

**GENIE AIRE  
CONFIDENTIALITY AGREEMENT**

THIS CONFIDENTIALITY AGREEMENT (this "**Agreement**") is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between **GENIE AIRE**, a California corporation ("**Franchisor**"), on the one hand, and \_\_\_\_\_, a \_\_\_\_\_ ("**Manufacturer Vendor**"), on the other hand, with reference to the following facts:

A. Franchisor has developed the Genie Air System for the establishment and operation of businesses that sell air conditioners, heaters, dehumidifiers, air cleaners and heating, ventilation, air conditioning and refrigeration equipment (collectively, "**HVACR Equipment**") and related products, supplies and equipment to contractors, distributors, wholesalers, dealers, businesses, hotels, motels, apartment owners, management companies, government agencies and similar customers that use the trade name and service mark "**Genie Air Conditioning & Heating**" and other related trademarks, service marks, logos and commercial symbols (the "**Genie Air Marks**").

B. Franchisor has the right to use, and to license others to use, the Genie Air Marks and the Genie Air System, and has, as the result of the expenditure of time, skill, effort, and money, developed a distinctive franchise model for qualified franchisees to obtain the right to operate a Genie Air Conditioning & Heating business using the Genie Air Marks and the Genie Air System.

C. Franchisor may provide Manufacturer Vendor with confidential and proprietary information regarding the Genie Air System prior to approving or declining to approve Manufacturer Vendor as an authorized supplier to sell HVACR Equipment and related products, supplies and equipment to Franchisor's franchisees. Franchisor desires that Manufacturer Vendor maintain the confidentiality of all such confidential and proprietary information on the terms and conditions set forth in this Agreement.

**NOW, THEREFORE, IT IS AGREED:**

1. **INCORPORATION OF RECITALS.**

The recitals set forth in Paragraph A through Paragraph C above are true and correct and are hereby incorporated by reference into the body of this Agreement.

2. **CONFIDENTIALITY.**

Manufacturer Vendor acknowledges and agrees:

2.1. **Confidential Information.** That Manufacturer Vendor's knowledge of the elements of the Genie Air System and any other proprietary data that may be disclosed to Manufacturer Vendor by Franchisor, or any affiliate of Franchisor, including, without limitation, any and all confidential and/or proprietary knowledge, data or information of a party and any and all confidential and/or proprietary knowledge, data or information which a party has obtained or obtains from another person or entity and which a party treats as proprietary or designates (whether or not in writing or electronic form) as "**Confidential Information**". By way of illustration, but not limitation, "**Confidential Information**" includes tangible and intangible information (whether or not in electronic form) relating to Franchisor's business operations, trade secrets, products and services, sources of materials and equipment, client management and other software, data, other content, formulations, patterns, compilations, programs, devices and processes, know-how, business relationships, contact information for industry professionals, designs, developmental or experimental work and services, improvements, discoveries, plans for

research, potential new or supplemental products and services, websites, advertisements or ancillary products and services, marketing and selling methods and/or plans, business plans, budgets and unpublished financial statements, licenses, prices and costs, vendors, collaborators and customers, information regarding the skills and compensation of employees and contractors of Franchisor, designs, drawings, specifications, source code, object code, documentation, diagrams, flowcharts, research, development, marketing techniques and materials, trademarks, trade secrets, sales/license techniques, inventions, copyrightable material, trademarkable material, databases, relationship between Franchisor and other companies, persons or entities, the Genie Air System, and any other information or material considered proprietary by Franchisor, whether or not designated as Confidential Information by Franchisor but that is not generally known by the public, or which derives independent economic value (actual or potential) from not being generally known to the public or persons unaffiliated with Franchisor and which is the subject of efforts made by Franchisor that are reasonable under the circumstances to maintain its secrecy or any other information in oral, written, graphic or electronic form which, given the circumstances surrounding such disclosure, would be considered confidential. Confidential Information also includes the manner in which any of the above-described items may be combined with other information or products or synthesized or used by Manufacturer Vendor. Confidential Information does not include any information which: (a) was in the lawful and unrestricted possession of Manufacturer Vendor prior to its disclosure by Franchisor; (b) is or becomes generally available to the public by acts other than those of Manufacturer Vendor after receiving it; (c) has been received lawfully and in good faith by Manufacturer Vendor from a third party who did not derive it from Franchisor; or (d) is shown by acceptable evidence to have been independently developed by Manufacturer Vendor.

2.2. **Value.** That the Confidential Information has been developed by Franchisor and its affiliates by the investment of time, skill, effort and money and are widely recognized by the public and are of substantial value.

2.3. **Proprietary.** That the Confidential Information is proprietary, confidential and constitutes a trade secret of Franchisor and its affiliates.

2.4. **Maintain Confidentiality.** That Manufacturer Vendor will fully and strictly maintain the confidentiality of the Confidential Information, will exercise the highest degree of diligence in safeguarding the Confidential Information and will not disclose or reveal the Confidential Information to any person.

2.5. **Reproduction and Use.** That Manufacturer Vendor will not directly or indirectly reproduce or copy any Confidential Information or any part thereof and will make no use of any Confidential Information for any purpose whatsoever.

### 3. **GENERAL.**

3.1. **Injunction.** Manufacturer Vendor recognizes the unique value and secondary meaning attached to the Confidential Information and the elements of the Genie Air System and agrees that any noncompliance with the terms of this Agreement or any unauthorized or improper use of the Confidential Information will cause irreparable damage to Franchisor and its franchisees. Manufacturer Vendor therefore agrees that if Manufacturer Vendor should engage in any such unauthorized or improper use of the Confidential Information, Franchisor shall be entitled to both permanent and temporary injunctive relief from any court of competent jurisdiction without notice or the posting of any bond, in addition to any other remedies prescribed by law.

3.2. **Heirs and Successors.** This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns.

3.3. **Entire Agreement.** This Agreement represents the entire understanding between the parties regarding the subject matter of this Agreement and supersedes all other negotiations, agreements, representations and covenants, oral or written. This Agreement may not be modified except by a written instrument signed by Franchisor and Manufacturer Vendor that expressly modifies this Agreement. The parties intend this Agreement to be the entire integration of all of their agreements on this subject of any nature regarding the subject matter of this Agreement. No other agreements, representations, promises, commitments or the like, of any nature, exist between the parties.

3.5. **No Right to Use the Genie Air System or the Genie Air Marks.** This Agreement is not a license of any sort, and does not grant Manufacturer Vendor any right to use or to license the use of, the Confidential Information, which right is expressly reserved by Franchisor.

3.6. **Waiver.** Failure by Franchisor to enforce any rights under this Agreement shall not be construed as a waiver of such rights. Any waiver, including a waiver of default, in any one instance shall not constitute a continuing waiver or a waiver in any other instance.

3.7. **Validity.** Any invalidity of any portion of this Agreement shall not affect the validity of the remaining portions and unless substantial performance of this Agreement is frustrated by any such invalidity, this Agreement shall continue in full force and effect.

3.8. **Headings and Gender.** The headings herein are for purposes of convenience only and shall not be used in construing the provisions hereof. As used herein, the male gender shall include the female and neuter genders, the singular shall include the plural and the plural, the singular.

3.9. **Attorneys' Fees.** If Franchisor becomes a party to any legal proceedings concerning this Agreement by reason of any act or omission of Manufacturer Vendor or its authorized representatives, Manufacturer Vendor shall be liable to Franchisor for the reasonable attorneys' fees and court costs incurred by Franchisor in the legal proceedings. If either party commences a legal proceeding against the other party arising out of or in connection with this Agreement, the prevailing party shall be entitled to have and recover from the other party its reasonable attorneys' fees and costs of suit.

3.10. **Cumulative Remedies.** Any specific right or remedy set forth in this Agreement, legal, equitable, or otherwise, shall not be exclusive, but shall be cumulative with all other rights or remedies set forth herein or allowed or allowable by law.

3.11. **Notices.** All notices or demands to be given under this Agreement shall be in writing and shall be served in person, by air courier delivery or by certified mail. Service shall be deemed conclusively made (i) at the time of service, if personally served, (ii) three (3) business days after delivery by the Party giving the notice, statement or demand if by air courier with a guaranteed tracking facility, and (iii) three (3) business days after placement in the United States mail by Certified Mail, Return Receipt Requested, with postage prepaid. Notices and demands shall be given to the respective Parties at the following addresses, unless and until a different address has been designated by written notice to the other Party:

**Notices to Franchisor:**

Genie Aire  
15041 Calvert Street  
Van Nuys, California 91411  
Attention: President

**With a copy to (which shall not constitute notice):**

Barry Kurtz, Esq.  
Kurtz Law Group, A Professional Corporation  
21650 Oxnard Street, Suite 500  
Woodland Hills, California 91367

**Notices to Manufacturer Vendor:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

Either party may change its address for the purpose of receiving notices, demands and other communications by a written notice given in the manner set forth above to the other party.

3.12. **Governing Law.** This Agreement takes effect upon its acceptance and execution by Franchisor in California, and shall be interpreted and construed under the laws of California.

3.13 **Venue.** The parties agree that any action brought by either party against the other in any court, whether federal or state, shall be brought within the city and county in which Franchisor has its principal place of business at the time the action is initiated, and the parties hereby waive all questions of personal jurisdiction or venue for the purpose of carrying out this provision.

3.13. **Counterparts and Electronic Copies.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be one and the same instrument. Signatures transmitted electronically or by facsimile will be deemed original signatures. Electronic copies of this Agreement shall constitute and be deemed an original copy of this Agreement for all purposes, provided that such electronic copies are fully executed, dated and identical in form to the original hard copy version of this Agreement.

**FRANCHISOR:**  
GENIE AIRE  
A California corporation

**MANUFACTURER VENDOR:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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