

NONDISCLOSURE AGREEMENT

THIS NONDISCLOSURE AGREEMENT (the “**Agreement**”) is made and entered into as of April __, 2023 (the “**Effective Date**”), by and between Maxcess International Corporation, a Delaware corporation with its principal place of business at 1211 W. 22nd Street, Suite 804, Oak Brook, IL 60523, together with its affiliates (collectively, the “**Disclosing Party**”), and _____, a _____ (the “**Receiving Party**”). (The Disclosing Party and the Receiving Party may hereinafter be referred to individually as a “**Party**” or collectively as the “**Parties**”.)

WHEREAS, the Parties intend to enter into discussions which may include the disclosure by the Disclosing Party to the Receiving Party of information which may include business, financial, marketing and sales, operational, manufacturing, and scientific information, and other confidential and proprietary information pertaining to the business of the Disclosing Party, for the purpose of exploring the possibility of the Receiving Party entering into a business transaction (the “**Potential Relationship**”) with the Disclosing Party; and

WHEREAS, the Receiving Party desires to receive such information from the Disclosing Party, and the Disclosing Party desires to protect the confidentiality of the information that it may disclose to the Receiving Party.

NOW THEREFORE, for and in consideration of the premises and mutual promises contained herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **Confidential Information.** “**Confidential Information**” shall mean any and all information related to the business of the Disclosing Party that is of a confidential or proprietary nature that is disclosed during the term of this Agreement, as well as the existence and the terms and conditions of this Agreement, by the Disclosing Party or any of its subsidiaries or affiliates or any of their respective officers, employees, advisers, agents or representatives to the Receiving Party or any of the Receiving Party’s subsidiaries or affiliates or any of their respective officers, employees, advisers, agents or representatives, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” including without limitation inventions, developments, processes, formulae, know-how, technology, compositional make-up, designs, ideas, concepts, intellectual property, data, databases, specifications, test methods and results, plans, samples of products and materials, customer lists, product pricing and business, financial, marketing and sales, operational, manufacturing, and scientific information, and any other information of the Disclosing Party which the Disclosing Party considers to be proprietary or confidential, and which a reasonable person would also consider to be proprietary and confidential.

2. **Obligations regarding Confidential Information.** The Receiving Party: (a) will not use any Confidential Information for any purpose other than to evaluate the Potential Relationship and/or to perform its obligations under any definitive agreement executed by the Parties which relates to the Potential Relationship; (b) will safeguard and protect such Confidential Information from disclosure to third parties and shall exercise the same degree of care as it employs to safeguard and protect its own proprietary information, but in no event less than a reasonable degree of care; and (c) will advise each person receiving Confidential Information of the obligations of confidentiality under this Agreement, and shall be liable for any unauthorized disclosure of Confidential Information by any such person. The Receiving Party may communicate Confidential Information to its employees, officers and directors who are required by their duties on behalf of the Receiving Party to have knowledge thereof for purposes of evaluating the Potential Relationship or performing its obligations under a definitive agreement between the Parties.

3. ***Disclosure in Judicial or Administrative Proceeding.*** If the Receiving Party is required by law, governmental proceeding or court order to disclose any Confidential Information, the Receiving Party may disclose such Confidential Information without liability hereunder; provided, the Receiving Party gives prompt notice to the Disclosing Party of any such proceeding or order prior to disclosure and provides the Disclosing Party with the opportunity to obtain a protective order and/or defend against such disclosure. In the event that such protective order or other remedy is not obtained, or that the Disclosing Party waives compliance with the provisions hereof, the Receiving Party agrees to furnish only that portion of the Confidential Information which its counsel advises is legally required to be disclosed, and to exercise reasonable efforts to obtain assurance that confidential treatment will be afforded to the Confidential Information so disclosed.

4. ***Exceptions to Confidentiality Obligations.*** The obligations of confidentiality under this Agreement will not apply to any information which: (a) is already known to the Receiving Party at the time of receipt or is independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party; (b) is publicly available at the time of receipt or subsequently becomes publicly available other than through a breach of this Agreement, but such subsequent public availability shall not relieve the Receiving Party from liability for any unauthorized disclosure prior to such subsequent date; or (c) is received by the Receiving Party from a third party who is not under a restriction or duty of confidentiality with respect to such information, but such receipt shall not relieve the Receiving Party from liability for any unauthorized disclosure prior to such receipt. Specific information shall not be deemed subject to any of the foregoing exceptions merely because it is embraced by more general information subject to one or more of such exceptions, nor shall specific combinations of information be deemed subject to any of the foregoing exceptions merely because the individual items which make up the combination are embraced by one or more of such exceptions.

5. ***Intellectual Property and Exclusivity.*** Each of the Parties acknowledges and agrees that:

(a) the Disclosing Party does not transfer to the Receiving Party any of its Intellectual Property Rights, and the Receiving Party may not use any of the Disclosing Party's Intellectual Property Rights other than to evaluate the Potential Relationship and/or to perform its obligations under any transaction thereafter entered into by the Parties which relates to the Potential Relationship;

(b) all Foreground Intellectual Property Rights will be owned by the Disclosing Party;

(c) the Receiving Party assigns to the Disclosing Party all of the Receiving Party's right, title and interest in and to all Foreground Intellectual Property Rights, and, to the extent that any Foreground Intellectual Property Rights are copyrightable works or works of authorship (including computer programs, technical specifications, documentation, and manuals), the Parties agree that such works are "works made for hire" for the Disclosing Party under the US Copyright Act; and

(d) the Receiving Party shall only use the Foreground Intellectual Property Rights to evaluate the Potential Relationship and/or to perform its obligations with respect to any transaction entered into by the Parties which relates to the Potential Relationship.

"Foreground Intellectual Property Rights" means any and all of the Intellectual Property Rights developed that are either developed by (x) the Disclosing Party alone or (y) by the Disclosing Party and the Receiving Party jointly or by the Receiving Party alone as requested by the Disclosing Party.

"Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to: (a) patents (including all reissues, divisionals, provisionals, continuations and continuations-in-part, re-examinations, renewals, substitutions and extensions thereof), patent applications,

and other patent rights; (b) US and foreign trademarks, service marks, trade dress, trade names, brand names, logos, symbols, trade dress, corporate names and domain names and other similar designations of source, sponsorship, association or origin, together with the goodwill symbolized by any of the foregoing; (c) works of authorship, expressions, designs and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, data, data files, and databases and other specifications and documentation; (d) inventions, discoveries, trade secrets, business and technical information and know-how, databases, data collections, patent disclosures and other confidential and proprietary information and all rights therein; and (e) all industrial and other intellectual property rights, and all rights, interests and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the laws of any jurisdiction throughout in any part of the world.

Except for the provisions of this Section 5, nothing contained in this Agreement shall be construed as granting or conferring upon the Receiving Party any rights or license (expressly, or by implication, estoppel or otherwise) in any Confidential Information or other intellectual property of the Disclosing Party. The furnishing of Confidential Information hereunder by a Disclosing Party shall not obligate either Party to enter into any further agreement or negotiation with the other Party or to refrain from entering into any agreement or negotiation with any other party.

6. **Representations and Warranties.** The Disclosing Party does not, by execution of this Agreement, represent, warrant or guaranty the accuracy or completeness of, and expressly disclaims any and all liability based on, any Confidential Information or other information provided to the Receiving Party. The Disclosing Party does not, by execution of this Agreement, represent, warrant or guaranty the accuracy or completeness of any estimates or projections provided to the Receiving Party nor that such estimates or projections will at any time be realized. Each Party represents and warrants to the other that: (i) entering into this Agreement does not and shall not violate any agreement with or obligation to (whether express, implied or by operation of law) any other person, company or entity to which such Party is a party or subject, and (ii) it has the full corporate power and authority to enter into this Agreement and perform its obligations hereunder.

7. **Indemnification.** The Receiving Party shall indemnify and hold harmless the Disclosing Party from any damage, loss, cost or liability (including legal fees and the cost of enforcing this indemnity) arising out of or resulting from any unauthorized use or disclosure of Confidential Information by the Receiving Party and any agent of the Receiving Party.

8. **Term.** The term of this Agreement shall extend from the Effective Date to its date of termination. This Agreement shall terminate upon the first to occur of: (a) thirty (30) days from the date that written notice of termination is given by one Party to the other Party, or (b) three (3) years after the Effective Date. The rights, obligations, and covenants of the Parties under this Agreement shall continue and survive the termination of this Agreement for a period of ten (10) years from the date of such termination, except with respect to Confidential Information that qualifies as trade secret information under applicable law, in which case the Parties' obligations shall survive until such Confidential Information no longer qualifies as a trade secret. Upon termination of this Agreement, or at any other time upon the written request of Disclosing Party, the Receiving Party shall return to the Disclosing Party all Confidential Information received by the Receiving Party under this Agreement (and all copies and summaries thereof made by Receiving Party), or, if requested by the Disclosing Party, destroy all Confidential Information received by the Receiving Party under this Agreement (and all copies and summaries thereof made by Receiving Party) and certify to the Disclosing Party, within fifteen (15) days of such request, that such destruction has been accomplished.

9. **Remedies.** The Parties acknowledge that any disclosure or misuse of Confidential Information as prohibited hereunder shall give rise to remedies at law and in equity, including actions for damages or injunctive relief. The Parties further acknowledge that the amount and kind of such damages may be difficult to ascertain, immediate, irreparable, continuous, and that recovery at law alone may be inadequate; and, therefore, the terms of this Agreement may be specifically enforced through injunctive relief. Notwithstanding the foregoing, nothing herein shall be construed to preclude the recovery of any and all remedies at law; and each Party shall be liable for all reasonable costs and attorneys' fees incurred by the other Party in enforcing its rights under this Agreement.

10. **Governing Law.** This Agreement shall be governed by and construed under the laws of the State of Illinois without regard to the conflict of laws provisions thereof. Each party submits to the exclusive jurisdiction of the state and federal courts located in and for the State of Illinois, consents to the jurisdiction of such courts, and waives any objection as to such jurisdiction or venue.

11. **Miscellaneous.** This Agreement and the rights and duties of the Parties hereunder may not be assigned or delegated by the Receiving Party. Any such attempted assignment or delegation by the Receiving Party shall be null and void. In the event that one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions contained herein. This Agreement may be executed in one or more counterparts, which, taken together, shall constitute an original. This Agreement constitutes the entire agreement between the Parties with respect to this subject matter and supersedes any prior or contemporaneous oral or written representations with regard to the subject matter hereof. This Agreement may not be modified except by a writing signed by both Parties. Failure of either Party to enforce any right or remedy available to it under this Agreement shall not be construed as a waiver of the right or remedy with respect to any other breach or failure by the other Party. The Receiving Party hereby acknowledges that the non-disclosure, indemnity and other covenants contained in this Agreement are reasonable and valid and all defenses to the strict enforcement of all or any portion thereof are hereby waived. This Agreement may be executed by facsimile or electronic transmission which shall be deemed an original.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, through their authorized representatives, have executed this Agreement as of the date first above written.

Maxcess International Corporation

Receiving Party:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____