**MUTUAL CONFIDENTIALITY AGREEMENT**

**THIS MUTUAL CONFIDENTIALITY AGREEMENT** (this “**Agreement**”) is made and entered into as of the \_\_\_\_\_ day of , 20\_\_ (the “**Effective Date**”), by and between Mercedes-Benz Purchasing Coordination Corp., a Delaware corporation, having its principal place of business at 1 Mercedes Drive, Vance, Alabama 35490 (“**MBPCC**”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Company**”), with an address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Company and MBPCC each being a “**Party**” and sometimes collectively referred to herein as the “**Parties**”).

A. The Parties wish to explore, establish or further a business relationship between them (the “**Opportunity**”) under which each Party may disclose its secret, confidential, and proprietary information to the other Party;

B. Each Party is willing to furnish such information to the other Party only for the purpose (the “**Purpose**”) of evaluating the Opportunity and/or effecting any Opportunity including, but not limited to, any transaction which may be entered into, and only pursuant to the terms of this Agreement; and

C. Each Party desires to protect its secret, confidential, and proprietary information to which the other Party will obtain access.

**NOW, THEREFORE**, in consideration of the discussions regarding the Opportunity and the disclosure of Confidential Information (as defined below), and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:

## The term “**Confidential Information**” means all information and materials concerning Discloser, its affiliates, and its business that is provided to Recipient by, or on behalf of, Discloser, its affiliates, or any of its directors, officers, members, managers, employees, agents or other representatives or from any other source, whether provided orally, in writing, electronically, or otherwise. Confidential Information includes, but is not limited to, any and all information and materials relating to Discloser's business and/or know how, current, future, or proposed products and services, financial, accounting, marketing, operational, strategic, statistical and numerical information, contracts and agreements with customers, vendors, and independent contractors, technical specifications, intellectual property, inventions, patent applications, trade secrets (as defined by applicable law), research programs and products, plans for business development, concepts, technologies, designs, processes, procedures, formulas, organizational data, marketing plans and strategies, sales data, unpublished promotional material, cost and pricing information, client information, customer lists, and prospective customer information. Discloser is not obligated to designate information transmitted pursuant to this Agreement as Confidential Information in order to receive the protections of this Agreement. The term “Confidential Information” does not include information which: (i) is already in Recipient's possession prior to being disclosed to Recipient by Discloser as shown by Recipient's files and records immediately prior to the time of disclosure; (ii) becomes generally available to the public other than as a result of a disclosure directly or indirectly, or inaction, by Recipient; or (iii) becomes available to Recipient on a non-confidential basis from a third party lawfully in possession of such information and not in violation of any contractual, legal or fiduciary obligation restricting such disclosure.

* 1. The term “**Affiliate**” means an entity, directly or indirectly, controlling a Party, controlled by a Party, or under common control with a Party.
	2. The term “**Discloser**” means the Party that provides and discloses Confidential Information.
	3. The term “**Recipient**” means the Party to whom Confidential Information is disclosed by Discloser.

# **Non-Disclosure.** Recipient shall treat, maintain, and hold all Confidential Information in trust and confidence, using the greater of: (i) the same level of care it uses to protect its own confidential information, and (ii) a commercially reasonable standard of care. Except as permitted in Section 4 below, Recipient shall not, whether directly or indirectly, or in any other manner whatsoever, disclose the Confidential Information or any part thereof to any third party without prior written consent from Discloser and, if requested, Recipient shall cause such third party to execute an acknowledgment whereby such third party agrees to be bound by the terms of this Agreement. Recipient may only disclose Confidential Information to its employees, agents, and representatives (collectively “**Representatives**”) who have a need to know and are engaged directly in the Purpose and only after: (a) advising each such Representative of the confidential nature of the Confidential Information, and (b) taking reasonable measures to cause such Representatives to abide by the confidentiality obligations set forth herein. Notwithstanding anything to the contrary set forth herein, Recipient shall be liable for the unauthorized disclosure of Confidential Information by anyone to whom Recipient discloses the Confidential Information. Notwithstanding anything to the contrary contained herein, MBPCC may share Confidential Information with its Affiliates and its Affiliates may share information or receive information from Company. MBPCC shall ensure that an Affiliate to which MBPCC or Company discloses Confidential Information shall keep such Confidential Information confidential to the same extent that MBPCC is so required, and Company shall keep any Confidential Information disclosed to Company by a MBPCC Affiliate confidential to the same extent as required for MBPCC.

1. **Use of Confidential Information.** Recipient acknowledges that the Confidential Information is confidential, valuable property of Discloser and agrees that the Confidential Information will be used by Recipient only for the Purpose.

# **Compelled Disclosure.** If Recipient is required or compelled by any law or legally binding order of any court, government, semi-government, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity acting within its powers to disclose any Confidential Information, Recipient shall, to the extent reasonably practicable, first provide Discloser with prompt written notice of such requirement so that Discloser may seek appropriate legal protection. If it is impossible or impractical to provide Discloser with prior notice of such disclosure, Recipient shall, as soon as possible, notify Discloser of such disclosure. If, failing the entry of legal protection, Recipient is, in the opinion of Recipient's legal counsel, compelled to disclose any Confidential Information, Recipient may disclose only that portion of the Confidential Information which Recipient's legal counsel advises that Recipient is compelled to disclose. Recipient shall cooperate and provide reasonable assistance, at Discloser's expense, with any attempt by Discloser to obtain any protective order or other legal protection to resist disclosure of any Confidential Information.

1. **Term.** Unless earlier terminated as set forth herein, this Agreement will commence on the Effective Date and will continue during the term of the Opportunity, if any, or for a period of five (5) years from the Effective Date, whichever is longer. This Agreement may be terminated at any time by either Party upon thirty (30) days’ prior written notice to the other Party hereto. Notwithstanding the foregoing: (i) Recipient’s obligations hereunder with regard to trade secrets of Discloser shall remain in effect as long as the information constitutes a trade secret under applicable law; and (ii) each Party's rights and obligations under this Agreement shall survive any expiration or termination of this Agreement for a period of five (5) years from the date of such expiration or termination, even after the return or destruction of Confidential Information by Recipient.

# **Return of Confidential Information.** All Confidential Information furnished to Recipient shall remain the sole property of Discloser, and Recipient shall promptly return or destroy, as directed by Discloser, all Confidential Information upon the earlier of the written request of the Discloser, or the termination of this Agreement. If requested by the demanding party, Recipient shall provide written confirmation that all such Confidential Information has been destroyed, returned or deleted. Recipient shall not make any duplicates, copies, extracts, summaries, reports or notes of any Confidential Information for Recipient's own use other than as is necessary for the Purpose. All originals and all necessary duplicates, copies, summaries, reports and notes shall belong exclusively to Discloser, and shall be part of the Confidential Information. The obligations of Recipient under this Agreement shall continue in force notwithstanding the destruction or return of Confidential Information, or the completion or termination of this Agreement for any reason. Notwithstanding the foregoing provisions of this Section 6, Recipient shall be allowed to maintain copies of Confidential Information in electronic form on Recipient's backup storage media pursuant to Recipient’s records retention policy so long as such Confidential Information is not utilized for any other purpose (provided that if such backups are accessed, the Confidential Information is deleted).

1. **Ownership of Confidential Information.** Except for the limited right of use granted herein, it is expressly understood and agreed that Discloser does not grant any right, license, privilege or immunity, express or implied, in any Confidential Information to Recipient.
2. **Injunctive Relief.** Recipient acknowledges and agrees that the Confidential Information is unique property of value to Discloser, and a breach of this Agreement may cause Discloser irreparable harm. Recipient acknowledges and agrees that money damages might not be a sufficient remedy for a breach of this Agreement and that, in addition to its remedies at law, Discloser shall be entitled to seek specific performance and injunctive relief as a remedy for any actual or threatened breach of this Agreement or any unauthorized use, reproduction or disclosure of the Confidential Information. Recipient agrees that it will not seek, and agrees to waive, any requirement for the securing or posting of a bond in connection with Discloser's seeking or obtaining such injunctive relief. In the event that as a result of Recipient's breach of this Agreement Discloser seeks to enforce the terms and conditions of this Agreement, Discloser shall be entitled to recover its expenses incurred in connection with such enforcement including, without limitation, reasonable attorneys' fees.
3. **Obligations and Acknowledgements.** Nothing herein obligates the Parties to proceed with any transaction or relationship contemplated during the Opportunity, or to disclose any information to each other. Unless and until a definitive agreement related to the Opportunity is executed: (i) no contract or agreement providing for the Opportunity shall be deemed to exist; and (ii) neither Party has any legal obligation with respect to the Opportunity by virtue of this Agreement.
4. **No Restriction**. The terms of confidentiality and non-use under this Agreement shall not be construed to limit either Party's right: (a) to develop independently or acquire products or services of the same type as may be included within the Confidential Information; or (b) to enter into any business transaction with any other entity or person which owns or has rights to any such similar products or services; or (c) to compete with the other party hereto, in each case as long as such right is exercised without violating any obligations hereunder.
5. **Amendment; Modification.** This Agreement may only be changed, modified, discharged or terminated by an instrument in writing executed by Recipient and Discloser.

# **Waiver.** No delay or failure on the part of any Party hereto in exercising any right, power, or privilege under this Agreement shall impair any such right, power, or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power, or privilege shall preclude the further exercise of such right, power, or privilege. No waiver shall be valid against any Party hereto unless made in writing and signed by the Party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

1. **Partial Invalidity.** The invalidity or unenforceability of any of terms, conditions, or provisions hereof shall not limit or impair the operation or validity of any other term or provision of this Agreement, and the remainder of this Agreement shall remain operative and in full force and effect.

# **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles.

1. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a United States nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by a Party from time to time in accordance with this Section).
2. **Successors and Assigns.** Neither Party may assign this Agreement or any of its rights or obligations hereunder to any third party without the prior written consent of the other Party, and no such assignment shall relieve any Party to this Agreement of its obligations hereunder.

# **Counterparts.** This Agreement may be executed in counterparts, each of which shall be an original, but which together shall constitute one and the same agreement. Faxed or scanned and emailed signatures on this Agreement shall be effective as if they were originals.

1. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof.

**[Signatures on Following Page]**

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date set forth above.

|  |  |
| --- | --- |
| **[Vendor]** | **Mercedes-Benz Purchasing Coordination Corp.** |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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