



**Mutual Non-Disclosure Agreement  
CONFIDENTIAL**

This Mutual Non-Disclosure Agreement (“NDA”) is dated and effective as of \_\_\_\_\_, 20\_\_ (the “Effective Date”), between ECO Zero LLC with a business address at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ with a business address at \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_. The term of this NDA (and the parties’ respective obligations under this NDA) commences on the Effective Date and, except as otherwise provided herein, extends for two (2) years after the date of final disclosure of Confidential Information by Discloser under this NDA.

**Recitals**

I. Each party acknowledges that, for the purpose of discussing possible business relationships (the “Purpose”), it may be necessary for it, as “Discloser”, to provide to the other party, as “Recipient”, certain information considered to be valuable, confidential and proprietary by Discloser in conjunction with discussions having the potential to result in a follow-on contractual agreement or contract amendment.

II. Such information includes the fact that it has been provided by Discloser, the fact that the parties are discussing the Purpose(s), and may in particular include, without limitation, pricing, technical data, product specifications, illustrations or other visuals, financial data and plans, marketing and product development plans, human resource information, growth strategies and plans, cost information, customer information inclusive of Customer Proprietary Network Confidential Information (“CPNI”) as federally defined, processes and procedures, trade secrets, proprietary “know-how”, and like information concerning, or provided by, Discloser, its affiliates, or their third party consultants, contractors, or suppliers (collectively, Discloser’s “Confidential Information”). Confidential Information that (a) was provided in furtherance of the Purpose(s) and (b) was provided by Discloser to Recipient prior to execution of this NDA is also subject to the terms of this NDA.

III. Confidential Information may further encompass any “metadata,” source code, object code, firmware, or other data, information, or documentation embedded in, or attached to, electronic documents, product samples, or other media provide to Recipient by Disclosure whether or not related to the Purpose(s). In regard to the foregoing, each party agrees that notwithstanding any other provision of this NDA to the contrary, it will promptly inform the other party if it believes that any such data was erroneously or unintentionally disclosed and will dispose of such data as instructed by the other party. In view of the foregoing, each party further agrees that under no circumstances absent the other party’s express written authorization will it attempt to “reverse engineer” or decompile (as applicable) any of the other party’s hardware, software, firmware, or other technology.

IV. Confidential Information does not include: (a) information Discloser expressly authorizes Recipient to disclose without restriction; (b) information Recipient already lawfully known to Recipient at the time of disclosure, absent a then-existing duty to keep it confidential; (c) information Recipient lawfully obtains from any source other than Discloser, provided that such source, to the best of Recipient’s knowledge, rightfully obtained such information and is not itself prohibited from disclosing to Recipient by a legal, contractual, or fiduciary duty to Discloser; or (d) information Recipient independently develops without benefit of, use of, or reference to, Discloser’s Confidential Information.

V. This NDA is not a commitment by either party to enter into any transaction or business relationship, nor is it an inducement to spend funds or expend resources. No such commitment will be binding unless stated in a writing signed by both parties. In consideration of the mutual promises and obligations expressed herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recipient will protect Confidential Information provided to it by or on behalf of Discloser from any use, distribution, or disclosure except as expressly permitted under this NDA. Recipient will use the same standard of care to protect Confidential Information as Recipient uses to protect its own confidential and proprietary information, but in any event not less than a reasonable standard of care.

2. Recipient agrees to use Confidential Information solely in further of the Purpose(s) and for no other purpose(s). Neither party will use the other party's Confidential Information provided hereunder to (a) solicit, for any purpose, the other party's or its affiliates' competitors, customers, suppliers, or other business associates; (b) recruit the other party's employees; or (c) engage in the purchase or sale of the other party's stock in violation of any applicable laws, rules, or regulations including, without limitation, those governing insider trading. Neither party will identify the other party or its employees, corporate affiliates, or other owners of Confidential Information in any press release or publicity statement, advertising, sales/marketing collateral, or other communication to the public without the prior written authorization of Discloser.

3. Recipient may provide Confidential Information only to Recipient's employees and third party professional legal, financial, and technical advisors who: (a) have a need to know such Confidential Information in connection with the Purpose(s); and (b) have agreed to protect from unauthorized disclosure all such Confidential Information as to which they have access. Provision of Discloser's Confidential Information to Recipient's third party professional legal, financial, and technical advisors is subject to the additional requirement that such third parties may, at Discloser's request, be required to separately execute nondisclosure agreements specific to the Purpose(s).

4. If Recipient is requested to provide Confidential Information to any court, governmental/regulatory agency, or other third party pursuant to a court order, subpoena, or other process of law, Recipient must, to the extent permissible under applicable law, first provide Discloser with prompt written notice of such request and cooperate with Discloser to appropriately protect against, or limit, the scope of the requested disclosure. To the extent practicable, Recipient will otherwise continue to treat the requested information as Confidential Information.

5. If, in Recipient's sole, reasonable judgment, the provision of notice to Discloser of any request or requirement to provide Confidential Information under subpoena to a federal, state, or local law enforcement agency would jeopardize the physical safety of any natural person to whom Discloser owes, or may owe, a duty of care, or if, as represented to Discloser by the requesting agency, the request concerns a matter of national security, the notice requirement that would otherwise apply to Recipient under Section 6 shall be deemed inapplicable with respect to such request. To be clear, Recipient will remain bound by all other applicable provisions of this NDA.

6. Confidential Information provided by Disclosure remains Discloser's property at all times. No license to, or ownership interest in, any trademark, copyright, patent, trade secret, or other intellectual property right of Discloser is granted to Recipient by virtue of the disclosure of Confidential Information hereunder. All information, including Confidential Information, provided hereunder is provided strictly "as-is" and without representation or warranty of any kind as to its accuracy, completeness, freedom from error, or value.

7. Upon Discloser's written request, all or any requested portion of Confidential Information (including, but not limited to, Notes) will be promptly returned to Discloser or destroyed, and Recipient will, if requested, provide Discloser with written certification stating that such Confidential Information has been returned or destroyed.

8. Notwithstanding Section 9, Recipient may, if required to do so by controlling law, and with notice to Discloser, securely sequester copies of Confidential Information for record-keeping purposes.

9. Either party may terminate this NDA with or without cause at any time following the Effective Date upon ten (10) days prior written notice to an officer or owner of the other party.

10. Notwithstanding any other provision of this NDA to the contrary, the parties' respective obligations under this NDA will survive and continue in effect indefinitely with respect to any Confidential Information expressly identified to the Recipient, prior to its disclosure, as a "trade secret". Recipient shall, in any event, have the option of refusing to take receipt of information constituting a trade secret.

11. Recipient acknowledges and agrees that any breach or threatened breach of this NDA is likely to cause the Discloser irreparable harm for which money damages may not be an appropriate or sufficient remedy. Recipient therefore agrees that the Discloser is entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this NDA. Such remedy is not the exclusive remedy for any breach or threatened breach of this NDA, but is in addition to all other rights and remedies available at law or in equity.

12. No party's forbearance, failure, or delay in exercising any right, power, or privilege under this NDA or applicable law is a waiver thereof, and a party's single or partial exercise thereof does not preclude any other or future exercise thereof, or the exercise of any other right, power, or privilege under this NDA or applicable law.

13. If and to the extent any provision of this NDA is held invalid or unenforceable at law, such provision will be deemed stricken from the NDA and the remainder of the NDA will continue in effect and be valid and enforceable to the fullest extent permitted by law.

14. This NDA may not be assigned or transferred by either party, except to a parent, subsidiary, or affiliate thereof, without the prior written consent of the other party, which consent must not be unreasonably withheld. This NDA is binding upon and inures to the benefit of all parties and their heirs, executors, legal and personal representatives, successors and assigns, as the case may be. To be clear, the party making a permitted assignment shall not thereby be relieved of its obligation to continue to maintain the confidentiality of Confidential Information disclosed to it under this NDA.

15. This NDA is deemed drafted by both parties and is to be governed and construed by New Jersey law, without regard to its choice of law provisions. The parties hereby irrevocably consent and agree that any legal action, suit, or proceeding arising out of or in any way in connection with this NDA must be instituted or brought in the courts of the State of New Jersey or the United States District Court for New Jersey.

16. This NDA is the entire agreement between the parties hereunder with respect to the subject matter hereof and may not be modified or amended except by a written instrument signed by both parties. There are no understandings or representations with respect to the subject matter hereof, express or implied, that are not stated herein.

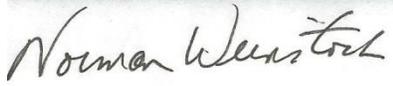
By their signatures below, the parties have executed this NDA by their duly authorized representatives in one or more counterparts, each of which constitutes an original but all of which together constitute one document. Transmission of signature pages by facsimile or other

electronic means is acceptable.

**Company:** \_\_\_\_\_

**ECO Zero LLC**

**Signature:** \_\_\_\_\_

**Signature:** 

**Name (print):** \_\_\_\_\_

**Name (print):** Norman Weinstock

**Title:** \_\_\_\_\_

**Title:** Chief Operating Officer

**Dated:** \_\_\_\_\_

**Dated:** \_\_\_\_\_