

MUTUAL NON-DISCLOSURE  
DISCLOSURE OF INFORMATION



THIS MUTUAL NON-DISCLOSURE PARTNER AGREEMENT (“Agreement”) is made between LMR Solutions dba as EPM Live (“Company”), a partnership organized and existing under the laws of the State of California, having its principal place of business at 5860 Owens Ave., Suite 130 Carlsbad CA, and \_\_\_\_\_, (“Partner”), whose address for purposes hereof is \_\_\_\_\_.

WITNESSETH:

1. **Purpose.** Partner wishes to partner with EPM Live for the purpose of providing technical and consulting services and each of the Parties may receive confidential information of the other party. For purposes of this Agreement, the party disclosing confidential information is hereinafter referred to as the "Disclosing Party" and the party receiving confidential information is hereinafter referred to as "Recipient." In connection with these purposes, certain trade and business information proprietary to the Disclosing Party, and which the Disclosing Party considers confidential, may be provided to Recipient.
2. **Definition.** "Confidential Information" means any information, technical data, or know-how (including, but not limited to, information relating to research, products, software, services, development, inventions, processes, engineering, marketing, techniques, customers, pricing, internal procedures, business and marketing plans or strategies, finances, employees and business opportunities) disclosed by the Disclosing Party to Recipient either directly or indirectly in any form whatsoever (including, but not limited to, in writing, in machine readable or other tangible form, orally or visually): (i) that has been marked as confidential; (ii) whose confidential nature has been made known by Disclosing Party, in writing or orally with specific written notification of such oral disclosure within three (3) days thereafter, to Recipient; or (iii) that due to its character, nature, or method of transmittal, a reasonable person under like circumstances would treat as confidential.
3. **Exclusions.** Confidential Information does not include information, technical data or know-how which:
  - a. is in Recipient's possession at the time of disclosure as shown by competent evidence prior to the time of disclosure;
  - b. before or after it has been disclosed to Recipient, becomes part of the public knowledge or literature, not as a result of any action or inaction of Recipient;
  - c. is approved for release by written authorization of the Disclosing Party;
  - d. is disclosed to Recipient by a third party not in violation of any obligation of confidentiality;or
  - e. is independently developed by Recipient without reference to Confidential Information.
4. **Use Limitations.** Recipient agrees not to use the Confidential Information for its own use or for any purposes except those purposes expressly set forth above and internal administrative purposes. Recipient shall not use the Confidential Information for purposes of unfair competition. Recipient agrees not to copy, alter, modify, disassemble, reverse engineer or decompile any of the materials

unless permitted in writing by the Disclosing Party. Recipient will not remove Disclosing Party's proprietary markings, including copyright notices, from any section or piece of the Confidential Information, and any and all authorized copies must contain the same proprietary markings, including copyright notices, contained on the Confidential Information provided to Recipient.

5. **Non-Disclosure.** Recipient agrees not to disclose the Confidential Information to any third parties or to any of its employees except those employees who have a need to know the Confidential Information for accomplishing the stated purposes described herein and where such employees shall be made aware that the information is confidential and shall be under a written contractual restriction on nondisclosure and proper treatment of confidential information that is no less restrictive than the terms of this Agreement. Notwithstanding the foregoing, Recipient may disclose the Disclosing Party's Confidential Information if in the opinion of its counsel disclosure is required by law; provided, however, that Recipient will use all reasonable efforts to notify Disclosing Party of the obligation to make such disclosure in advance of the disclosure so that Disclosing Party will have a reasonable opportunity to object to such disclosure and that Recipient requests confidential treatment of the disclosed Confidential Information. Recipient agrees that it shall treat the Confidential Information with the same degree of care it accords its own confidential information of a similar nature; provided that in no event shall Recipient exercise less than reasonable care to protect the Confidential Information.
6. **Non-Compete.** At all times while this agreement is in force and after its expiration or termination, Recipient agrees to refrain from disclosing EPM Lives' customer lists, trade secrets, or other confidential material. Recipient agrees to take reasonable security measures to prevent accidental disclosure and industrial espionage. While this agreement is in force, the Recipient agrees to use [his/her] best efforts to enforce and to abide by the nondisclosure and noncompetition terms of this agreement. After expiration or termination of this agreement, Recipient agrees not to create products that compete directly with EPM Live for a period of 1 year. Recipient agrees to pay liquidated damages in the amount of \$1M USD for any violation of the covenant not to compete.
7. **Third Party Information.** Neither party shall communicate any information to the other in violation of the proprietary rights of any third party.
8. **Return of Materials.** Any materials or documents of Disclosing Party which are furnished to Recipient, and all copies thereof, at the earlier of Disclosing Party's request for return of the materials, or the termination of this Agreement between the Disclosing Party and Recipient, at the Disclosing Party's option, will either be: (i) promptly returned to the Disclosing Party; or (ii) destroyed by Recipient (with Recipient providing written certification of such destruction).
9. **No License.** The Confidential Information shall remain the sole property of the Disclosing Party. No license or other right is granted to Recipient by the disclosure of any information hereunder, nor is any warranty made as to such information.
10. **Remedies.** Recipient understands and agrees that the Disclosing Party is providing the Confidential Information to Recipient in reliance upon this Agreement, and Recipient will be fully responsible to the Disclosing Party for any damages or harm caused to the Disclosing Party by a breach of this Agreement by Recipient or any of its officers, directors, agents, employees, consultants or affiliates. Recipient acknowledges and agrees that a breach of any of its promises or agreements contained herein will result in irreparable injury to the Disclosing Party for which there will be no adequate remedy at law, and the Disclosing Party shall be entitled to apply for equitable relief, including

injunction and specific performance, in the event of any breach or threatened breach or intended breach of this Agreement by Recipient. Such remedies, however, shall not be deemed to be the exclusive remedies for any breach of the Agreement but shall be in addition to all other remedies available at law or in equity.

11. **Arbitration; Attorneys' Fees; Jurisdiction/Venue.** Any dispute, controversy or claim, whether based on contract, tort, statute or other legal or equitable theory (including any amendments or extensions thereto) (collectively, a "Claim") arising out of or relating to this Agreement, or the breach thereof, shall be settled by binding arbitration. Any proceedings pursuant to this Section 10 are confidential and will be treated as compromise and settlement negotiations for purposes of the applicable rules of evidence. The validity, interpretation and performance of this Agreement shall be governed by the laws of the State of California.
12. **Termination; Survival.** This Agreement shall govern all communications between the parties that are made during the period from the date hereof to the date on which either party receives from the other written notice that subsequent communications shall not be so governed. Recipient's obligations under this Agreement with respect to Confidential Information it has previously received shall continue for a period of two (2) years after termination of this Agreement.
13. **Non-Solicitation Of Employees.** Neither party shall, during the term of this Agreement and for one (1) year after its termination, solicit for hire as an employee, consultant or otherwise any of the other party's personnel who have had direct involvement with the Services, without such other party's express written consent.
14. **General.** This Agreement sets forth the entire understanding and agreement of the parties with respect to the subject matter hereof and supersedes all other oral or written representations and understandings. This Agreement may be amended or modified only in writing signed on behalf of Recipient and an authorized representative of the Disclosing Party. If any provision of this Agreement is found by a proper authority to be unenforceable or invalid, such unenforceability or invalidity shall not affect the other provisions of this Agreement and the unenforceable or invalid provision shall be construed to be amended in order to avoid such unenforceability or invalidity while preserving as closely as possible the intent of the parties. This Agreement shall not be construed as a teaming agreement, joint venture, partnership, fiduciary or other business relationship. Neither party will assign or transfer any rights or obligations under this Agreement (by operation of law, sale of assets, merger, reorganization or otherwise) without the prior written consent of the other party, except that either party shall have the right to assign this Agreement, without prior consent or approval of other party, to the successor to substantially all of the assets and business of such party. This Agreement shall be binding upon the permitted successors and assigns of both parties.
15. **Notices.** All notices or reports permitted or required under this Agreement shall be in writing and shall be by personal delivery, nationally recognized overnight courier service, facsimile transmission or by certified or registered mail, return receipt requested, and shall be deemed given upon the earlier of actual receipt or one (1) day after deposit with the courier service, receipt by sender of confirmation of electronic transmission or five (5) days after deposit in the mail. Notices shall be sent to the addresses set forth at the end of this Agreement or such other address as either party may specify in writing.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be duly executed by a duly authorized representative of such party as of the date posted within this agreement.

_____	<u>LMR Solutions dba EPM Live</u>
Company Name	Company Name
_____	<u>5864 Owens Ave., Suite 130</u>
Business Address	Business Address
_____	<u>Carlsbad, CA 92008</u>
City, State, Zip Code	City, State, Zip Code

Sign: _____	Sign: _____
By: _____	By: <u>Matt Wilson</u>
Title: _____	Title: <u>Director Partner Strategy</u>
Date: _____	Date: _____