

BI-DIRECTIONAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT (“Agreement”) is made and entered into by and between the individuals/organizations (including their firms, employees, agents, heirs, assigns, designees, and consultants) signed below, (the “Party or Parties”) to protect certain proprietary and confidential information of the disclosing Party. **Effective Date upon signing (below).**

WHEREAS the Parties desire to discuss certain business issues related to their respective roles in one or more potential project(s) hereafter referred to individually as (“Project”); and,

WHEREAS the Parties anticipate that, in the course of discussions, evaluations and a possible business relationship between the Parties all in connection with any Project, each may disclose to the other certain non-public, confidential and/or proprietary information, including without limitation, data, ideas, marketing information, business plans, proposals or other information (hereinafter referred to as “Confidential Information”); and

WHEREAS the use of Confidential Information by, or its disclosure to, any person or organization other than the Parties would be highly detrimental and damaging to the one or more of the Parties,

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

- A. Confidential Information. All signed members of Party intend to share written, text, verbal and computer-readable information it desires to be treated as Confidential Information, whether disclosed as part of the discussions, evaluations or business relationships in connection with the Project will be considered strictly “CONFIDENTIAL” or “PROPRIETARY” at the time of disclosure. This includes all Party participants oral information and as such will be treated as Confidential Information. Confidential Information also includes the existence of discussions between the Parties, individually or with any other Party member regarding any Project and shall be kept in strict confidence between only signed members of this agreement. All signed members to the Party will be notified of participants and only those members shall share Project information.
- B. Nondisclosure. The receiving Party acknowledges the economic value to the disclosing Party of all Confidential Information and the receiving Party shall:
 1. Use of Confidential Information only for the purpose of evaluating and/or contributing to any Project; and
 2. Restrict disclosure of the Confidential Information solely to those authorized Party members, employees, or authorized representatives of the receiving Party and its affiliates with a “need to know” and who are obligated by the receiving Party in a manner consistent with this Agreement to maintain the confidentiality of such information; and
 3. Advise those employees or authorized representatives who gain access to the Confidential Information of their obligations hereunder; and
 4. Make only the number of copies of Confidential Information necessary to disseminate the information to those personnel who are entitled to have access to it and ensure that all confidential notices set forth on the Confidential Information are set forth in full on such copies; and
 5. Safeguard the Confidential Information with the same degree of care to avoid unauthorized disclosure as recipient uses to protect its own confidential and proprietary

information but in no event shall receiving Party use less than a reasonable degree of care.

- C. Exceptions. The restrictions set forth in paragraph B above shall not apply if:
1. The Confidential Information was already known to the receiving Party prior to disclosure by the disclosing Party; or
 2. The Confidential Information has become publicly known through no act of the receiving Party in violation of this agreement; or
 3. The Confidential Information has been lawfully received from a third Party not subject to this Agreement; or
 4. Confidential Information has been independently developed by the receiving Party without reliance on Confidential Information, provided that such independent development can be substantiated by written records and documents; or
 5. Confidential Information has been approved for release by written authorization of the disclosing Party; or
 6. The Confidential Information has been furnished by the disclosing Party to the receiving Party or a third party without designation as "Confidential" or "Proprietary" information; or
 7. In the event that the Confidential Information of the disclosing Party must be disclosed pursuant to a requirement of a governmental agency or court of law and the receiving Party is legally required (by documents subpoena, Civil Investigative Demand or similar process) to disclose any such Confidential Information, it is agreed that, to the extent practicable, the receiving Party will provide the disclosing Party with prompt notice of any such request, so that the disclosing Party may seek an appropriate protective order and/or waive compliance with the provisions of this Agreement. It is further agreed that if, in the absence of a protective order or the receipt of a waiver hereunder, if in the opinion of receiving Party's counsel it is legally required to disclose Confidential Information, the receiving Party may disclose such information and provide notice of such actions to disclosing Party without liability hereunder.
- D. Term. This Agreement shall remain in effect from the date first written (below with signatures) until replaced by another written agreement between the Parties. The terms of this Agreement as it relates to any Confidential Information or Project shall remain in effect for Five (5) years from date of first disclosure of that Confidential Information or Project received under this Agreement, or the date this Agreement was executed last by all parties.
- E. Use. The receiving Party shall not remove, overprint or deface any notice of copyright, trademark, logo, legend or other notice of ownership from any originals or copies of Confidential Information it obtains from the disclosing Party and shall not reverse engineer, decompile or disassemble any hardware or software provided or disclosed by the disclosing Party.
- F. Return of Confidential Information. Each Party agrees that, upon the other's request, all documents and records containing Confidential Information shall be either destroyed or returned to the disclosing Party. The option to return or destroy the Confidential Information shall be at the disclosing Party's discretion provided that if such disclosing Party chooses to have the Confidential Information destroyed, the receiving Party will do so and provide the disclosing Party with written certification of such destruction within fourteen (14) days of the disclosing Party's initial request. An exception to the above is granted only when the receiving Party is required to maintain Confidential Information for compliance to a

governmental agency or court of law, in which case the receiving Party shall notify the disclosing Party of such and will be exempted from this clause for the period retained providing that such Confidential Information must be maintained by the receiving Party for such requirements only and with compliance to all other clauses of this agreement.

- G. No Grant of Rights. Nothing contained in this Agreement shall be construed as granting or transferring any rights under any patent, trademark, copyright or other proprietary right protecting any Confidential Information, except for the right to use such information in accordance with this Agreement. Nor shall this Agreement create any other obligations, including without limitation agency or partnership obligations, between the Parties except as expressed herein. This Agreement does not constitute an offer to sell information.
- H. Right to Enjoin Disclosure and Competition. The Parties acknowledge that unauthorized disclosure or improper use of Confidential Information would cause the disclosing Party irreparable harm for which it would have no adequate remedy at law. Accordingly, the disclosing Party shall have the right to obtain a temporary restraining order and injunction enjoining improper disclosure or use of Confidential Information, in addition to any other rights and remedies available. In the event it becomes necessary for any Party to commence legal action to enforce its rights under this Agreement, the non-prevailing Party shall be responsible for all reasonable attorney's fees and costs incurred by the prevailing party with respect to such action.
- I. Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the internal laws of the State of North Dakota, exclusive of its choice of law provisions, and all questions concerning the meaning, intention or validity of the terms of this Agreement, as well as the performance of the Parties hereto, shall be determined and resolved in accordance therewith. The Parties agree to submit to the exclusive jurisdiction and venue of the State and Federal Courts sitting in Cass County, North Dakota, and waive any objections to the Court based on jurisdiction, venue or inconvenient forum.
- J. Severability. If any provision of this Agreement is declared void, or otherwise unenforceable by a court or other tribunal of competent jurisdiction, such provision shall be deemed to have been severed from this Agreement, which shall otherwise remain in full force and effect.
- K. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective affiliates, heirs, successors, representatives and assigns.
- L. Entire Agreement. This Agreement constitutes the entire agreement on confidentiality between the Parties. The Parties acknowledge and agree that no other statements, representations, agreements or warranties, except those outlined herein, apply to the terms and conditions of this Agreement.

Name:

Title:

Company:

Email:

Address:

City:

State | Zip

Country:

Phone/Other:

Signature:

Date:

By: **XCS Pros, LLC**
Michael Brooks
2407 32nd St. S.
Fargo, ND 58103

Michael@xcspros.com
Managing Partner
701-212-8112

Signature:

Date:

Signature DATE is the EFFECTIVE DATE of this AGREEMENT.

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