

MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement (the “Agreement”) is made as of _____, 2020 by and between United Way of Greater Rochester, Inc., a New York non-for-profit corporation (“UWGR”), and _____, a _____ company (“Company”).

1. Purpose and Background. UWGR and Company intend to exchange certain Confidential Information (as hereinafter defined) concerning themselves and their affairs for the purpose of evaluating a potential business relationship of mutual interest between the parties (the “Relationship”) relating to the Company and its application (the “Application”). The party that discloses any item of Confidential Information is referred to herein as the “Discloser” as to that item of Confidential Information. The party receiving such item of Confidential Information is referred to herein as the “Recipient” as to that item of Confidential Information. This Agreement is intended to allow the parties to discuss and evaluate the Relationship while protecting a Discloser’s Confidential Information against unauthorized use or disclosure. Each of the party’s agree and acknowledge that for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties have entered into this Agreement intending to be legally bound.

2. Definition of Confidential Information. “Confidential Information” means any oral, written, graphic or machine-readable information including, but not limited to, that which relates to Discloser’s business, assets, technology, methods, trade secrets, know-how, processes, data, specifications, techniques, improvements, inventions or other intellectual property that Discloser designates as being of a confidential nature or which under the circumstances surrounding disclosure and the nature of the information the Recipient reasonably should know that such information is intended to be treated as confidential or proprietary. Information shall be Confidential Information regardless of whether the information is in tangible or intangible form or whether the information is retained in the memory of Recipient or its agents. Confidential Information includes, for example and without limitation, Discloser’s financial information or data, marketing techniques and material, business plans and strategies, business operation and systems, pricing policies, information concerning employees, customers, and/or vendors, trade secrets, products, services, discoveries, inventions, improvements, research development, know-how, designs, plans, specifications, and products.

3. Nondisclosure of Confidential Information

(a) Recipient agrees not to use any Confidential Information disclosed to it by Discloser for its own use or for any purpose other than to carry out discussions concerning, and the undertaking of, the Relationship. Recipient shall not disclose or permit disclosure of any Confidential Information of Discloser to any person, firm partnership, corporation, limited liability company or other legal entity of a third party (collectively, a “Person”), other than directors, officers, employees, consultants and agents of Recipient who are required to have the information in order to carry out the discussions regarding the Relationship (“Representatives”). Recipient has had or will have its Representatives who have access to Confidential Information of Discloser sign a nondisclosure agreement in content substantially similar to this Agreement. Recipient will cause its Representatives to observe the terms of this Agreement, and will be responsible for any breach of this Agreement by any of its Representatives. Recipient agrees that it shall take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of Discloser in order to prevent it from falling into the public domain or the possession of persons other than those Persons authorized under this Agreement to have any such information. Such measures shall include, but not be limited to, the highest degree of care that Recipient utilizes to protect its own Confidential Information of a similar nature, which shall be no less than reasonable care or as required by law or regulation. Recipient further agrees

to promptly notify Discloser in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Discloser's Confidential Information which may come to Recipient's attention.

(b) **Exceptions.** Notwithstanding the above, Recipient shall not have liability to Discloser with regard to any Confidential Information which Recipient can prove:

(i) was in the public domain at the time it was disclosed by Discloser or has entered the public domain through no fault of Recipient;

(ii) was known to Recipient, without restriction, at the time of disclosure, as demonstrated by writings in existence at the time of disclosure;

(iii) is disclosed with the prior written approval of Discloser;

(iv) becomes known to Recipient, without restriction, from a source other than Discloser without breach of this Agreement by Recipient and otherwise not in violation of Discloser's rights; or

(v) is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided, however, that Recipient shall provide prompt notice of such court order or requirement to Discloser to enable Discloser to seek a protective order or otherwise prevent or restrict such disclosure.

4. No Publicity. Neither Party shall, without prior written mutual consent, disclose to any other person the fact that Confidential Information of Discloser has been and/or may be disclosed under this Agreement, that discussions or negotiations are taking place between the parties, or any of the terms, conditions, status or other facts with respect thereto, except as required by law and then only with prior notice as soon as possible to the other party.

5. No Modification. Recipient agrees that it shall not modify, reverse engineer, decompile, create other works from or disassemble any intellectual property contained in Discloser's Confidential Information unless expressly permitted in writing by Discloser.

6. No Duplication; Return of Materials. Recipient agrees, except as otherwise expressly authorized by Discloser, not to make any copies or duplicates of any Confidential Information. Any materials or documents that have been furnished by Discloser to Recipient in connection with the Relationship shall be promptly returned by Recipient, accompanied by all copies of such documentation, within ten days after (a) the Relationship has been rejected or concluded or (b) the written request of Discloser.

7. No Rights Granted. Nothing in this Agreement shall be construed as granting any rights under any patent, copyright or other intellectual property right of Discloser, nor shall this Agreement grant Recipient any rights in or to Discloser's Confidential Information other than the limited right to review such Confidential Information solely for the purpose of determining whether to enter into the Relationship. Recipient agrees and understands that nothing in this Agreement (a) requires the disclosure of any Confidential Information, which shall be disclosed, if at all, solely at Discloser's option, (b) requires Discloser to proceed with the Relationship or any transaction in connection with which the Confidential Information may be disclosed, and (c) the Discloser shall remain the exclusive owner of its Confidential Information and all intellectual property rights therein.

8. **Term.** The foregoing commitments of each party shall survive any termination of the Relationship between the parties, and shall continue for a period terminating on the later to occur of the date (a) three (3) years following the date of this Agreement or (b) two (2) years from the date on which Confidential Information is last disclosed under this Agreement.

9. **No Warranty.** Discloser does not make any warranty, express or implied, as to any Confidential Information that it may provide hereunder, including without limitation as to the accuracy of the Confidential Information.

10. **Affiliates.** Recipient's obligations hereunder shall extend to its "Affiliates" which include any Person controlled by, controlling or under common control with Recipient. For purposes of this Agreement, "control" (including controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership, whether being the individual owner or the beneficial owner as the term is defined in Rule 16a (1) of the Securities Exchange Act of 1934, as amended, of voting securities, by contract or otherwise.

11. **Successors and Assigns.** The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties, provided that Discloser's Confidential Information may not be assigned without the prior written consent of Discloser. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

12. **Severability.** All clauses and covenants contained in this Agreement are severable and in the event any of them are held to be invalid by a court of competent jurisdiction, such clause or covenant shall be valid and enforced to the maximum extent as to which it may be valid and enforceable, and this Agreement shall be interpreted as if such invalid clauses or covenants were not contained herein.

13. **Independent Contractors.** Each of the parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute a partnership, joint venture, co-ownership or otherwise as participants in a joint or common undertaking.

14. **Governing Law; Jurisdiction.** This Agreement and all acts and transactions pursuant hereto and the rights and obligations of the parties hereto shall be governed, construed and interpreted in accordance with the laws of the State of New York, without giving effect to principles of conflicts of law. Each of the parties hereto consents to the exclusive jurisdiction and venue of the courts of Monroe County, New York.

15. **Remedies; Indemnification.** Each of the parties agree that the obligations of Recipient set forth in this Agreement are necessary and reasonable in order to protect Discloser and its business. The Discloser and Recipient each expressly agree that due to the unique nature of Discloser's Confidential Information, monetary damages would be inadequate to compensate Discloser for any breach by Recipient of its covenants and agreements set forth in this Agreement. Accordingly, Discloser and Recipient each agree and acknowledge that a violation or threatened violation of the confidentiality, non-competition and non-solicitation provisions contained herein shall cause irreparable injury to Discloser and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Discloser shall be entitled (a) to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach by Recipient, without the necessity of proving actual damages, and (b) to be indemnified by Recipient from any loss or harm, including but not limited to attorney's fees,

arising out of or in connection with any breach or enforcement of Recipient's obligations under this Agreement or the unauthorized use or disclosure of Discloser's Confidential Information.

16. Amendment and Waiver. Any term of this Agreement may be amended with the written consent of Discloser and Recipient. Any amendment or waiver effected in accordance with this Section shall be binding upon the parties and their respective successors and assigns. Failure to enforce any provision of this Agreement by a party shall not constitute a waiver of any term hereof by such party.

17. Headings. The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties and shall not in any way affect the meaning or interpretation of this Agreement.

18. Presumptions. In construing the terms of this Agreement, no presumption shall operate in either party's favor as a result of its counsel's role in drafting the terms or provisions hereof.

19. Advice of Counsel. Recipient understands the legally binding nature of this Agreement. Recipient acknowledges that Recipient has been advised by the Discloser to review the terms of this Agreement with legal counsel of Recipient's choice and that Recipient has been given reasonable opportunity to seek such legal advice.

20. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

21 Entire Agreement. This Agreement is the product of both of the parties hereto, and constitutes the entire agreement between such parties pertaining to the subject matter hereof, and merges all prior negotiations and drafts of the parties with regard to the transactions contemplated herein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

[Signature Page Follows]

The parties have executed this Nondisclosure Agreement as of the date first above written.

UWGR:

UNITED WAY OF GREATER ROCHESTER, INC.

By: _____

Name: _____
(print)

Title: _____

Address: _____

COMPANY:

By: _____

Name: _____
(print)

Title: _____

Address: _____
