

CONFIDENTIALITY AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 200__ (the “Effective Date”) by and between **EXCELLENCE IN MOTIVATION, INC.**, an Ohio corporation, with its principal place of business located at 6 North Main Street, Suite 370, Dayton, Ohio 45402 (“EIM”), and _____, a(n) _____ corporation, with its principal place of business located at _____ (“Vendor”), under the following circumstances:

- A. EIM and Vendor desire to engage in discussions regarding a possible business relationship between EIM and Vendor (the “Relationship”) whereby Vendor may provide services to EIM and/or certain customers of EIM (“Customers”) on behalf of EIM (the “Services”); and
- B. To facilitate discussions relating to the Relationship and the Services, EIM and Vendor each desire to share certain of its Confidential Information (as defined below), provided that each party keeps such Confidential Information secret and confidential as provided in this Agreement.

NOW, THEREFORE, based on the above and in consideration of the mutual promises and covenants set forth in this Agreement, the sufficiency of which is hereby acknowledged, EIM and Vendor agree as follows:

1. **Confidential Information.** To facilitate discussions relating to the Services and to evaluate the potential Relationship, each party (the “Disclosing Party”) will disclose certain of its Confidential Information to the other (the “Recipient”) subject to the terms and conditions of this Agreement. For purposes of this Agreement, “Confidential Information” shall mean all information disclosed by Disclosing Party or its agents to Recipient, including, without limitation, Customer lists, Customer contacts, information relating to the business operations and/or activities of Customers, product or service ideas and descriptions, incentive activities, fee schedules, source code, computer programs and other software, web designs, business development plans and ideas, correspondence, drawings, reports, prints, tangible objects, system operating models, memoranda, designs, technology, specifications, performance standards, processes of manufacturing, product descriptions and formulations, composition information, processes, know-how, trade secrets and trade practices and any other information that is proprietary to the Disclosing Party or a Customer and is identified as such by the Disclosing Party either orally or in writing. Except as set forth in the following sentence, all Confidential Information disclosed shall be in written, graphic or machine-readable form and shall be marked “Confidential Information.” If Disclosing Party chooses to disclose Confidential Information orally, then Disclosing Party will be responsible for advising Recipient that such information is Confidential Information at the time of the disclosure and confirming such fact in writing within thirty (30) days thereafter.

2. **Permitted Recipients.** Recipient shall reveal the Confidential Information only to Recipient’s shareholders, officers, agents, employees, independent contractors and advisors who need to know the Confidential Information to evaluate the potential Relationship, are informed by Recipient of the confidential nature of the Confidential Information, and agree in writing to be bound by the terms and conditions of this Agreement by executing a copy of this Confidentiality Agreement, a copy of which shall be delivered to Disclosing Party (the “Permitted Recipients”). The Recipient shall be liable to the Disclosing Party for any breach of this Agreement by a Permitted Recipient to whom it discloses any Confidential Information.

3. **Limitations on Use of Confidential Information.** During the Term (as defined below)

and for a period of five (5) years following the termination or expiration of this Agreement (the "Limitation Period"), Recipient and the Permitted Recipients: (i) shall keep the Confidential Information secret and confidential; (ii) agree not to use the Confidential Information for any purpose other than for evaluating the Relationship and the Services; and (iii) shall not disclose the Confidential Information except as permitted in this Agreement or as otherwise authorized by Disclosing Party in writing.

4. **Exceptions.** The obligation of the Recipient to protect and not to disclose the Disclosing Party's Confidential Information shall not apply to information that is: (i) actually known by the Recipient before being obtained from the Disclosing Party; (ii) independently developed by, known, or in the possession of the Recipient or its employees at the time of disclosure hereunder; (iii) generally available to the public prior to its disclosure by the Disclosing Party, or that becomes generally available to the public after disclosure by the Disclosing Party through no fault of the Recipient; (iv) obtained or acquired by the Recipient from a third party in possession of such information who is not under obligation to the Disclosing Party to not disclose the information; or (v) ordered by a court of competent jurisdiction to be produced by the Recipient; *provided, however*, that upon the receipt of any such order, the Recipient shall immediately notify the Disclosing Party of such order so that an appropriate protective agreement or order may be sought.

5. **Term and Termination.** The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue until the earlier of: (i) the third anniversary of the Effective Date; or (ii) written notice of termination is provided by EIM or Vendor to the other. The termination of this Agreement by either party shall not affect the obligations of each party to protect and keep confidential any and all Confidential Information disclosed to it under this Agreement, as is set forth in this Agreement. The rights and obligations of the parties pursuant to Sections 2, 3, 4, 6, 7, 8, and 11 shall survive the termination or expiration of this Agreement.

6. **Obligations Upon Termination.** Upon the termination or expiration of this Agreement, each Recipient shall promptly return or, at the direction of the Disclosing Party, destroy any and all Confidential Information it has received (and all copies thereof) and all tangible objects, including models and reproductions thereof furnished by the Disclosing Party, including any such items in the possession of a Permitted Recipient. If directed to destroy the Confidential Information, the Recipient shall furnish the Disclosing Party with written documentation that such Confidential Information has been destroyed.

7. **No Right or License.** Neither the execution of this Agreement nor the disclosure of Confidential Information by the Disclosing Party shall be deemed to grant to Recipient or any Permitted Recipient, expressly or by implication, any right or license to use or disclose the Confidential Information, except as specifically provided herein. The Confidential Information shall be and remain the sole and exclusive property of the Disclosing Party.

8. **Non-Disclosure of Discussions; Choice of Disclosure.** During the Term and the Limitation Period, neither party shall disclose to any person other than the Permitted Recipients: (i) the fact that discussions or negotiations concerning the Relationship or the Services have occurred or are occurring; or (ii) the fact that Confidential Information has been or may be exchanged. Under no circumstance will either EIM or Vendor be obligated to disclose any Confidential Information such party chooses not to disclose.

9. **Accuracy of Confidential Information.** Nothing in this Agreement or in any disclosure of Confidential Information hereunder will be deemed to constitute a representation or warranty by the Disclosing Party of the truth, accuracy, or completeness of any such Confidential Information. In no event shall the Disclosing Party or any of its representatives have any liability to the Recipient, its representatives or any Permitted Recipients resulting from the use of any Confidential Information by Recipient, its representatives or any Permitted Recipients.

10. **No Obligation to Formalize Relationship.** Under no circumstance will either party be obligated to pursue or formalize the Relationship by virtue of entering into this Agreement and exchanging Confidential Information.

11. **Specific Performance.** EIM and Vendor acknowledge that the Confidential Information of the other is unique and valuable and that the other party may sustain irreparable loss and damage in the event Confidential Information is divulged, disclosed or used in violation of this Agreement. Accordingly, EIM and Vendor each agree and consent that in the event any action or proceeding shall be initiated by the other party to enforce this Agreement, EIM and Vendor each waive the claim or defense in such action that there is an adequate remedy at law available to the other party and EIM and Vendor shall not urge in any such action or proceeding the claim or defense that such remedy at law exists. EIM and Vendor each agree that the remedies of the other for breach of this Agreement shall be cumulative and the seeking or obtainment of injunctive relief shall not preclude a claim or award for damages or other relief.

12. **Notices.** All notices hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand, overnight delivery service, or mailed by certified mail, postage prepaid to the addresses set forth in the first paragraph of this Agreement.

13. **Miscellaneous.** This Agreement sets forth the entire understanding between EIM and Vendor concerning the subject matter hereof and supersedes all prior understandings or agreements concerning the subject matter hereof. This Agreement may not be modified, in any respect, except by an instrument in writing duly executed by EIM and Vendor. The waiver, by either party hereof of any breach of any provision of this Agreement shall not be construed as, or constitute, a continuing waiver or a waiver of any other breach of any provision of this Agreement. This Agreement shall inure to the benefit of, be binding upon, and be enforceable by actions of law or in equity by the parties hereto and their permitted successors and assigns. Neither party shall have the right to assign its rights or obligations under this Agreement without the prior written consent of the other party. The headings of the clauses contained herein are solely for the convenience of the parties and do not constitute a part hereof. No right or remedy conferred in this Agreement is intended to be exclusive of any other right or remedy, and each and every right or remedy given hereunder shall be cumulative and in addition to any other right or remedy now or hereafter existing in law or in equity or by statute. This Agreement shall be governed by and its provisions construed and enforced in accordance with the laws of the State of Ohio, United States of America.

IN WITNESS WHEREOF, the parties hereto have executed this Confidentiality Agreement as of the Effective Date.

EXCELLENCE IN MOTIVATION, INC. _____

By: _____
Its: _____

By: _____
Its: _____