Non-Compete/Non-Disclosure Agreements (NCNDA)

THE THRIVAL COMPANY LLC

7500 Rialto Blvd., Bldg. 1, Suite 250

Austin, TX 78735

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This Non-Disclosure Agreement (“Agreement”) is made and entered into this

\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , 2020  (“Effective Date”), by and between

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

a  \_\_\_\_[Name of State] \_\_\_\_\_\_\_\_ \_\_\_\_\_\_ [fill in LLC/Corporation], ­­­­­­­­­

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Company Name”)  having a place of business

at  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[Full Legal Address]\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

and The Thrival Company LLC (Thrival)

In this Agreement, Thrival and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [“Company Name”] may be referred to individually as “Party” and collectively as “Parties.”

 **WHEREAS**, the Parties wish to specify the conditions under which certain Proprietary Information, as defined herein, may be exchanged for the purposes of technical exchange and collaboration on each Parties’ solution development and offerings, (hereinafter, “Purpose”).

 **WHEREAS**, the Parties have determined to set down certain understandings reached between them relating to the exchange and protection of Proprietary Information between them regarding the above-mentioned Purpose.

 **NOW THEREFORE**, in consideration of the foregoing, the Parties hereby agree as follows:

1. For purposes of this Agreement, “Proprietary Information” shall mean any information disclosed pursuant to this Agreement and marked by the disclosing Party at the time of disclosure as “Proprietary” or with an equivalent legend. Any oral or visual disclosure of Proprietary Information shall be identified as such by the disclosing Party at the time of disclosure, subsequently reduced to writing in summary form and marked as “Proprietary” or with an equivalent legend by the disclosing Party, and delivered to the receiving Party within thirty (30) days of the oral or visual disclosure. Both Parties agree to treat as Proprietary Information all information that is disclosed pursuant to this Agreement and for which it is unclear whether the information is proprietary. Proprietary Information may include, but not be limited to, prototypes, business/marketing strategies, development strategies, specifications, drawings, sketches, models, samples, computer programs, reports, data, techniques, designs, codes, documentation, and financial, statistical or other technical information. Proprietary Information shall not include any information that:
	1. is already in the possession of the receiving Party without obligation of confidentiality at the time of receipt from the disclosing Party;
	2. is independently developed by the receiving Party, as evidenced by appropriate documents;
	3. is or becomes publicly available, including by inspection of a commercially-available product, without breach of this Agreement by the receiving Party;
	4. is rightfully received, free of restrictions and without breach of this Agreement, by the receiving Party from a third party;
	5. is released by the disclosing Party to any third party without imposing similar restrictions; or
	6. is approved for release by the prior written approval of the disclosing Party.
2. The Parties may transfer or exchange Proprietary Information under this Agreement in oral, visual, or written form. The receiving Party shall maintain Proprietary Information in confidence and shall not use such Proprietary Information except for the Purpose of this Agreement. The receiving Party agrees to use the same care and discretion to avoid unauthorized disclosure, publication, dissemination or use of Proprietary Information of the disclosing Party as the receiving Party uses to protect the confidentiality of its own Proprietary Information, but not less than reasonable care. Should the receiving Party be faced with judicial or governmental action which calls for the disclosure of Proprietary Information received hereunder, said receiving Party must immediately notify the disclosing Party and provide the disclosing Party a reasonable opportunity to pursue the withholding or protection of such Proprietary Information prior to the receiving Party’s disclosure.
3. The receiving Party agrees that any Proprietary Information disclosed hereunder:

(i) shall be used by the receiving Party solely for the Purpose of this Agreement to place orders for personal protective equipment and other supplies for buyers who need access to Thrival’s supply chain,

(ii) shall only be disclosed to the receiving Party’s employees on a need to-know basis for the Purpose of this Agreement, and

(iii) shall not be distributed, disclosed or disseminated to any third party except with the consent of the disclosing Party and provided that such third party has executed a non-disclosure agreement containing terms both consistent with the requirements of this Agreement and making the originating disclosing Party a third party beneficiary to such non-disclosure agreement.
4. Either Party shall be allowed to make copies of any Proprietary Information disclosed by the other Party provided that the markings on the original Proprietary Information are affixed to all copies (including partial copies) and provided such copies are necessary to fulfill the Purpose of this Agreement. The receiving Party shall maintain the confidentiality of all copies and partial copies of Proprietary Information.
5. Nothing in this Agreement shall create, by express grant, implication, estoppel or otherwise, in the receiving Party any right, title, interest, or license in or to the inventions, patents, technical data, computer software, software documentation or other intellectual property of the disclosing Party.
6. Proprietary Information received hereunder shall be protected by the receiving Party during the term of this Agreement and for a period of three (3) years from the date of expiration or termination of this Agreement.
7. The receiving Party acknowledges and agrees that due to the unique nature of the disclosing Party’s Proprietary Information, there can be no adequate remedy at law for any breach of the receiving Party’s obligations hereunder, that any such breach will result in irreparable harm to the disclosing Party, and that, upon any such breach or any threat thereof, the disclosing Party shall be entitled to seek appropriate equitable relief and any damages available to it at law or in equity. The receiving Party shall notify the disclosing Party in writing immediately upon the occurrence of any unauthorized release of Proprietary Information, whether inadvertent or otherwise, and shall use reasonable efforts to prevent or limit any further dissemination of such Proprietary Information.
8. In the event that any of the provisions of this Agreement are held by a court or other tribunal of competent jurisdiction to be unenforceable or invalid, that portion of this Agreement that is found to be unenforceable or invalid shall be severed from this Agreement, and valid and enforceable provision(s) shall be negotiated by the Parties and substituted therefore to accomplish the intent of the severed provision(s) as nearly as practicable. The remaining provisions of this Agreement shall remain in full force and effect.
9. No waiver of this Agreement or any portion thereof will be binding upon either Party unless made in writing and signed by a duly authorized representative of such Party, and no failure or delay in enforcing any right will be deemed a waiver.
10. All documentation, correspondence, and communications relating to this Agreement shall be in the English language.
11. Neither Party shall disclose any Proprietary Information, including technology, exchanged pursuant to this Agreement in any manner contrary to the laws and regulations of any country with jurisdiction or of the United States of America or any agency thereof, including but not limited to, the Export Administration Regulations of the United States Department of Commerce, the International Traffic in Arms Regulations of the United States Department of State, the trade embargos regulated by the United States Department of the Treasury Office of Foreign Assets Control, and the National Industrial Security Program Operating Manual (“NISPOM”) of the Department of Defense (DoD 5220.22-M).
12. Parties acknowledge that the requirements of the Procurement Integrity Act (41 U.S.C. § 423) and of Federal Acquisition Regulation (“FAR”) Subpart 9.6, related to Organizational Conflicts of Interest, may apply to the exchange of Proprietary Information under this Agreement. Parties agree that they will not disclose any information in violation of the Procurement Integrity Act or the receipt of which would create an organizational conflict of interest pursuant to FAR Subpart 9.6.
13. Upon the expiration or termination of this Agreement, the receiving Party shall cease all use of Proprietary Information received hereunder and shall return to the disclosing Party or destroy all such Proprietary Information, including all copies thereof, and, if destroyed, furnish the disclosing Party with written certification of destruction. Notwithstanding the foregoing, the receiving Party may retain one (1) copy of the disclosing Party’s Proprietary Information solely for archival and dispute resolution purposes.
14. Unless terminated earlier, this Agreement shall expire one (1) year from the Effective Date of this Agreement. Either Party, upon thirty (30) days written notice to the other Party, may terminate this Agreement. However, expiration or termination shall not affect the rights and obligations of the Parties hereunder with respect to Proprietary Information disclosed prior to the expiration or termination of this Agreement.
15. Each Party shall bear all costs and expenses incurred by it under or in connection with this Agreement. Nothing in this Agreement shall be construed as an obligation by either Party to enter into a contract, subcontract, or other business relationship with the other Party. If this Agreement is entered into in anticipation of a teaming agreement, the Parties understand and agree that, notwithstanding any conduct of the Parties to the contrary, there is no binding agreement to team until both Parties sign the final teaming agreement.
16. Each Party warrants that it has the right to disclose its Proprietary Information for the purposes of this Agreement. IN PROVIDING ANY PROPRIETARY INFORMATION HEREUNDER, NEITHER PARTY MAKES ANY REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO ITS ADEQUACY, ACCURACY, SUFFICIENCY OR FREEDOM FROM DEFECT OF ANY KIND, INCLUDING FREEDOM FROM ANY PATENT INFRINGEMENT THAT MAY RESULT FROM THE USE OF SUCH PROPRIETARY INFORMATION, NOR SHALL EITHER PARTY INCUR ANY RESPONSIBILITY OR OBLIGATION WHATSOEVER BY REASON OF SUCH PROPRIETARY INFORMATION, EXCEPT AS PROVIDED IN THIS AGREEMENT.
17. This Agreement shall be governed, interpreted, and enforced by the law of the State of California, without making reference to its conflicts of laws provisions.
18. Neither Party may assign or otherwise transfer this Agreement or any of its rights and obligations hereunder to any third party (except to a legally recognized successor in interest to all or substantially all of the Party’s assets) without the prior written consent from the other Party, which consent shall not be unreasonably withheld.
19. This Agreement supersedes all prior discussions and writings with respect to the subject matter hereof and constitutes the entire agreement between the Parties with respect to the subject matter hereof. This Agreement cannot be modified or altered in any respect except as agreed in a writing of subsequent date that is duly executed by authorized representatives of both Parties.

**IN WITNESS THEREOF**, the Parties have caused this Non-Compete and Non-Disclosure Agreement to be executed in duplicate originals by their duly authorized representatives as of the Effective Date.

**THE THRIVAL COMPANY, LLC**              [COMPANY NAME\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]



By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Elizabeth Frisch Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: CXO and Owner Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\*Please email full Wire Transfer Information and a Copy of a Valid Passport to prove ability to accept payments in the United States from The Thrival Company.

\*Email to beth@thrivalcompany.com (CFO) and elizabeth@thrivalcompany.com (CXO)