

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “**Agreement**”) is entered into on this ___ day of _____ 20___, by Digital Lead Performance, LLC, a Florida limited liability company (the “**Company**”), and _____, a _____ (the “**Dealer**”). (The Company and the Dealer, when disclosing information or materials to the other party pursuant to the terms of this Agreement, may also be referred to herein as the “**Disclosing Party**” and when receiving information or materials from the other party, may also be referred to herein as the “**Receiving Party**” as the context so requires. Each party may also be referred to herein as a “**party**” or collectively as the “**parties**”).

WHEREAS, The Company and the Dealer intend to engage in communications and negotiations regarding a potential business transaction between them (the “**Transaction**”) in which the Company, if engaged by the Dealer, will provide services to the Dealer including, but not limited to, digital lead generation and related management services (the “**Services**”);

WHEREAS, in connection with the negotiation of the Transaction and, if Company is so engaged by Dealer, the provision of the Services, each party, as a Disclosing Party, is willing to provide Confidential Information (as defined herein) to the other party as a Receiving Party provided that the confidentiality of, and each Disclosing Party’s rights in, the Confidential Information provided by Disclosing Party to Receiving Party are protected; and

WHEREAS, each Disclosing Party is willing to divulge its Confidential Information to each Receiving Party only on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants made herein the receipt and sufficiency of which is hereby acknowledged, and the foregoing recitals which are hereby incorporated into this Agreement by this reference, the parties desire to enter into this Agreement and hereto agree as follows:

1. **Definition of Confidential Information.**

(a) For purposes of this Agreement, “**Confidential Information**” means any data or information that is proprietary to each Disclosing Party and not generally known to the public, whether in tangible or intangible form, in whatever medium provided, whether unmodified or modified by the Receiving Party or its Representatives (as defined herein), whenever and however disclosed, including, but not limited to: (i) any marketing strategies, plans, financial information, or projections, operations, sales estimates, business plans and performance results relating to the past, present or future business activities of such party, its affiliates, subsidiaries and affiliated companies; (ii) plans for products or services, and customer or supplier lists; (iii) any scientific or technical information, invention, design, process, procedure, formula, improvement, technology or method; (iv) any concepts, reports, data, know-how, works-in-progress, designs, development tools, specifications, computer software, source code, object code, flow charts, databases, inventions, information and trade secrets; (v) all information of, or related

to, Disclosing Party that relates to patents, patent applications, research, product plans, products, developments, inventions, processes, designs, drawings, engineering, formulae, markets, software (including source and object code), hardware configuration, computer programs, algorithms, business plans, agreements with third parties, services, financial projections, customers, marketing or finances of Disclosing Party, internal, non-public, proprietary, or technical information or know-how concerning Disclosing Party and its business and assets, business plans, marketing plans, strategic alliances, data, photographs, specifications, samples, business information and any other material bearing or incorporating any such information; (vi) any other information that should reasonably be recognized as confidential information of the Disclosing Party; and (vii) any information generated by the Receiving Party or by its Representatives that contains, reflects, or is derived from any of the foregoing. Confidential Information need not be novel, unique, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that Disclosing Party regards all of its Confidential Information as trade secrets.

(b) Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which: (a) was lawfully possessed, as evidenced by the Receiving Party's records, by the Receiving Party prior to receiving the Confidential Information from the Disclosing Party; (b) is generally known by the public through no fault of or failure to act by the Receiving Party inconsistent with its obligations under this Agreement; and (c) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of paragraph 4 hereof shall apply prior to any disclosure being made.

2. **Disclosure of Confidential Information.**

(a) The Receiving Party agrees that during the term of this Agreement, and at any time after the termination of this Agreement, it will use all endeavors to keep confidential at all times, and not permit or cause the disclosure to any person, the Confidential Information. The Receiving Party agrees to hold the Confidential Information in the strictest of confidence and shall use at least the same methods and degree of care to prevent disclosure of the Confidential Information as the Receiving Party uses to prevent disclosure of its own Confidential Information.

(b) From time to time, the Disclosing Party may disclose Confidential Information to the Receiving Party only in accordance with the terms set forth in this Agreement. The Receiving Party will: (a) limit disclosure of any Confidential Information to its directors, officers, managers, employees, third party agents or service providers, or representatives (collectively "**Representatives**") who have a need to know such Confidential Information in connection with the Transaction or Services to which this Agreement relates, and only for that purpose; (b) advise its Representatives of the proprietary nature of the Confidential Information and of the existence of this Agreement, require such Representatives to be bound by written confidentiality restrictions with respect to the Confidential Information and assume full liability for acts or omissions by its Representatives that are inconsistent with its obligations under this Agreement; (c) keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential

information; and (d) not disclose any Confidential Information received by it to any third parties (except as otherwise provided for herein). The parties agree that they are responsible for insuring that each Representative complies fully with the terms of this Agreement.

3. **Use of Confidential Information.**

The Receiving Party agrees to use the Confidential Information solely in connection with (i) the negotiation and communication regarding the Transaction, and (ii) the provision of Services and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the Disclosing Party. All use of Confidential Information by the Receiving Party shall be for the benefit of the Disclosing Party and any modifications and improvements thereof by the Receiving Party shall be the sole property of the Disclosing Party.

4. **Compelled Disclosure of Confidential Information.**

Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, subpoena, discovery request, regulatory request or similar method, provided that the Receiving Party promptly notifies, to the extent practicable, the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided that the Receiving Party will disclose only that portion of the requested Confidential Information that, in the written opinion of its legal counsel, it is required to disclose. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order and the Receiving Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

5. **Term.**

This Agreement shall remain in effect until terminated by either party upon thirty days prior written notice delivered to the other party. Notwithstanding the foregoing, the Receiving Party's duty to hold in confidence Confidential Information that was disclosed during the term shall remain in effect indefinitely.

6. **Remedies.**

Both parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The damages to Disclosing Party that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, both parties hereby agree that the

Disclosing Party shall be entitled to injunctive relief and/or specific performance or other relief from any court of competent jurisdiction in order to prevent the dissemination of any Confidential Information in violation of the terms hereof, without posting a bond or other security. The Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

7. **Return of Confidential Information.**

The Receiving Party shall immediately return and redeliver to the Disclosing Party all tangible material embodying any Confidential Information provided hereunder and all notes, summaries, memoranda, drawings, manuals, records, excerpts or derivative information deriving therefrom, and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data, word processing, or other types of files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time as the Disclosing Party may so request; provided however that the Receiving Party may retain such of its documents as is necessary to enable it to comply with its reasonable document retention policies or under applicable law. Alternatively, the Receiving Party, with the written consent of the Disclosing Party may (or in the case of Notes, at the Receiving Party's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably nonrecoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Receiving Party supervising the destruction.

8. **Non-Solicitation.**

During the term of this Agreement and for one year following the termination of this Agreement, each of the Company and the Dealer will not, and will not permit any of their affiliates to, directly or indirectly, hire, recruit or otherwise solicit or induce any employee, customer, subscriber or supplier of the other party to terminate its employment or other arrangement with such party, otherwise change its relationship with such party or establish any relationship for any business purpose deemed competitive with the business of such party.

9. **Notice of Breach.**

The Receiving Party shall notify the Disclosing Party immediately upon discovery of, or suspicion of, (1) any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives; or (2) any actions by the Receiving Party or its Representatives inconsistent with their respective obligations under this Agreement. The Receiving Party shall cooperate with any and all efforts of the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

10. **No Binding Agreement for Transaction.**

The parties agree that neither party will be under any legal obligation of any kind whatsoever with respect to a Transaction or the provision of Services by virtue of this Agreement, except for the matters specifically agreed to herein. The parties further acknowledge and agree that they each reserve the right, in their sole and absolute discretion, to reject any and all proposals and to terminate discussions and negotiations with respect to a Transaction at any time. This Agreement does not create a joint venture or partnership between the parties. If a Transaction goes forward, the non-disclosure provisions of any applicable transaction documents entered into between the parties (or their respective affiliates) for the Transaction shall supersede this Agreement. In the event such provision is not provided for in said transaction documents, this Agreement shall control.

11. **Warranty.**

NO WARRANTIES ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT WHATSOEVER. The parties acknowledge that although they shall each endeavor to include in the Confidential Information all information that they each believe relevant for the purpose of the evaluation of a Transaction and/or the provision of Services, the parties understand that no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by the Disclosing Party. Further, neither party is under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose. Neither party hereto shall have any liability to the other party nor to the other party's Representatives resulting from any use of the Confidential Information except with respect to disclosure of such Confidential Information in violation of this Agreement.

12. **Miscellaneous.**

(a) This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.

(b) The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of the state of Florida applicable to contracts made and to be wholly performed within such state, without giving effect to any conflict of laws provisions thereof. The Federal court located in the Middle District of Florida and state courts located in Lee County, Florida shall have sole and exclusive jurisdiction over any disputes arising under, or in any way connected with or related to, the terms of this Agreement, and the parties: (i) consent to personal jurisdiction therein; and (ii) waive the right to raise *forum non conveniens* or any similar objection.

(c) Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

(d) Although the restrictions contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will

be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.

(e) Any notices or communications required or permitted to be given hereunder may be delivered by hand, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party indicated below (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in the case of personal delivery or electronic-mail, on the date of such delivery, (b) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (c) in the case of mailing, on the seventh business day following such mailing.

(f) This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.

(g) The receipt of Confidential Information pursuant to this Agreement will not prevent or in any way limit either party from: (i) developing, making or marketing products or services that are or may be competitive with the products or services of the other; or (ii) providing products or services to others who compete with the other.

(h) Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

(i) This Agreement may be executed by facsimile signatures or signatures transmitted via email or electronic signature technology, which shall be binding upon the signing party, and in counterparts, each of which shall be deemed an original and all of which shall constitute a single agreement among the parties.

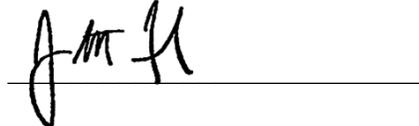
(j) Each party hereby agrees, certifies and warrants that his/her or its obligations under this Agreement have been accepted, the execution of this Agreement has been approved and authorized, and is valid and binding, and that he or she or it is willing to provide any and all documents necessary to carry out the intent and purposes of this Agreement. Each party represents and warrants to the other party that he or she or it has the capacity and authority to enter into this Agreement and to bind himself/herself or the applicable party hereto.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Mutual Confidentiality and Non-Disclosure Agreement to be executed by signature of their duly authorized representative as of the date first above written.

COMPANY:

Digital Lead Performance, LLC



By: J. Scott Fischer
Its: Manager

Digital Lead Performance, LLC
12730 Commonwealth Drive, Suite 2
Fort Myers, Florida 33913
Attention: Kimberly Haskins
Email: kimh@sfe-us.com

DEALER:

Name: _____
DBA: _____

By: _____
Its: _____

Name: _____
Address: _____
City, State, Zip: _____
Attention: _____
Email: _____