

## CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS AGREEMENT is entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between Eric's Car Service, Eric Lochbrunner and Melanie Lochbrunner hereinafter "Disclosing Party" and \_\_\_\_\_, a \_\_\_\_\_ corporation ("\_\_\_\_\_").

WHEREAS, the parties are contemplating a transaction involving a new vendor agreement between Disclosing Party and \_\_\_\_\_ (hereinafter "Negotiation"); and

WHEREAS, as part of the Negotiation, the parties will review confidential financial and related information (hereinafter "Confidential Information"); and

WHEREAS, the review of such Confidential Information is subject to the condition that the receiving party agrees to keep the Confidential Information confidential, and not disclose such Confidential Information to any other party in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and mutual promises and conditions contained herein, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Nondisclosure of Confidential Information.**

(a) For purposes of this Agreement, the "Receiving Party" shall be defined as the recipient of the other party's Confidential Information as defined herein, and "Disclosing Party" shall be defined as the party disclosing the Confidential Information.

(b) Receiving Party agrees that it shall not itself, and its affiliates will not, at any time whether during the period that the parties are conducting the Negotiation, in any fashion, or in any manner, either directly or indirectly, (i) disclose the fact or substance of this Agreement or of either party's discussions concerning the Negotiation; or (ii) disclose or use, for its or its affiliates or representatives' own benefit (other than solely in connection with the Negotiation), or for the benefit of any other person, firm, corporation or other entity, any Confidential Information (as defined herein) received by it or any of its representatives or affiliates from the Disclosing Party, or any employee, agent, representative, or advisor of the Disclosing Party.

(c) Receiving Party will restrict distribution of Confidential Information to those employees, agents, representatives, clients, or advisors of Receiving Party who have a need to know such information in connection with the Negotiation. Receiving Party will advise such persons of the confidential nature of the Confidential Information and use appropriate safe keeping procedures for the Confidential Information, which at a minimum shall be at least those procedures in place for the safe keeping of its own Confidential Information. Neither the Receiving Party nor any of its agents, employees, directors or advisors to whom any Confidential Information is disclosed will reproduce or copy any such Confidential Information or make summaries or notes therefrom except for disclosure as otherwise permitted hereunder.

(d) For purposes of this Agreement, "Confidential Information" includes any and all reports, information and data, whether written, oral, recorded or visually observed, which Receiving Party receives directly or indirectly from Disclosing Party, or any employee, agent, representative or advisor thereof, including, without limitation, all reports, information and data regarding Disclosing Party's business, customers, personnel, financial condition, financial statements, plans, products, specifications, inventions or ideas which may or may not constitute or form the basis for a patent or invention, product improvements, alterations or enhancements, developmental projects, plans, technical data, product specifications, sketches, know-how, designs, prices, materials, discounts, costs, distributors, manuals, statements of procedure or operation, drawings, photographs, graphs, research and development, business plans, marketing studies, databases, formulae, procedures, processes, patented and unpatented technologies, copyrights, trademarks, service marks, suppliers, vendors, assets, forecasts, trade secrets, operations and prospects, and all other confidential and/or proprietary information of Disclosing Party, as well as all memoranda, notes or other writings of Disclosing Party.

(e) The foregoing obligations and commitments not to use or disclose shall not apply to (a) information which is or becomes generally available to the public; except as a result of the breach of this agreement; (b) information that was already in the possession of the Receiving Party at the time of disclosure and that was not acquired directly or indirectly from the Disclosing Party; and (c) information that is developed by a party independently from any information obtained from the Disclosing Party. Notwithstanding the foregoing exceptions, the Receiving Party agrees not to disclose the Disclosing Party's interest in or relationship to any such information. Specific information shall not be deemed to be within the foregoing exceptions merely because it is embraced by more general information in the public domain.

(f) Notwithstanding anything to the contrary contained in this Agreement, Receiving Party may disclose any Confidential Information without breaching the terms of this Agreement if compelled to do so by a valid order of any government officer or agency or of a court of competent jurisdiction, specifically directing Receiving Party to disclose the Confidential Information, provided, that Receiving Party shall use its best efforts to avoid or resist such an order and, in any event, not less than five (5) days prior to any such disclosure Receiving Party shall notify the Disclosing Party in writing of such order.

2. **Return of Information.** At any time upon the Disclosing Party's request, Receiving Party will promptly deliver to, or confirm to the Disclosing Party the destruction of, all Confidential Information, including all reproductions, copies, notes and summaries thereof, together with all additional documents and materials that reflect any of such Confidential Information or information derived therefrom. Notwithstanding the return or destruction of such materials, Receiving Party, its agents, employees, representatives, and advisors, shall continue thereafter to hold in confidence in accordance with this Agreement all Confidential Information as such covenant shall survive termination of this Agreement.

3. **Remedies.** Receiving Party shall indemnify and hold harmless the Disclosing Party from any and all damages, loss, costs or liability, including legal fees and expenses, arising out of or resulting from Receiving Party's breach or violation of this Agreement. In addition, the Receiving Party acknowledges and agrees that the rights of the Disclosing Party under this Agreement are of a specialized and unique character and that immediate and irreparable harm will result to the Disclosing Party if Receiving Party fails, refuses to perform, or breaches any

obligation under this Agreement. The parties further agree that in the event of any failure, refusal to perform, or breach of this Agreement by Receiving Party, and in addition to any and all other remedies that each party may have in law or in equity, the Disclosing Party shall be entitled to temporary, preliminary and permanent injunctive relief to restrain such failure, refusal, or breach of Receiving Party, and to all costs and expenses, including reasonable attorneys fees, of any proceeding brought to obtain such injunctive relief. Nothing contained in this section shall restrict or limit in any way the Disclosing Party's right to seek and obtain any form of relief, legal or equitable, in an action brought to enforce its rights hereunder.

4. **Miscellaneous.**

(a) Each party acknowledges and agrees that the Confidential Information related thereto of a party shall be the sole and exclusive property of such party, and the party shall retain any and all rights thereto. Nothing contained in this Agreement shall be construed to grant to the other party any express or implied license or other right in or to the information.

(b) This Agreement shall be binding upon the undersigned, its successors and assigns. No provision of this Agreement may be amended or waived except in a writing expressly referring to this Agreement that is executed by a duly authorized officer or representative of the party against whom amendment or waiver is being asserted. The recitals at the outset of this Agreement are incorporated into and made a part of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same Agreement. This Agreement shall be executed in person or by facsimile signature, in one or more counterparts, each of which shall be deemed an original of this Agreement, and all of which, when taken together, shall be deemed to constitute one and the same agreement.

(c) Each Party hereby represents and warrants on its behalf that by signing below such party shall be bound by the terms and conditions contained herein upon the signature of such duly authorized officer.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first above written.

_____	_____
By: _____	By: _____
Name and Title: _____	Name and Title: _____
Date: _____	Date: _____