

Non-Disclosure Agreement

This Non-Disclosure Agreement (the “Agreement”) is effective as of the acceptance date by and between 121eCommerce, LLC, an Ohio limited liability company, and you, the Client (the individual or entity named below). This Agreement is a legal and enforceable agreement that governs your relationship with 121eCommerce once you accept its terms and conditions by checking the: (1) “I agree to use electronic records and signatures and to DocSend’s [Terms of Services](#).” box; and (2) the “I have reviewed and agree to the terms of this Non-Disclosure Agreement” box, and then (3) clicking the Continue button.

1. Background. 121eCommerce and the Client (collectively, the “Parties” and individually, a “Party”) are currently engaged in discussions and negotiations regarding establishing a professional relationship, and such discussions may involve disclosures by each Party to the other of Confidential Information (as defined herein) for the purpose of business transactions or related tasks of the Client (the “Projects”). The Parties are entering into this Agreement in order to define each Party’s respective rights and obligations with respect to the Confidential Information of the other Party. The Parties agree that any deliverables by 121eCommerce to the Client in regards to the “Projects,” including but not limited to proposals for the Projects (“Proposals”), shall be considered “Confidential Information” (as defined below).
2. Definitions. For the purposes of this Agreement, the words and phrases below shall have the following meanings:
 - a. “Confidential Information” means any and all data or information that is of value to a Party, and is not generally known in the industry or to competitors of a Party, and includes, but is not limited to, Proposals, all deliverables of the Projects marked “Confidential”, business information, other forms of proposals, other forms of project scopes, contract design, specifications, research, software, trade secrets, discoveries, ideas, know-how, designs, drawings, flow charts, data, computer programs, marketing plans, customer names, budget figures, and other technical financial and business information concerning such Party, or any such information of clients, customers, parents, affiliates, subsidiaries or agents of such Party, which is disclosed by such Party (the “Disclosing Party”), whether directly in oral or material form to the other Party (the “Receiving Party”), or indirectly, by permitting the Receiving Party to observe the conduct of the Disclosing Party’s various operations or processes, but shall not include Non-Proprietary Information; these may relate largely to the information of the Client being passed on to 121eCommerce to enable the latter to pursue the objective for which this process is being initiated under the Projects.
 - b. “Non-Proprietary Information” means information that: (i) is within the public domain at the date of disclosure or which thereafter enters the public domain through no fault of the Receiving Party or its respective affiliates, officers, agents, representatives, servants or employees; (ii) is already known to the Receiving Party at the time of its disclosure by the Disclosing Party, and is not subject to confidentiality restrictions; (iii) following its disclosure to the Receiving Party, is received by the Receiving Party without obligation of confidence from a third party who the Receiving Party had no reason to believe was not lawfully in possession of such information free of any obligation of

confidence; (iv) is independently developed by the Receiving Party or a parent, subsidiary or affiliate of the Receiving Party without reference to or knowledge of the Disclosing Party's Confidential Information; or (v) the Disclosing Party has given its prior written approval to disclose; provided, however that any information consisting of a combination of Non-Proprietary Information and Confidential Information will only be considered by the Receiving Party as Non-Proprietary Information if the combination itself is in the public domain or the prior possession of the Receiving Party, or is received by the Receiving Party without obligation of confidence, is independently developed, or is approved for disclosure as described above.

3. Ownership of Confidential Information. The Receiving Party acknowledges that the Confidential Information of the Disclosing Party is received on a confidential basis, and that the Disclosing Party shall remain the exclusive owner of its Confidential Information and of all patent, copyright, trade secret, trademark and other intellectual property rights therein. No license or conveyance of any such rights to the Receiving Party is granted or implied under this Agreement.
4. Treatment of Confidential Information. The Receiving Party shall:
 - a. **USE THE CONFIDENTIAL INFORMATION OF THE DISCLOSING PARTY ONLY FOR PURPOSES OF AND IN FURTHERANCE OF THE PROJECTS WITH 121ECOMMERCE. IN NO EVENT SHALL THE RECEIVING PARTY SHARE, ALLOW ACCESS, DELIVER A COPY OR SHARE IN ANY CAPACITY, THE CONFIDENTIAL INFORMATION WITH ANY THIRD-PARTY, SPECIFICALLY INCLUDING BUT NOT LIMITED TO, ANY COMPETITOR OF 121ECOMMERCE.**
 - b. **Use of the Confidential Information of the Disclosing Party only for purposes of and in furtherance of the Projects,** and, without limiting the generality of the foregoing, shall not, directly or indirectly, deal with, use, exploit or disclose such Confidential Information or any part thereof to any person or entity or for any purpose whatsoever (or in any manner which would benefit any competitor of the Disclosing Party) except as expressly permitted hereunder or unless and until expressly authorized in writing and in advance to do so by the Disclosing Party;
 - c. use reasonable efforts to treat, and to cause all its affiliates, officers, agents, servants, employees, representatives, professional advisors, and contractors and prospective contractors to treat, as strictly confidential all Confidential Information of the Disclosing Party, and not to use the Confidential Information in a manner that could be used to compete with the Disclosing Party. In no event shall such efforts be less than the degree of care and discretion as the Receiving Party exercises in protecting its own confidential information;
 - d. not, without the prior written consent of the Disclosing Party, disclose or otherwise make available the Disclosing Party's Confidential Information or any part thereof to any party other than those of its directors, officers, agents, servants, employees, professional advisors, contractors or prospective contractors who need to know the Confidential Information in furtherance of the Projects;
 - e. not copy or reproduce in any manner whatsoever the Confidential Information of the Disclosing Party or any part thereof without the prior written consent of the Disclosing

Party, except where required for its own internal use in accordance with this Agreement;

- f. Receiving Party also agrees that its obligation to maintain the confidentiality of the Confidential Information received from Disclosing Party shall continue until such time as each such Confidential Information disclosed to Receiving Party becomes publicly known through no action or fault of Receiving Party (as set forth above), or such Confidential Information disclosed to Receiving Party is no longer a "trade secret," as defined under Ohio's Uniform Trade Secrets Act or applicable Ohio statute; and promptly upon the request of the Disclosing Party, return and confirm in writing the return of all originals, copies, reproductions and summaries of Confidential Information of the Disclosing Party or, at the option of the Disclosing Party, destroy and confirm in writing the destruction of the Confidential Information of the Disclosing Party; Provided, however that nothing herein shall restrict in any manner the ability of either Party to use or disclose Confidential Information owned by it in any manner whatsoever, and the obligations of confidentiality herein shall apply to each Party only to the extent that the Confidential Information or portion thereof is not owned by that particular Party.
5. Required Disclosure. The obligation of nondisclosure set forth in Section 4(c) shall not apply to any Confidential Information of the Disclosing Party that the Receiving Party is required to disclose by any applicable law, by any rule or regulation of any court or government agency of competent jurisdiction, or pursuant to legal process; provided, however, that the Receiving Party required to make such disclosure shall: (a) promptly use its reasonable best efforts to limit such disclosure, (b) use its reasonable best efforts to provide the Disclosing Party with advance notice of any such request for disclosure as promptly as feasible in order that the Disclosing Party may seek a protective order or such other appropriate remedy as the Disclosing Party deems necessary, and (c) in any event, make such disclosure only to the extent so required.
6. Liquidated Damages and Injunctive Relief. The Receiving Party acknowledges that the improper disclosure or use of the Confidential Information may give rise to irreparable injury to the Disclosing Party, inadequately compensable in damages and that, accordingly, the Disclosing Party may seek and obtain, in addition to any legal remedies that may be available, liquidated damages in the amount of Ten Thousand Dollars (\$10,000) for each violation of Section 4, and injunctive relief against the breach or threatened breach by the Receiving Party of any of the terms of this Agreement. It is expressly stipulated by the Receiving Party that the actual amount of damages resulting from such violation(s) of Section 4 would be difficult if not impossible to determine accurately because of the unique nature of this Agreement, and differences of opinion with respect to such matters, and that the liquidated damages and injunctive relief provided for herein are a reasonable estimate by the Parties of such damages. Receiving Party agrees that such liquidated damages and injunctive relief are not exclusive of any other remedies available to Disclosing Party may have, especially in cases of fraud. Under principles of equity, Receiving Party acknowledges and agrees that if a court or finder of fact finds that Receiving Party has breached any term of this Agreement, then Disclosing Party shall be entitled to pre and post judgment interest at the maximum interest rate allowed by law.
7. Copyright. 121eCommerce has copyright rights to the literary works (the content aka words) in its Proposals for Projects that it delivers to Client. 121eCommerce has federal copyright registration for most of the terms in its Proposals for Projects delivered to Client. For the

duration of this Agreement, 121eCommerce grants to Client a limited, non-exclusive, non-transferable right and license to access and use the Proposals for Projects to evaluate whether Client will retain 121eCommerce for the Projects consistent with the terms and conditions of Section 4. The granting of these rights and access to the Proposals apply solely to the extent necessary for Client to access and view the Proposals in the manner contemplated herein this Agreement and under the Proposals. As part of this copyright license provided herein this Section 7, **CLIENT MAY NOT ALLOW ACCESS, DELIVER A COPY OR SHARE IN ANY CAPACITY, THE PROPOSALS WITH ANY THIRD-PARTY, SPECIFICALLY INCLUDING BUT NOT LIMITED TO, ANY COMPETITOR OF 121ECOMMERCE**

8. **Governing Law; Dispute Resolution.** This Agreement shall be governed in all respects by the laws of the State of Ohio, without application of conflict of law principles. Any legal action arising out of or relating to this Agreement or the transactions contemplated by this Agreement shall exclusively be brought in the United States District Court for the Northern District of Ohio, or the Court of Common Pleas for the County of Cuyahoga, Ohio. Each party hereto consents to the exclusive personal jurisdiction of the court listed above in any such action and waives any defense of inconvenient forum to the maintenance of an action in the above-referenced courts. The Parties agree any judgment obtained pursuant to this Agreement may be transferred to any other court in the world and shall be deemed to comply with the Hague Convention, the Inter-American Convention and all laws of the country in which the Client does business, and shall be given full faith and credit in any court in the world or tribunal to which it is transferred. The foregoing dispute resolution process is subject to any additional or alternative dispute resolution process or terms as may be laid out in the applicable MSA between the parties. In the event of any conflict or ambiguity between the terms of this Agreement and the terms of any MSA, the terms and conditions of the MSA shall be controlling.
9. **Notices.** Any notices required or permitted by this Agreement shall be in writing and shall be delivered as follows, with notice deemed given as indicated: (a) by personal delivery, when delivered personally; (b) by overnight courier, upon written verification of receipt; (c) by e-mail, telecopy, or facsimile transmission, upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, return receipt requested, upon verification of receipt.
10. **Relationship of the Parties.** Nothing in this Agreement nor any acts of the Parties shall be construed, implied or deemed to create an agency, partnership, joint venture or employer and employee relationship between them. Neither this Agreement nor any of its provisions shall be considered or construed as a commitment by either Party to engage the other Party in the Project or any other work or to purchase any products or services from the other Party.
11. **Publicity.** Neither Party may use the name of the other in connection with any advertising or publicity materials or activities without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
12. **Non-Solicitation.** During the pendency of discussions concerning a possible Project between the Parties and during the pendency of any resulting Project, and for a period of one year following termination of such discussions or termination or expiration of the resulting Project (whichever is later), neither Party will, directly or indirectly (including through an affiliate) solicit, offer employment to, or hires or engage any employee, consultant, or other personnel of the other Party or its affiliate who is, or was, involved in the discussions or any subsequent Project between the Parties or their affiliates. Nothing contained herein shall preclude a Party's hiring

or engaging of any such person who responds to a general solicitation of employment through an advertisement not targeted specifically at the employees, contractors, or personnel of the other Party or its affiliate.

13. Non-disparagement. Neither 121eCommerce nor Client shall make any public statements that disparage the other Party. Notwithstanding the foregoing, statements made in the of sworn testimony in administrative, judicial or arbitral proceedings (including without limitation, depositions in connection with such proceedings) shall not be subject to this Section.
14. Entire Agreement. This Agreement, together with any Master Services Agreement or any other agreement entered into between the Parties concerning the Project (the "MSA"), contains the entire understanding between the Parties regarding the treatment of the Confidential Information, superseding all prior or contemporaneous communications, agreements, or understandings with respect to such Confidential Information. No amendment to the terms and conditions of this Agreement shall be valid and binding on the Parties unless made in writing and signed by an authorized representative of each of the Parties.
15. Miscellaneous. Client expressly consents to 121eCommerce that it authorizes 121eCommerce to contact it by email, telephone and other means of contact that it provides to 121eCommerce. Neither party shall assign or otherwise transfer this Agreement or any rights hereunder, in whole or in part, without the prior written consent of the other Party. This Agreement shall be binding upon the Parties hereto and their respective successors and permitted assigns. If any provision of this Agreement should be held invalid, illegal or unenforceable, then, in such event, the remainder of the Agreement shall still be and continue to be in full force and effect as if such invalid, illegal or unenforceable provision had been deleted from or never included in this Agreement. Each of the undersigned represents and warrants to the other Party that they have the power and authority to enter into this Agreement. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. Federal ESIGN Act of 2000, e.g., www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes. The Parties agree all documents, notices, and correspondence between the Parties concerning this Agreement or the Project shall be in the English language.

IN WITNESS WHEREOF each of the Parties hereto have duly executed this Non-Disclosure Agreement as of the date and year first above written.