



CASTELLO®

MUTUAL NONDISCLOSURE AGREEMENT

THIS MUTUAL NONDISCLOSURE AGREEMENT (this “**Agreement**”) is effective as of _____, 20__ (“**Effective Date**”) by and between CASTELLO®, a Virginia Incorporated company with its principal place of business at 836 Rockbridge Rd. Glasgow, Virginia, 24555 (together with its affiliates, successors, assigns and licensees, “**CASTELLO America, CASTELLO Canada, CASTELLO Italy, CASTELLO® 1935**”) and _____, a _____ with its principal place of business at _____ (“**Company**”).

- Purpose.** CASTELLO and Company wish to explore and/or engage in a business opportunity (or opportunities) of mutual interest (“**Purpose**”) and in connection with the Purpose, each party may disclose to the other party certain information which the Disclosing Party desires the Recipient to treat as confidential.
- “**Confidential Information**” means information directly or indirectly disclosed in writing, orally or by inspection of tangible objects, before or during the Term of this Agreement by one party (the “**Disclosing Party**”) to the other party (the “**Recipient**”) or the Recipient’s directors, officers, employees, agents and advisors (collectively, “**Representatives**”), belonging or pertaining to the Disclosing Party, its customers, vendors, its other business partners or other third parties and that is identified as “confidential,” “proprietary,” “private,” “restricted,” “sensitive,” “secret”, “internal use only” or any other similar legend, or is known or should have been known by Recipient to be confidential or proprietary due to its nature or the context of its disclosure. To the extent practical, Confidential Information will be disclosed in a documentary or tangible form marked “confidential,” “proprietary,” “private,” “restricted,” “sensitive,” “secret” or “internal use only” or any other similar legend, but in no case will failure to mark the Confidential Information nullify the proprietary or confidential nature of the disclosure.

By way of example, Confidential Information may include, without limitation, business plans, financial reports, financial data, marketing data, employee data, forecasts, strategies, software or firmware code, source code, documentation, financial analysis, marketing plans, customer names, customer list, customer data, layouts, diagrams, designs and/or specifications, algorithms, inventions, unpublished patent, trademark or copyright applications or registrations, or other know-how, drawings, schematics, technology, processes, any other trade secrets, discoveries, ideas, concepts, techniques, materials, formulae, compositions, information, data, results, plans, surveys and/or reports of a business development or marketing nature. Confidential Information also includes copies, notes, abstracts and other tangible embodiments made by Recipient or its Representatives that are based on or contain any Confidential Information, as well as the existence and progress of the Purpose.

Confidential Information excludes any information that Recipient can establish: (i) at the time of disclosure was publicly known and generally available in the public domain; (ii) after disclosure becomes publicly known and generally available in the public domain through no fault, action or inaction of Recipient or its Representatives; (iii) prior to disclosure by the Disclosing Party was lawfully in Recipient’s possession without breach of any confidentiality obligations by Recipient, which must be established by Recipient’s records created prior to the Disclosing Party’s disclosure; (iv) is hereafter lawfully obtained by the Recipient on a non-confidential basis from a third party that is not subject to a confidentiality agreement or other contractual, legal or fiduciary obligation of confidentiality or restriction on dissemination with respect thereto; or (v) was independently developed by Recipient without reference to or reliance on the Confidential Information.

- Non-Use and Non-Disclosure.** Recipient agrees not to use or disclose Confidential Information for any purpose whatsoever except in furtherance of the Purpose and for the benefit of the Disclosing Party. Recipient agrees not to disclose any Confidential Information to its Representatives or any third parties, except to any Representatives who require the Confidential Information in order to further the Purpose, provided any such Representative is not a competitor of the Disclosing Party and the Disclosing Party does not object to such disclosure. Recipient shall not, and shall cause its Representatives to not, copy, reverse engineer, disassemble or decompile any prototypes, software or other tangible objects which embody Confidential Information and which are provided to Recipient hereunder.

4. **Maintenance of Confidentiality.** Recipient agrees that it shall, and shall cause its Representatives: (i) to take all reasonable measures to protect the secrecy, and avoid disclosure and use, of Confidential Information, except as expressly permitted in this Agreement; (ii) without limiting the foregoing, to take at least those measures that Recipient and its Representatives take to protect its own highly confidential information, but in no event less than a reasonable degree of care; (iii) have its Representatives who have access to Confidential Information sign a non-use and non-disclosure agreement in content substantially similar to the provisions hereof, prior to any disclosure of Confidential Information to such Representatives; (iv) to reproduce the Disclosing Party's proprietary rights notices on any copies of Confidential Information, in the same manner in which such notices were set forth in or on the original; (v) to immediately notify the Disclosing Party in the event of any unauthorized use or disclosure of its Confidential Information; (vi) in the event Recipient or its Representatives are subject to judicial or governmental proceedings requiring disclosure of Confidential Information, immediately notify the Disclosing Party and before any disclosure obtain, or cooperate with the Disclosing Party's efforts to obtain, a protective order or confidential treatment of the Confidential Information. Recipient agrees the Disclosing Party may hold Recipient responsible in the event Recipient's Representatives fail to comply with any of their obligations in this Agreement.

5. **Non-Disparagement.** Company acknowledges that CASTELLO® has a reputation as a high quality Brand and desires to maintain its positive reputation and receive positive publicity. Company shall therefore not directly or indirectly make any oral, written or recorded statement or comment with respect to CASTELLO® or its Representatives, products or services, or depict or portray any CASTELLO® or CASTELLO® Representative in any way that may reasonably be construed as disparaging, critical, defamatory or otherwise not in the best interests of CASTELLO.

6. **No Obligation.** Nothing herein shall obligate CASTELLO® or Company to proceed with any transaction between them, and each party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the Purpose, unless otherwise agreed in writing by the parties.

7. **No Warranty.** ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, REGARDING ITS ACCURACY, COMPLETENESS OR PERFORMANCE, AND EACH PARTY HEREBY DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES.

8. **Return of Confidential Information.** Recipient shall, no later than within ten (10) business days of the Disclosing Party's request, deliver to the Disclosing Party or destroy all Confidential Information of the Disclosing Party without retaining, in whole or in part, any copies, extracts or other reproductions (whatever the form or storage medium) of such Confidential Information, and shall certify the destruction of such Confidential Information in writing to the Disclosing Party. Recipient may retain a copy of the Confidential Information only if, and only to the extent that, a copy is required to comply with its internal record retention policies and procedures for legal, compliance or regulatory purposes, or to the extent copies are created as a result of automatic archiving or back-up procedures, all of which shall remain subject to the obligations of confidentiality under this Agreement until the Confidential Information is destroyed.

9. **Rights to Confidential Information.** Recipient will not acquire any intellectual property rights in the Confidential Information, by license or otherwise, by virtue of entering into this Agreement, except the limited right to use in Section 3. The Disclosing Party will retain all ownership, intellectual property, and other rights in and to its Confidential Information.

10. **10. Term.** This Agreement shall commence on the Effective Date and survive until terminated by either party by providing written notice to the other party ("Term"). Recipient's obligations in Sections 3, 4 and 8 will survive termination of this Agreement until the Confidential Information meets one of the Confidential Information exclusions in Section 2.

11. **Remedies.** Recipient agrees that any violation or threatened violation of this Agreement may cause immediate and irreparable injury to the Disclosing Party, for which payment of money would not compensate the Disclosing Party. Disclosing Party is therefore entitled to seek injunctive relief for any such violation without proof of actual damages or the posting of bond or other security, in addition to any other remedies available at law or in equity.

12. **Miscellaneous.**

a. This Agreement shall bind and inure to the benefit of the parties hereto and their successors and permitted assigns.

b. Company may not assign this Agreement without CASTELLO® prior written consent. Any attempted assignment in breach of the immediately preceding sentence will be null and void.

c. This Agreement shall be governed by the laws of the State of Virginia, without reference to conflict of laws principles.

Company agrees that any legal action arising out of or relating to this Agreement shall be instituted exclusively in a court of competent jurisdiction in the State of Virginia, Rockbridge County. Company consents to personal jurisdiction in any such court and hereby waives, to the fullest extent permitted by law, any objection thereto and agrees not to deny or defeat such court's jurisdiction or venue (including, without limitation, by a forum non conveniens motion). Company further consents to service of process in any legal action arising out of or relating to this Agreement upon Company's designated registered agent in the State of Virginia.

d. Any failure to enforce any provision of this Agreement shall not constitute a waiver thereof or of any other provision hereof.

e. If any provision of this Agreement, or any part thereof, is held to be invalid under any applicable statute or rule of law, it will be deemed omitted, and the validity of the remaining provisions will not be affected thereby.

f. If this Agreement is or becomes ancillary to another agreement between the parties, this Agreement will be deemed incorporated therein by reference unless such agreement explicitly provides otherwise with specific reference to this Agreement. Except as provided in the immediately preceding sentence, this Agreement expresses the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both parties hereto.

[Signature page follows]

IN WITNESS WHEREOF, the individuals executing this Agreement each hereby represent and warrant that they are duly authorized to execute this Agreement on behalf of their respective party.

CASTELLO®

Company: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____