

# SOFUS Confidentiality Agreement

**Effective Date:** \_\_\_\_\_

This Confidentiality Agreement (“Agreement”), dated as of the effective date above (“Effective Date”), is between client listed in section 8 of this agreement (“Customer”) and the Sofus Group, its owners, and affiliates (“SOFUS”) hereinafter individually referred to as a “Party” and collectively referred to as the “Parties”.

**WHEREAS**, in connection with the Parties’ evaluation of a potential transaction, pursuant to which SOFUS will review and evaluate the customer’s business for the purpose of consulting, business improvement, corporate or cultural development, and or business process improvement, in conjunction with a consulting agreement,

**WHEREAS**, both Parties have agreed to hold the Confidential Information (as hereinafter defined) confidential in accordance with the terms of this Agreement:

**NOW, THEREFORE**, for and in consideration of each Party furnishing the other Party with the Confidential Information and other good and valuable consideration, the Parties hereby agree as follows:

1. The term “Confidential Information” as used herein shall mean all information related to the Potential Transaction, which SOFUS or its Representatives and/or CUSTOMER or its Representatives (“Disclosing Party”) furnishes to the other Party (“Receiving Party”), on or after the Effective Date, in whatever form or medium provided (including, without limitation, oral communications), which if in writing is clearly marked “confidential” or if transmitted orally, stated at that time to be “confidential”, as well as all information generated by either Party or its Representatives that contains, reflects or is derived from the furnished information; provided, however, the term “Confidential Information” shall not include information which (i) is or becomes generally available to the public other than as a result of acts by the Receiving Party or anyone to whom the Receiving Party supplies the Confidential Information, (ii) was in the Receiving Party’s possession prior to the date it was disclosed to either Party by the other Party or its Representatives, (iii) is disclosed to the Receiving Party by a third party which is not, to the Receiving Party’s knowledge, prohibited from disclosing such information by a legal or fiduciary duty to the Disclosing Party, or (iv) is independently developed by the Receiving Party or any of its Representatives without the use of any Confidential Information.

The Confidential Information shall be kept confidential and shall not without the Disclosing Party’s prior written consent be disclosed by the Receiving Party’s or its affiliates’ directors, officers, partners, agents, potential lenders, legal counsel, advisors and clients in which SOFUS is acting as an advisor and or working on behalf of (collectively, “Representatives”) in any manner whatsoever, in whole or in part, except as provided in this Agreement. Both Parties consent and agree to transmission of the Confidential Information only to such of the Receiving Party’s Representatives who need to know the Confidential Information for the sole purpose of evaluating the Potential Transaction and who are informed by the Receiving Party of the confidential nature of the Confidential Information. Such Representatives shall be directed by the Receiving Party not to disclose the Confidential Information to any other person. Without the prior written consent of the other party, neither Party nor its Representatives will disclose to any person the fact that they have received any of the Confidential Information or that

# SOFUS Confidentiality Agreement

discussions or negotiations are taking place concerning the possible Potential Transaction, including the status thereof.

2. Each Party shall be responsible for any breach of this Agreement by any of its Representatives. In this regard, each party agrees to pay or reimburse the other Party for actual damages incurred as the result of its use of the Confidential Information in contravention of the terms of this Agreement. It is understood and agreed that either Party may be irreparably and immediately harmed by any breach of this Agreement by the other Party or its Representatives and may not be made whole by monetary damages. Accordingly, each Party agrees that, in addition to any other remedy to which the other Party may be entitled at law or in equity, the other Party shall be entitled to seek any injunction or injunctions (without the posting of any bond and without proof of actual damages) to prevent breaches or threatened breaches of this Agreement and/or to compel specific performance of this Agreement. In no event shall any Party be entitled to exemplary, indirect, special, punitive or consequential damages.

3. If the Receiving Party or any of its Representatives are requested or required (by deposition, interrogatory, request for documents, subpoena, civil investigative demand from a regulatory agency or other governmental entity exercising jurisdiction over the Party or subject matter in question or similar process) to disclose any of the Confidential Information, the Receiving Party shall provide the Disclosing Party with prompt written notice of such request or requirement and shall cooperate with the Disclosing Party so it may seek a protective order or other appropriate remedy, provided that any effort by the Receiving Party to cooperate with the Disclosing Party, should the Disclosing Party seek to obtain a protective order concerning the Confidential Information, will be at the Disclosing Party's sole expense. Notwithstanding the issuance or non-issuance of a protective order or other remedy being obtained or not obtained, the Receiving Party may produce such Confidential Information if in the opinion of counsel of the Receiving Party, the Confidential Information is responsive to discovery requests or demands in the respective proceeding(s), but the Receiving Party shall exercise reasonable efforts to request that confidential treatment will be accorded such Confidential Information.

4. Each Party to this Agreement reserves the right, in its sole and absolute discretion, to reject any or all proposals, to decline to furnish further Confidential Information, to deny access to its data and to terminate discussions and negotiations at any time without liability to the other Party regarding the Potential Transaction. The exercise of these rights shall not affect the enforceability of any obligation arising under this Agreement before termination. Upon receipt of a notice in writing requesting any such termination of discussions and negotiations, the Receiving Party agrees, within fifteen (15) calendar days after receipt of such request by the Disclosing Party, to (i) return to the Disclosing Party all Confidential Information delivered by the Disclosing Party or its Representatives to the Receiving Party or its Representatives, and no copies, extracts or other reproduction shall be retained by the Receiving Party or its Representatives, and (ii) destroy all copies of any analyses, compilations, studies, or other documents, records or data prepared by the Receiving Party or its Representatives which contain or otherwise reflect or are generated from the Confidential Information, and one of the Receiving Party's authorized officers shall provide certification to the Disclosing Party that such Confidential Information has in fact been so destroyed. Notwithstanding the foregoing, (i) the obligation to return or destroy Confidential Information shall not cover information that is maintained on routine computer system backup tapes, disks or other backup storage devices as

# SOFUS Confidentiality Agreement

long as such backed-up information is not intentionally used, disclosed, or otherwise recovered from such backup devices, and (ii) the Receiving Party may retain one copy of Confidential Information it receives and uses for the purpose of senior management or board of director briefing materials or to the extent required pursuant to any applicable law, governmental rule or regulation, stock exchange requirement, court order, administrative order or other official order by a governmental, judicial or regulatory authority. Any oral Confidential Information shall continue to be held confidential by the Receiving Party and its Representatives, subject to the terms of this Agreement.

5. Although the Receiving Party understands that the Disclosing Party and its Representatives will include in the Confidential Information certain information that the Disclosing Party or its Representatives believe to be relevant for the purpose of the Receiving Party's evaluation of the Potential Transaction, neither the Disclosing Party nor its Representatives is making or has made any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information. The Disclosing Party and its Representatives shall not have any liability to the Receiving Party or any of its Representatives resulting from the use of the Confidential Information by the Receiving Party or its Representatives. Only those representations and warranties that are made in a definitive agreement when, as, and if it is executed, and subject to such limitations and restrictions as may be specified in such definitive agreement, will have any legal effect.

6. This Agreement does not establish a partnership, agency, joint venture or similar relationship, nor does it obligate any Party to enter into such a relationship. The Parties expressly recognize and agree that this Agreement does not create any exclusive dealing arrangement between the Parties.

7. This Agreement shall be for sole benefit of the Parties hereto. This Agreement may be modified or waived only by a separate writing signed by SOFUS and CUSTOMER. If any clause or provision of this Agreement is illegal, or unenforceable, then it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties that in lieu of each clause or provision that is illegal, invalid or unenforceable, there be added as part of this Agreement a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable

8. All notices required or permitted to be given under this Agreement shall be in writing and deemed to be properly given if (a) delivered in person, or (b) sent by facsimile (provided that a positive transmittal sheet is generated and able to be provided), or (c) sent by United States certified mail with first class postage prepaid, or (d) delivered by private, prepaid courier, and addressed to the appropriate party. A Party may change its address by providing written notice to the other Party, or to such other address as a Party shall from time to time designate. The notice details of the Parties are as follows:

# SOFUS Confidentiality Agreement

As it pertains to written communication in physical and digital form:

**CLIENT / CUSTOMER:**

\_\_\_\_\_  
(company name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, Zip)

\_\_\_\_\_  
(email address)

\_\_\_\_\_  
(primary contact)

**SOFUS:**

The Sofus Group

41 Fence Row Lane

Manheim, PA 17545

[bgerhart@sofusgroup.com](mailto:bgerhart@sofusgroup.com)

Brian P. Gerhart

10. The obligations of the Parties under this Agreement to maintain the Confidential Information as confidential shall terminate (2) year(s) from the Effective Date.

11. This Agreement may be delivered via facsimile or email/pdf, it being the express intent of the Parties that such Agreement delivered via facsimile or email/pdf shall have the same force and effect as if it was an original.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

\_\_\_\_\_  
(company name)

\_\_\_\_\_  
(signature of agreement)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(signature date)

The Sofus Group

\_\_\_\_\_  
(signature of agreement)

Brian P. Gerhart

\_\_\_\_\_  
(signature date)