



MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Mutual Non-disclosure and Confidentiality Agreement (“Agreement”) is entered into by and between **THE MAINSTAY FOUNDATION** (“Disclosing Party”) and _____ (“Recipient”).

I. DEFINITIONS

1. “Transactions” – All ongoing and potential business transactions between the two parties; including without limitation, employment, internships, contract services.
2. “Confidential Information” – All information provided by the Disclosing Party to the Recipient or prepared by Recipient for Disclosing Party in connection with the Transactions, including without limitation: all technical and non-technical data and analysis; plans or proposals; financial information; information relating to the Disclosing Party, its partners, members, staff, employees, contractors, clients, affiliates; sales and marketing information; and other financial information relating to the business or affairs of the Disclosing Party. Confidential Information includes all information that the Disclosing Party labels, or in any other way communicates, as to be held confidential by Recipient.
3. “Representative” – Director, officer, employee, subcontractor, agent, advisor or other representative (including, without limitation, attorneys, accountants, consultants, bankers, investment bankers, other potential financing sources and financial advisors) of a party to this Agreement.

II. Covered Parties

For purposes of this Agreement, the definitions of the “Disclosing Party” and the “Recipient” shall be deemed to include any Representative of such party. Each party shall be solely responsible for all actions and obligations of its Representatives as if they were the actions and obligations of that party.

III. Non-Disclosure and Limitations of Use of the Confidential Information

1. The Recipient agrees that it shall use all the Confidential Information solely for the purposes of the Transactions, that all the Confidential Information will be kept strictly confidential and that the Recipient shall not disclose any Confidential Information in any manner whatsoever, directly or indirectly, to any third party except as expressly permitted in this Agreement. Neither party shall make, publish or otherwise disseminate in any manner any public statement or description of the Transactions, the existence of the Confidential Information or any issue which is subject to this Agreement.
2. The Recipient and its Representatives shall exercise, in good faith, the same degree of care in safeguarding the Confidential Information against any and all loss or other inadvertent disclosure as the Recipient uses for its own confidential information of like importance.
3. In the event that Recipient or any of its Representatives is requested or required (by oral question, interrogatories, requests for information or documents, subpoenas, civil investigation or similar process) to disclose any of the Confidential Information, Recipient will provide Disclosing Party with prompt notice of such requests so that Disclosing Party, as applicable, may seek an appropriate protective order, or if appropriate, waive compliance with the provisions of this Agreement. Recipient will use its best efforts to obtain or assist Disclosing Party in obtaining such a protective order.

LOCAL FOCUS. NATIONAL REACH. GLOBAL MINDSET.



IV. Ownership of the Confidential Information

The Recipient or the Disclosing Party may terminate the Recipient's review of the Confidential Information at any time upon notice to the other party. At the time of such termination or the conclusion of the Transactions, the Recipient shall immediately cease the further use of any Confidential Information and return it to the Disclosing Party or handle the Confidential Information in any other way agreed upon by the parties. No termination or return or destruction of the Confidential Information will affect any of Recipient's obligations under this Agreement, unless otherwise agreed upon by the parties.

V. Remedies

The Recipient shall be responsible for any breach of this Agreement by the Recipient. The Recipient acknowledges and agrees that any disclosure of the Confidential Information except as provided in this Agreement may cause serious and irreparable damage to the Disclosing Party for which there may be no adequate remedy at law. Without limiting the Disclosing Party's rights and remedies which are otherwise available, the Disclosing Party shall be entitled to equitable relief including, without limitation, an injunction, restraining order or specific performance for any breach of this Agreement by the Recipient. The Recipient waives any securing or posting of any bond in connection with such remedy. In addition, each party shall indemnify, defend and hold the other party harmless from and against any and all claims, losses, defenses, actions, causes of action, damages, costs or expenses (including reasonable attorney fees and any other costs) both direct and indirect, asserted, claimed or caused if and to the extent the same arises in whole or in part, directly or indirectly, from any breach of this Agreement by that party.

VI. Signatures

Recipient acknowledges that Recipient has received two copies of this Agreement and has read this Agreement and understands its contents.

Disclosing Party

Recipient

The Mainstay Foundation

Name: