

MUTUAL NONDISCLOSURE AGREEMENT

This Mutual Nondisclosure Agreement ("**Agreement**") is entered into as of _____ ("Effective Date") by and between Zapfel Group LLC ("**ZG**"), a Connecticut corporation, with an address of 5 Hedley Farms Road, Westport, CT 06880 and _____ ("**Client**"), a _____, located at _____, each a "**party**" hereto, and, collectively, the "**parties**". The parties wish to protect and preserve the confidential and/or proprietary nature of information and materials that may be disclosed or made available to each other in connection with the exploration of a possible engagement in a business relationship between the parties and the provision of advice by ZG to Client (the "**Purpose**").

NOW, THEREFORE, in consideration of the foregoing and the rights and obligations set forth herein, the parties hereby agree as follows:

1. **CONFIDENTIAL INFORMATION.** "**Confidential Information**" means any and all non-public information and material including but not limited to the business, finances, marketing, operations, know-how, creative processes, developmental work, new products, product pricing, developmental plans, forecasts, strategies, software, products, product features and functionality, data, inventions, technical data and drawings, patents, trademarks, copyrights and trade secrets of the disclosing party (the "**Discloser**") or disclosed by the Discloser or its Representatives (as hereinafter defined) to the other party hereto or its Representatives ("**Recipient**") or obtained by Recipient through inspection or observation of Discloser's property or facilities (whether in writing, or in oral, graphic, electronic or any other form) whether before or after the Effective Date.
2. **NON-DISCLOSURE AND LIMITED USE.** Each Recipient shall hold Confidential Information in confidence and shall not disclose any such Confidential Information, other than to its directors, officers, employees, managers, managing members, agents, consultants, legal, accounting and financial advisors, subsidiaries and other affiliates (collectively, "**Representatives**") who need to know such information in furtherance of the Purpose and who are bound by restrictions as to confidentiality. Recipient shall not use any Confidential Information for the benefit of itself or any third party or for any purpose other than the Purpose. Recipient shall take the same degree of care that it uses to protect its own confidential and proprietary information and materials of similar nature and importance (but in no event less than reasonable care) to protect the confidentiality and avoid the unauthorized use, disclosure, publication or dissemination of the Confidential Information. Recipient shall not make any copies of the Confidential Information except to the extent reasonably necessary to carry out the Purpose, or unless otherwise approved in writing in advance by Discloser. Recipient shall not decompile, disassemble or otherwise reverse engineer any Confidential Information or any portion thereof, or determine or attempt to determine any source code, algorithms, methods or techniques embodied in any Confidential Information or any portion thereof. Without the prior written consent of the other party hereto or except as permitted herein or as reasonably required to assert its rights hereunder, neither party shall disclose the existence or substance of the discussions between the parties or the existence, status or any terms of this Agreement or of any related agreement between the parties (or any matters relating thereto). The obligations of this Section 2 with respect to any item of Confidential Information or with respect to any discussions or agreements between the parties shall apply to each and every Representative of a party that has received or obtained Confidential Information of the other party. Each party hereto agrees to be responsible for any breach of the confidentiality or use restrictions under this Agreement by such party or any of its Representatives. In the event that a party hereto is using a subcontractor or third party that in the course of its work may be made privy to Confidential Information, such party shall have the subcontractor or third party sign a nondisclosure agreement similar to this Agreement protecting Confidential Information and provide a copy of such nondisclosure agreement upon request of the other party hereto.

3. SCOPE.

a. Confidential Information shall not include, and the restrictions in this Agreement shall not apply to, any information or materials: (a) which becomes generally known to the public other than as a result of a disclosure by Recipient or Recipient's Representative; (b) which was known to Recipient and reduced to written form in documents which were in Recipient's possession at the time such information was disclosed to Recipient, provided that the source of such information or materials was not known by Recipient to be bound by a nondisclosure agreement with other contractual, legal or fiduciary obligations of confidentiality to the Discloser or any other party with respect to such information or materials; (c) becomes available to Recipient on a non-confidential basis from a source other than Discloser provided that such source is not bound by a nondisclosure agreement with other contractual, legal or fiduciary obligations of confidentiality to the Discloser or any other party with respect to such information or materials; or (d) which is independently developed by Recipient without the use of the other party's Confidential Information.

b. The burden of proving that Confidential Information may be disclosed pursuant to the exceptions set forth in this Section 3 shall be on the Recipient.

4. **REQUIRED DISCLOSURE.** In the event that a party is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil or criminal investigations, demands or similar process) to disclose any part of the other party's Confidential Information, unless prohibited by law, the party that is requested or required to make the disclosure (the "**Disclosing Party**") shall provide the other party hereto (the "**Non-Disclosing Party**") with prompt written notice of any such request or requirement so that the Non-Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If in the absence of a protective order or other remedy or receipt of waiver by the Non-Disclosing Party, the Disclosing Party is nonetheless, in the opinion of its legal counsel, legally compelled to disclose Confidential Information to any tribunal or other government or administrative body or else stand liable for contempt or suffer other censure or penalty, the Disclosing Party may, without liability hereunder, disclose to such tribunal or other government or administrative body only that portion of Confidential Information which such counsel advises the Disclosing Party is legally required to be disclosed. To the extent legally permissible, the Disclosing Party shall promptly provide the Non-Disclosing Party with a copy of the Confidential Information so disclosed. Each party undertakes to use reasonable efforts to ensure that any Confidential Information disclosed under this Section 4, to the extent possible, will be limited to the greatest extent permitted by law and treated confidentially by the recipient of such Confidential Information.
5. **EQUITABLE RELIEF.** Because of the unique nature of the Confidential Information of each party hereto, each party further acknowledges and agrees that any disclosure or use of Confidential Information by a Recipient other than for the Purpose and/or sole benefit of the Discloser in violation of Recipient's obligations under this Agreement, would be wrongful, would cause irreparable harm or injury to the Discloser and that monetary damages would be inadequate to compensate for such breach. Accordingly, Recipient hereby acknowledges and agrees that in the event of any violation hereof, Discloser shall be authorized and entitled to seek and obtain ex parte (without the other party's participation), to the extent legally permissible, from any court of competent jurisdiction preliminary and permanent injunctive relief without the posting of any bond or other security and without providing any proof of actual damages, as well as an equitable accounting of all profits or benefits arising out of such violation, which rights and remedies shall be cumulative and in addition to any other rights or remedies to which Discloser may be entitled.

6. OWNERSHIP; NO LICENSE; NOTICE OF UNAUTHORIZED DISCLOSURE. All Confidential Information of Discloser (including, without limitation, all copies and extracts and portions thereof that contain Confidential Information of Discloser) is and shall remain the sole property of Discloser and its affiliates, as applicable. Recipient does not acquire (by license or otherwise, whether express or implied) any intellectual property rights or other rights under this Agreement or any disclosure hereunder, except the limited right to use such Confidential Information in accordance with the express provisions of this Agreement. All rights relating to the Confidential Information that are not expressly granted hereunder to Recipient are reserved and retained by Discloser. If Recipient discovers an unauthorized disclosure of the other party's Confidential Information, the Recipient shall take commercially reasonable efforts to try to prevent further disclosure or use of such Confidential Information and shall immediately notify the Discloser of such unauthorized disclosure of information.
7. NO DISPARAGEMENT. Each party agrees not to make any statements, written or verbal, or cause or encourage others to make any statements, written or verbal, that defame, disparage or in any way criticize the personal or business reputation, practices, or conduct of the other party hereto, its employees, directors, managers and officers. Each party understands and agrees that this Section 7 is a material provision of this Agreement and that any breach of this Section 7 shall be a material breach of this Agreement, and that the other party hereto would be irreparably harmed by violation of this provision.
8. NO WARRANTY. Each party acknowledges that neither Discloser nor any of its Representatives has made, makes or will make any express or implied representation or warranty as to the accuracy or completeness of any Confidential Information, and agrees that no such person or entity will have any liability whatsoever relating to any Confidential Information or for any errors therein or omissions therefrom. Each party further agrees that it shall only be entitled to rely on such express representations and warranties regarding Confidential Information, if any, as may be set forth in a final definitive agreement between the parties and/or their affiliates which effectuates an actual transaction, when, as and if executed and delivered by all parties thereto, and subject in all events to the terms and conditions of and limitations set forth in such definitive agreement. For purposes of this Agreement, the term "definitive agreement" does not include an email, an executed letter of intent or any other preliminary written agreement, or a memorandum or term sheet, nor does it include any written or verbal acceptance of an offer or proposal.
9. NO AGREEMENT. Each party also understands and agrees that no contract, agreement or arrangement with respect to any closing of any Possible Transaction exists or shall be deemed to exist unless and until definitive agreements expressly setting forth the complete terms of such Possible Transaction have been executed and delivered by the parties and/or their affiliates. Each party also agrees that, unless and until such definitive agreements between the parties and/or their affiliates with respect to such Possible Transaction have been executed and delivered, neither party nor its affiliates has or shall have any legal obligation of any kind whatsoever to the other party hereto, whether by virtue of this Agreement or any other written or oral expression of interest or of terms, except for the obligations set forth in the other paragraphs of this Agreement.
10. TERM. This Agreement and the obligations hereunder shall survive for five (5) years from the date of last disclosure of Confidential Information hereunder provided however that the obligations regarding trade secrets shall continue as provided herein until they are no longer trade secrets under applicable law. This Agreement may be terminated or superseded at any time by a separate mutual written agreement of the parties hereto.

11. RETURN OF MATERIALS. Upon the request of the Discloser, Recipient shall promptly return or destroy any Confidential Information, including without limitation all copies and reproductions, and all analyses, compilations, studies or other documents prepared by or for Recipient or any of its representatives. Electronic Confidential Information shall be deleted and destroyed. Recipient agrees to provide Discloser with a certificate of destruction confirming the Confidential Information has been destroyed and that no copies, derivatives or subsets exist in Recipient's or any Representative's possession. Tangible or hard copies of Confidential Information shall be returned by a mail service which uses a tracking system, such as Airborne Express or Federal Express. Recipient shall provide Discloser with the tracking number. Notwithstanding the foregoing terms, each Recipient's legal counsel shall be entitled to retain a copy of all Confidential Information for archival purposes only, and Confidential Information may be retained to the extent required by or consistent with law, rule or regulation or applicable document retention policy, and there shall be no requirement to destroy any computer records or files containing Confidential Information which shall have been created pursuant to archiving or back-up procedures. Notwithstanding the retention, return or destruction of Confidential Information and such other applicable materials, each party hereto, and each of its Representatives that received or obtained Confidential Information of the other party hereto, will continue to be bound by its obligations of confidentiality and non-use hereunder.

12. NOTICES. All legal notices required under this Agreement shall be deemed effective upon the date and time a notice is received when sent by a mail service which uses a tracking system, such as Airborne Express, Federal Express or First Class Mail where applicable to the registered addresses of the respective parties. At any time either party hereto may change its address for receiving notices hereunder by so notifying the other parties hereto in accordance with the notice provisions of this Section 12.

13. GOVERNING LAW; ARBITRATION; VENUE; PREVAILING PARTY.

a. This Agreement shall be governed and construed under the laws of the State of Connecticut without reference to its provisions as to conflicts of laws. Except as provided in this Agreement, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules. In the event that either party hereto is a national of a Member State of the United Nations Commission on International Trade Law, the arbitration will be held in accordance with the United Nations Commission on International Trade Regulations and Law ("UNCITRAL") Arbitration Rules administered by the International Centre for Dispute Resolution or its successor ("ICDR"), an affiliate of the American Arbitration Association. In the event the ICDR is no longer in business, the parties will mutually agree upon an alternative arbitration agency to administer the arbitration. In each case, the arbitration will be held in New York City, New York, U.S.A. conducted in English and decided by a single arbitrator unless the law of the country where a party is located requires three (3) arbitrators. The parties agree that the arbitration may be held elsewhere, if required by the law of the country where a party is located or upon mutual agreement of the parties. Any court having jurisdiction may enter judgment on the arbitrator's award. Except as provided in Section 14(b), if either party commences action in any court, in violation of the arbitration requirement, then the party so commencing the action will be responsible for all expenses incurred by the parties in the arbitration and the court proceedings whether or not they are the prevailing party.

b. Notwithstanding Section 13(a), each party hereto may bring an action for injunctive relief in any court of competent jurisdiction to enforce their intellectual property or proprietary rights, or the restriction on use or disclosure of Confidential Information in order to avoid irreparable harm to such party and its affiliates.

c. Subject to the last sentence in Section 14(a), the prevailing party shall be entitled to recover all reasonable attorneys' fees and related costs, in addition to any other relief which may be awarded in the arbitration or by a court pursuant to Section 13(b).

d. The use and non-disclosure restrictions and confidentiality obligations set forth in this Agreement are in addition to any restrictions imposed upon the parties by statute, at common law, or by any other applicable law, including without limitation any applicable trade secret law.

14. ASSIGNMENT. Except as otherwise provided herein, the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties. Neither party may assign this Agreement or its rights and obligations hereunder without the prior written consent of the other party, provided, that, such consent shall not be unreasonably withheld. Except as otherwise set forth herein or as otherwise mandated by applicable law, no other person or entity will be considered a third-party beneficiary of this Agreement or otherwise be entitled to receive or enforce any rights or remedies in relation to this Agreement.
15. WAIVER; AMENDMENT; SEVERABILITY; COUNTERPARTS. No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. This Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof and supersedes all prior or contemporaneous representations, negotiations, conditions, communications and agreements, whether oral or written, between the parties relating to the subject matter hereof. No modification, amendment or waiver of any provision of this Agreement shall be binding without the express written consent of the parties hereto. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be invalid or unenforceable, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute the same agreement, and any such counterpart executed and delivered via facsimile or electronic transmission, including DocuSign or comparable document signature methods, shall be deemed an original (and as if manually executed and delivered) for all intents and purposes.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date by their duly authorized representatives.

Client:

By: _____

Name:

Title:

ZG:

By: _____

Name:

Title: