, and not to use the Confidential Information for any purpose other than in furtherance of the Disclosure Purpose. The standard of care imposed on each Party for protecting Confidential Information received from the other Party will be reasonable and prudent care to prevent improper disclosure or use of such Confidential Information (except neither Party shall be excused from its own negligence), including, but not limited to, allowing access to such Confidential Information to such of its or his employees, officers, directors, agents, consultants, contractors and/or contract employees, or representatives who have a need to know in connection with the Disclosure Purpose. The term "need to know" means that knowledge of the Confidential Information is required or reasonably necessary in order to perform certain responsibilities in connection with the Disclosure Purpose. In the event of loss or theft of any documents, items of work in progress, or any work products embodying Confidential Information by or from any Party, the other Party must be notified immediately. Except with the Disclosing Party's prior written consent, or as specifically permitted herein, the Receiving Party shall not, and shall direct its affiliates and their respective directors, officers, employees, agents, and other representatives (collectively, "Representatives"), not to disclose or permit the disclosure to any third party of any Confidential Information disclosed to it by Disclosing Party or such Disclosing Party's Affiliates or Representatives. For purposes of this NDA, "Affiliates" shall include any entity that controls, is controlled by, or is under common control with such Party.

(b) *Use of Confidential Information.* Receiving Party shall not use Disclosing Party's Confidential Information for any purpose except to evaluate or engage in discussions concerning the contemplated mentoring relationship and/or to carry out such mentoring relationship between the Parties (the "Disclosure Purpose"). Receiving Party shall not use Confidential Information disclosed pursuant to this NDA to develop its or his own business or to compete with Disclosing Party, nor shall Receiving Party reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the Confidential Information disclosed pursuant to this NDA. Receiving Party shall not, directly or indirectly, circumvent or attempt to circumvent the intent of this NDA, nor shall Receiving Party use Disclosing Party's Confidential Information to interfere with pre-established relationships, obtain access to technologies directly, or otherwise take any opportunity of Disclosing Party.

(c) *General Standard of Care.* Without limiting any other obligations set forth herein, Receiving Party shall afford Disclosing Party's Confidential Information the same degree

of confidentiality and handle such information with the same degree of care as Receiving Party affords its or his own sensitive business information, provided, however, that in no event shall Receiving Party use less than a reasonable degree of care when handling Disclosing Party's Confidential Information.

(d) *Vicarious Liability.* Any unauthorized disclosure or use of any Confidential Information (as measured against the restrictions contained herein) by Receiving Party's Representatives or Affiliates will be deemed to be a breach of this NDA by Receiving Party to the same extent as if Receiving Party had disclosed such information directly.

4. Public Statements and Press Releases; Confidentiality of NDA.

Neither Party shall make an announcement or issue a press release on the subject matter of this NDA or the business dealings or transactions by and between the Parties without the prior written consent of the other Party (consent not to be unreasonably withheld). The Parties shall treat all discussions, negotiations, proposals, meetings, and/or work regarding the contemplated mentoring relationship and transactions between the Parties that give rise to or that are covered by this NDA as confidential, whether such discussions or negotiations contained Confidential Information or not, as well as the fact that discussions, negotiations, proposals, meetings, and/or work with regard to the Disclosure Purpose are taking place.

5. Reproduction of Confidential Information.

Neither Party shall reproduce copies of the Confidential Information which bears the legend, "DO NOT DUPLICATE," or its equivalent. Subject to the terms of this NDA, either Party may duplicate documents which do not bear the aforementioned legend, provided that such duplication is a reasonable requirement for furtherance of the Disclosure Purpose.

6. Compelled Disclosure.

In the event that Receiving Party is required by court order or other government demand that has the force of law, Receiving Party may disclose Disclosing Party's Confidential Information without liability hereunder, provided that prior to disclosure, Receiving Party gives Disclosing Party prompt notice of such request and assists Disclosing Party (if requested by Disclosing Party) in seeking an appropriate protective order.

7. Ownership and Return or Destruction of Confidential Information.

(a) *Ownership.* Confidential Information, including all copies, if any, disclosed by Disclosing Party to Receiving Party under this NDA shall be and remain property of Disclosing Party notwithstanding integration of such Confidential Information into a new document by Receiving Party.

(b) *Return of Confidential Information.* Upon: (i) written request by Disclosing Party; (ii) termination of this NDA pursuant to Section 10, below; or (iii) conclusion of the Parties' mentoring relationship, all of Disclosing Party's Confidential Information, including all copies thereof and records, notes, and other written, printed, or tangible material pertaining thereto that is in possession of Receiving Party shall be returned to Disclosing Party promptly and shall not thereafter be retained in any form by Receiving Party, provided, however, that documents created by Receiving Party that include both Disclosing Party's and Receiving Party's Confidential Information do not need to be delivered to Disclosing Party and may instead be destroyed by Receiving Party pursuant to Paragraph (c) of this Section 7.

(c) *Destruction of Confidential Information.* The Disclosing Party may alternatively direct the Receiving Party to destroy Confidential Information, including all copies thereof, and any notes, records, or other written, printed, tangible, or electronic materials pertaining to the Confidential Information that are in Receiving Party's possession in a manner which preserves the confidentiality. The Receiving Party shall provide written certification that all of Disclosing Party's Confidential Information has been destroyed.

8. No License.

Nothing in this NDA is intended to grant any rights to either party under any patent, copyright, or other intellectual property right of the other Party, nor will this NDA grant any Party any rights in or to the Confidential Information of the other Party except as expressly set forth in this NDA.

9. Remedies.

The Parties acknowledge that these covenants are reasonable and necessary for the protection of the proprietary interest of each other. The Parties further agree that Confidential Information is valuable and unique and that disclosure and breach of this NDA will result in irreparable injury to the Disclosing Party for which remedies at law may be inadequate. In the event of a breach or threatened breach of the terms of this NDA, Disclosing Party shall be entitled to, and the Receiving Party consents to the granting of, an injunction prohibiting any such breach, whether temporary, preliminary, or final, without proof of actual damages. Any such relief shall be in addition to and not in lieu of any appropriate remedy in the way of money damages. Each Party agrees to reimburse the other Party (if successful on the merits) for all court costs and legal fees, including reasonable attorneys' fees, incurred in enforcing this NDA or obtaining relief hereunder.

10. Termination.

Either Party may terminate this NDA by giving ten (10) days' written notice to the other.

11. Survival of Confidentiality Obligation.

Confidential Information will be subject to the conditions of non-disclosure, non-use, and return set forth in this NDA until such Confidential Information comes into the public domain through no fault or breach of this NDA by Receiving Party. In the event that a subsequent agreement is concluded by the Parties, this NDA will be superseded by such subsequent agreement to the extent that its terms and conditions conflict with those set forth in this NDA.

12. Indemnification.

Receiving Party agrees to indemnify and hold Disclosing Party harmless from any damages, loss, cost, or liability without exception (including fees and the cost of enforcing this indemnity) arising out of or resulting from any unauthorized use or disclosure by Receiving Party or Receiving Party's Affiliates of the Confidential Information or other violation of this Agreement.

13. Controlling Law.

This NDA shall be governed and interpreted in accordance with the laws of the State of Ohio, without reference to their respective conflicts of law principles. In the event of any dispute, or difference arising out of, or relating to this Agreement, or the breach thereof, the Parties shall be free to settle their dispute in the state or federal courts in Fairlawn, Ohio.

14. No Assignment.

Receiving Party shall not assign any of its rights or obligations hereunder.

15. No Waiver.

No waiver of any provision, breach, or default under this NDA shall be deemed a waiver of any subsequent provision, breach, or default, nor shall any such waiver constitute a continuing waiver.

15. Counterparts.

This NDA may be executed in one or more counterparts, each of which will be deemed to be an original copy of this NDA, and all of which, when taken together, shall be deemed to constitute one and the same agreement.

16. Entire Agreement.

This Agreement contains the entire and complete agreement between the Parties, and supersedes any prior understandings, promises, representations and agreements, oral or written, with respect to the subject of this NDA. No modification, change, or waiver of this Agreement shall be valid unless made in writing and signed by the authorized representative of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement at the place and on the date (the Signing Date) set forth at the outset of this Agreement.

Name

Date: _____

ENFUSEN CORP

By: _____

Its _____

Date: _____

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APPENDIX A

SPECIFIC INFORMATION INCLUDED AS “CONFIDENTIAL INFORMATION”

1. Examples of Confidential Information. By way of example only, Confidential Information may include, without limitation, the following information related to or contained in:

- Strategic plan
- The identity of one or more business partners
- Descriptions of non-public transaction structure proposals
- Descriptions of business operations, billing and receivable operations
- Marketing and operational procedures and strategies
- Business plans or strategies
- Policies and procedures
- Methods
- Products yet to be released to the public
- Services not generally known to the public
- Computer systems
- Inventory systems
- Suppliers
- Distribution networks
- Software and software code
- Process descriptions or block diagrams
- Technical systems
- Product development methodologies and strategies
- Manufacturing data
- Engineering data
- Drawings, designs and blueprints
- Test data
- Materials
- Costs
- Specifications
- Equipment
- Financial performance figures or projections
- Credit information
- Procurement and sales activities and procedures
- Pricing, salary and benefit information and other data regarding the Owner's employees
- "Trade secrets" as defined by Section 1333.61 of the Ohio Revised Code
- Formulas
- Know-how
- Ideas, discoveries and inventions
- Patent applications
- Client or customer lists
- Mailing lists

- Employee candidate names and resumes, lists, and recruiting techniques
- The nature and content of client contracts and records

2. Other Specific Items Included as “Confidential Information”.

The following items are specifically included in the term “Confidential Information”: All non-public information that is the property of Microsoft Corporation and its Affiliates, know-how, and trade secrets of Microsoft Corporation and its Affiliates in any form that are designated as “Confidential” or that a reasonable person knows or reasonably should understand to be confidential.