

# MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

BETWEEN

**Knowledge Health Solutions, LLC, a Texas Limited Liability Company, having its principal place of business at 21402 Harbor Water Dr, Cypress, TX 77433**

(Hereafter "Party 1/Parties")

AND

\_\_\_\_\_, having its

principal place of business at \_\_\_\_\_

(Hereafter "Party 2/Parties")

The effective date of this Agreement is the **April 3, 2020** (hereafter, the "Effective Date").

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this "Agreement") is made and entered into as of the Effective Date set forth above by and between Party 1 and Party 2 (each, a "Party" and collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, the Parties hereto desire to have discussions related to, and may enter into, one or more business transactions, regarding: the introduction by either party to contacts in order to facilitate deals, advisory, consulting, and all such derivatives (the "Project");

WHEREAS, the Parties have an interest in participating in discussions wherein disclosing Party might share information with receiving Party that the disclosing Party considers to be proprietary and Confidential Information (as hereinafter defined);

WHEREAS, the Parties recognize the value of the Confidential Information and that it is in their mutual best interests to maintain the confidential, proprietary and secret nature of the Confidential Information.

NOW, THEREFORE, for and in consideration of the above premises, and in further consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

## 1. CONFIDENTIAL INFORMATION.

1.1 “Confidential Information” means any and all information and materials disclosed or furnished by the disclosing Party or any of its Representatives (as defined below) either on or after the Effective Date to the receiving Party or any of its Representatives in connection with the Project or in the course of the Parties’ evaluation of such Project, whether the Confidential Information is disclosed orally or in writing, together with all compilations, records, notes or other materials or information prepared by the disclosing Party or any of its Representatives that contains, reflects or are based upon, in whole or in part, any Confidential Information of the disclosing Party. Confidential Information includes, but is not limited to: financial records; business, marketing, and strategic plans; documents, data, drawings, product plans, designs, technical procedures, manufacturing processes, samples, formulas, methodologies, formulations, patent applications, know-how, experimental results, licensing information, product specifications and other business information, relating to disclosing Party’s business, assets, operations, contracts, practices, procedures and strategies; the identity of, contact information for, and any other account information on customers, vendors, and suppliers; trade secrets, techniques and processes. Confidential Information also includes the fact that discussions or negotiations are taking place between the Parties concerning the Project or that any Confidential Information has been shared with a Party or its Representatives in connection therewith. In addition, Confidential Information includes (i) the proposed terms and conditions of the Project (including any financial terms and conditions) and the status thereof and any arrangements or agreements entered into in connection therewith, and (ii) the existence, context, and scope of this Agreement. Confidential Information may be provided and/or obtained in written, oral, electronic or other form. The receiving Party acknowledges that no representation or warranty, express or implied, has been or is made by or on behalf of disclosing Party as to the accuracy or completeness of any of the Confidential Information furnished to the receiving Party.

1.2 Confidential Information does not include information that receiving Party can demonstrate: (i) was in receiving Party’s possession prior to it being furnished to the receiving Party under the terms of this Agreement, provided the source of that information was not known by the receiving Party to be bound by any obligation of confidentiality to the disclosing Party; (ii) is now, or hereafter becomes, through no act or failure to act on the part of either Party, generally known to the public; (iii) is rightfully obtained by the receiving Party from a third party, without breach of any obligation to the disclosing Party.

1.3 “Representative” includes a Party’s directors, members, shareholders, officers, employees, agents, contractors, consultants, and financial, legal and other advisors.

2. FORM OF DISCLOSURE. Confidential Information may be oral, visual, or by demonstration, or in some other form not permanently recorded, and shall be considered Confidential Information regardless of whether such Confidential Information has been expressly designated as confidential or proprietary.

3. PERIOD OF CONFIDENTIALITY AND NON-USE. The receiving Party (including its affiliates, employees, agents and consultants) shall maintain any and all Confidential Information in strict confidence for a period of three (3) years from the Effective Date and shall not disclose any Confidential Information it receives from the disclosing Party to any third party or otherwise use the Confidential Information for its own or any other party's benefit, except in furtherance of its obligations to the disclosing Party pursuant to any business transaction it may enter into with the disclosing Party. The receiving Party shall use, as a minimum, the same degree of care to avoid disclosure or use of the Confidential Information as it employs with respect to its own confidential, proprietary and secret information of like importance, but in any case, using no less than a reasonable degree of care to maintain strict confidence over any Confidential Information obtained regarding this Agreement or the disclosing Party at large. The receiving Party shall limit access to all Confidential Information to only those of receiving Party's personnel, agents, employees, representatives or assigns who need to know such information for carrying out the receiving Party's obligations pursuant to any business transaction it may enter into with the disclosing Party or for carrying out the receiving Party's obligations with respect to this Agreement or the Project. Confidential Information will be used only for carrying out the receiving Party's obligations to the disclosing Party pursuant to any business transaction it may enter into with the disclosing Party and not with any third party. The receiving Party shall insure that its affiliates, employees, officers, directors, owners, agents, consultants, and representatives who are given access to Confidential Information by or on behalf of the receiving Party shall be provided a copy of this Agreement and shall be strictly bound by and shall comply with the terms of this Agreement.

4. EXCLUSIONS. In addition to Section 1.2, supra, information shall not be deemed Confidential Information, and the receiving Party shall have no obligation of confidentiality or restriction against use with respect to any information which:

4.1. Was known, in the possession of and documented by receiving Party through no wrongful act of the receiving Party prior to the disclosing Party's disclosure of such information to the receiving Party; or

4.2. Is or becomes publicly known through no wrongful act of the receiving Party and/or through no breach of any obligation to disclosing Party pursuant to this Agreement or otherwise; or

4.3. Is rightfully received from a third party who is not subject to restrictions on the use and disclosure of such information in favor of disclosing Party; or

4.4. Is approved for release by a signed, written authorization from disclosing Party; provided that, unless notice of said prior knowledge and possession or receipt from a third party is given to disclosing Party within thirty (30) days of receipt of the information from disclosing Party or from a third party, respectively, it shall be conclusively presumed that the said information was not previously in receiving Party's knowledge and possession or received from a third party.

5. **DISCLOSURES REQUIRED BY LAW.** In the event receiving Party is requested or required by a government or court order, or similar process, to disclose any Confidential Information supplied to it by disclosing Party, receiving Party shall provide disclosing Party with notice of such request within at least three (3) business days of receipt of the request for disclosure so that disclosing Party may seek an appropriate protective order and/or waive receiving Party's compliance with any applicable portion(s) of this Agreement.

6. **INDEMNIFICATION.** The receiving Party shall reimburse, indemnify and hold harmless disclosing Party and its affiliates, owners, employees, officers, directors, agents and representatives from any damage, loss, penalty, cost or expense incurred by disclosing Party as a result of or in connection with the use or disclosure of Confidential Information contrary to the terms of this Agreement by receiving Party or its affiliates, employees, directors, officers, owners, consultants, agents or representatives or any others to whom such Confidential Information has been disclosed by any such persons or entities. The term "affiliates" as used in this Agreement shall mean any persons, corporations, partnerships, limited liability companies, accountants, attorneys or other business entities, which directly or indirectly control, are controlled by, or are in common control with receiving Party. As used herein, the term "control" shall mean direct or indirect power to direct or cause the direction of management, policies, strategies or acts (whether through ownership of securities, by contract, common law or otherwise).

7. **NO PUBLIC COMMENT.** The receiving Party shall not directly or indirectly make or cause to be made any public comment, statement, or communication with respect to disclosing Party, to the Confidential Information, to this Agreement, or to otherwise disclose or permit the disclosure to any third party of any Confidential Information or of any matter relating to the Project or purpose or any transactions contemplated by the Parties in connection therewith, without the prior written consent of disclosing Party.

8. **NOTICE OF UNAUTHORIZED USE OR DISCLOSURE.** The receiving Party shall notify the disclosing Party immediately (within no more than twenty-four (24) hours) upon discovery of any unauthorized use or disclosure of Confidential Information or any other breach or suspected breach of this Agreement by receiving Party or any third party. The receiving Party and all affiliates will cooperate with the disclosing Party in every reasonable way to help the disclosing Party regain possession of the Confidential Information and to prevent its further unauthorized use or disclosure.

9. **OWNERSHIP AND RETURN OF CONFIDENTIAL INFORMATION.** All Confidential Information disclosed to receiving Party shall be and remain the property of disclosing Party. Upon disclosing Party's written request, the receiving Party shall promptly return all Confidential Information (including all originals, copies, reproductions, summaries, hard copies, soft copies and electronically stored compilations of such Confidential Information). Alternatively, at the election of disclosing Party, the receiving Party agrees to certify the

destruction of any such Confidential Information pursuant to this Section 9 of the Agreement in writing, and to keep the same confidential and secret in accordance with this Agreement.

10. NO LICENSE. Nothing contained in this Agreement shall be construed as granting or conferring to receiving Party any right, license or otherwise, either expressly or by implication, in or to any Confidential Information disclosed by disclosing Party to receiving Party as a result of this Agreement, including, without limitation, rights or licenses under any present or future patent, patent application, copyright, trademark, service mark, trade secret or other proprietary information owned, licensed or controlled by disclosing Party

11. SURVIVAL. The receiving Party's obligations of non-disclosure pursuant to the terms of this Agreement shall survive until all Confidential Information has been returned to disclosing Party or the destruction thereof has been sufficiently certified to disclosing Party in writing in accord with Section 9, supra.

12. RELATIONSHIP. This Agreement shall not be construed as a joint venture, pooling arrangement, partnership, teaming effort, collaboration or agency arrangement. The receiving Party shall have no ownership interest whatsoever in the Confidential Information being handed over to them by the disclosing Party.

13. NO WAIVER. Neither Party waives any right, patent, or proposed plan in invention or development lawfully possessed by it at the time of signing this Agreement. In addition, this Agreement does not imply any waiver of any rights or action under the patent, trademark, copyright, trade secret, unfair competition, fair trade or related laws. Failure to enforce any provision of this Agreement shall not constitute a waiver of any term hereof.

14. BINDING AGREEMENT. This Agreement shall be binding upon the receiving Party and its subsidiaries, successors, assigns, legal representatives, employees, contractors, licensees, agents, affiliates and all corporations controlling receiving Party or controlled by receiving Party and shall inure to the benefit of disclosing Party and its subsidiaries, successors, assigns, legal representatives, and all corporations controlling disclosing Party or controlled by disclosing Party.

15. INJUNCTIVE RELIEF. The receiving Party understands and agrees that any use or dissemination of Confidential Information in violation of this Agreement will cause disclosing Party irreparable harm, and that monetary damages may not be a sufficient remedy for the unauthorized use or disclosure of Confidential Information, and that disclosing Party may be left with no adequate remedy at law. Therefore, disclosing Party shall be entitled, without waiving any other rights or remedies available at law, to seek immediate injunctive or equitable relief, including specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as the disclosing Party shall deem appropriate, including consequential and/or compensatory damages as may be deemed proper by a court of

competent jurisdiction in Texas. Such remedies shall not be deemed to be the exclusive remedy for any breach of this Agreement but shall be in addition to all other remedies available at law or in equity.

16. **PREVAILING PARTY.** If either Party employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs and expenses, including applicable court costs.

17. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to principles of conflict or choice of laws, and the Parties consent to venue and jurisdiction in and by the Local, State and Federal courts within the legal jurisdiction of the Project.

18. **ASSIGNMENT.** This Agreement may not be assigned by receiving Party without the prior written consent of the disclosing Party.

19. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding between the Parties relative to the protection of Confidential Information and supersedes all prior and collateral communications, reports and understandings between the Parties in respect thereto. No change, modification, alteration or addition to any provision of this Agreement shall be binding unless it is in writing and signed by an authorized representative of both Parties.

20. **SEVERABILITY.** If a court of competent jurisdiction makes a final determination that any provision of this Agreement (or any portion thereof) is invalid, illegal or unenforceable for any reason whatsoever, (i) the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby; and (ii) to the fullest extent possible, the provisions of this Agreement shall be construed so as to give full effect to the intent manifested by the provisions held invalid, illegal or unenforceable.

21. **HEADINGS.** The headings in this Agreement are for reference purposes only and shall not limit or otherwise affect the meaning of the provisions.

22. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts including by signing a facsimile or electronic copy. Each counterpart shall be deemed an original and all counterparts together shall constitute one and the same instrument.

23. **NON-CIRCUMVENTION.** For the term of this agreement, and for three years after the termination of said agreement, the recipient agrees not to pursue or engage in any transaction involving the potential transaction, or contact directly or indirectly any party-in-interest relating to the disclosing party's business or pursue any introduction of any party of interest without the disclosing party's prior written consent. The recipient agrees that all communications regarding

the potential transaction, requests for additional information, and discussions regarding procedures will be submitted or directed to the disclosing party and not directly with any other party. The recipient covenants not to use the confidential information to the detriment of the disclosing party and to use it only in connection with its evaluation of the potential transaction. The disclosing party shall be present in the engagement of any transaction involving the potential transaction with introduced parties-in-interest by the recipient.

#### 24. MISCELLANEOUS.

24.1. None of the provisions of this Agreement shall be deemed to have been waived by any act, omission, or acquiescence on the part of the disclosing Party without a written instrument signed by the disclosing Party. No waiver by a Party of any breach shall be effective unless in writing, and no waiver shall be construed as a waiver of any succeeding breach, whether or not of the same or a different term or condition.

24.2. This Agreement shall be construed as to its fair meaning and not strictly for or against either Party.

24.3. Any notice required or permitted to be delivered under this Agreement shall be in writing and shall be deemed effectively given to the proper address noted above: (i) upon personal delivery to the Party to be notified; (ii) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iii) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt, to the address set forth above (or to such other address as such party may designate by five (5) days' advance written notice to the other Party).

24.4. The person signing on behalf of each Party represents that he or she has the right and power to execute this Agreement.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement as of the dates written below.

PARTY 1: Knowledge Health Solutions LLC

Representative's Signature: \_\_\_\_\_

Print Name: Jason Rose

Date:

PARTY 2:

Representative's Signature \_\_\_\_\_

Print Name:

Date: